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19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

21 U.S. WECHAT USERS ALLIANCE,
CHIHUO INC., BRENT COULTER,
22 FANGYI DUAN, JINNENG BAO, ELAINE
PENG, and XIAO ZHANG,

23 Plaintiffs,

24 v.

25 DONALD J. TRUMP, in his official capacity
as President of the United States, and
26 WILBUR ROSS, in his official capacity as
Secretary of Commerce,

27 Defendants.

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Case No. 3:20-cv-05910-LB

**NOTICE OF MOTION AND
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE UNDER SEAL**

Judge: Hon. Laurel Beeler

Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Plaintiffs hereby file this Administrative Motion to
3 File Under Seal pursuant to Northern District of California Civil Local Rules 79-5 and
4 7-11, seeking to file under seal a document described in the Declarations of Michael W.
5 Bien and Van Swearingen in Support of Plaintiffs' Administrative Motion to File Under
6 Seal ("Bien Administrative Declaration" and "Swearingen Administrative Declaration"),
7 filed herewith.

8 This Administrative Motion is based on this Notice of Motion; the accompanying
9 Memorandum of Points and Authorities; the Bien and Swearingen Administrative
10 Declarations filed herewith under seal; the entire record in this action; and such other
11 materials and argument as may be presented before or at the hearing.

12

13 DATED: October 8, 2020

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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By: /s/ Michael W. Bien

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Michael W. Bien

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Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Civil Local Rule 79-5, Plaintiffs’ counsel respectfully submit this
3 Administrative Motion to File Under Seal Appendix I to Defendant’s Commerce
4 Department Decision Memorandum (“Decision Memo”), containing non-party Tencent’s
5 Mitigation Proposal referenced in Exhibit A to the Declaration of John Costello, filed by
6 Defendants on September 28, 2020. *See* ECF No. 76-1 at 14. Pursuant to an agreement
7 among Defendants’ counsel, Plaintiffs’ counsel, and Tencent, Defendants provided a copy
8 of Appendix I to Plaintiffs’ counsel for attorneys’ eyes’ only review on the evening of
9 September 30, 2020. Appendix I, containing Tencent’s Mitigation Proposal, comprises
10 sensitive and sealable information, as explained more fully below and in the Bien
11 Administrative Declaration filed in conjunction with this Administrative Motion. *See* Civ.
12 L.R. 79-5(d)(1)(A). Plaintiffs’ counsel are concurrently filing a Proposed Order Granting
13 the Administrative Motion to File Under Seal. *See id.*, 79-5(d)(1)(B). Plaintiffs’ counsel
14 are also filing herewith an unredacted version of the Mitigation Proposal sought to be
15 sealed, in conformance with Civil Local Rule 79-5(d)(1)(C) and (D), and will provide
16 courtesy copies of the same documents to the Court, in conformity with Civil Local Rule
17 79-5(d)(2).

18 Defendants’ counsel indicated the Government’s position as “not opposing
19 [Plaintiffs’] motion to seal, for purposes of this motion only.” *See* Bien Administrative
20 Declaration ¶ 10. Tencent’s counsel indicated that “Tencent supports the sealing of this
21 document.” *Id.*

22 **I. THERE ARE COMPELLING REASONS TO SEAL THE REQUESTED**
23 **INFORMATION.**

24 The Court may seal documents “only upon a request that establishes that the
25 document, or portions thereof, are privileged, protectable as a trade secret or otherwise
26 entitled to protection under the law.” Civ. L.R. 79-5(b). Ordinarily, the party seeking to
27 file under seal must demonstrate “compelling reasons” for limiting public access to court
28 records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir.

1 2016). Where the evidence is attached to a non-dispositive motion, however, the less
2 demanding “good cause” standard from Rule 26(c) of the Federal Rules of Civil Procedure
3 applies. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir.
4 2006). The good cause standard applies to documents related to a motion for preliminary
5 injunction. *See Jam Cellars, Inc. v. Wine Grp. LLC*, No. 19-cv-01878-HSG, 2020 WL
6 5576346, at *2 (N.D. Cal. Sept. 17, 2020).

7 Here, the Court need not decide whether the less demanding good-cause standard
8 applies because there are clearly compelling reasons to seal Appendix I. “‘Confidential
9 business information’ in the form of ‘license agreements, financial terms, details of
10 confidential licensing negotiations, and business strategies’ satisfies the ‘compelling
11 reasons’ standard.” *Jam Cellars*, 2020 WL 5576346, at *1 (quoting *In re Qualcomm*
12 *Litig.*, No. 3:17-cv-0108, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017)). *See also*
13 *Google Inc. v. IXI Mobile (R&D) Ltd.*, No. 16-CV-04173-LHK, 2016 WL 10749145, at *2
14 (N.D. Cal. Oct. 11, 2016) (granting sealing as to exhibit, finding it contains “confidential
15 information relating to the organization of Plaintiff’s businesses and the locations of
16 Plaintiff’s data centers and servers, information that could cause competitive harm to
17 Plaintiff if disclosed.”). Agreements with third parties containing confidentiality clauses
18 related to confidential business information similarly satisfy the “compelling reasons”
19 standard. *See Finisar Corp. v. Nistica, Inc.*, No. 13-cv-03345, 2015 WL 3988132, at *5
20 (N.D. Cal., June 30, 2015).

21 Appendix I consists *entirely* of confidential business information. As summarized
22 in Defendants’ Commerce Department Decision Memorandum, *see* ECF No. 76-1 at 14,
23 the confidential document describes Tencent’s proposed plans and business strategies for a
24 new U.S. version of the WeChat app, new security measures to protect the new app’s
25 source code, and partnership plans for cloud-based data storage in the United States.
26 Disclosure of such information would result in competitors “gaining insight” into the
27 details of Tencent’s proposed “business model and strategy,” *In re Qualcomm Litig.*, 2017
28 WL 5176922, at *2, as well as the proposed security measures intended to protect

1 Tencent’s intellectual property and user data. As a result, there are compelling reasons for
2 filing the document under seal.

3 Furthermore, the document to be sealed was provided to Plaintiffs’ counsel pursuant
4 to an agreement among Plaintiffs’ counsel, Defendants’ counsel, and Tencent that the
5 document and its contents would be “subject to Attorneys-Eyes-Only treatment and subject
6 to the highest protections available under the forthcoming protective order, and used solely
7 in connection with the *US WeChat Users Alliance v. Trump* action[.]” Bien Administra-
8 tive Decl. ¶ 6. Counsel for Tencent explained that the document “should not be publicly
9 disclosed, both because it constitutes highly business sensitive/trade secret information,
10 including potential business plans and potential business partners, and out of respect for
11 the Commerce/Tencent discussions.” *Id.* Sealing should be granted here. *See*
12 *Synchronoss Technologies, Inc. v. Dropbox Inc.*, 2018 WL 6002319, at *3 (N.D. Cal.,
13 2018) (finding “compelling reasons to seal portions that appear to disclose confidential
14 negotiations and business strategies.”) (internal citation and quotation omitted).

15 **CONCLUSION**

16 For the foregoing reasons, as well as those articulated in the Bien Administrative
17 Declaration, Plaintiffs respectfully request that the Court grant the Administrative Motion
18 to File Under Seal and adopt the Proposed Order Granting the Motion.

19
20 DATED: October 8, 2020

Respectfully submitted,

21 ROSEN BIEN GALVAN & GRUNFELD LLP

22 By: /s/ Michael W. Bien

23 Michael W. Bien

24 Attorneys for Plaintiffs