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12
 13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 U.S. WECHAT USERS ALLIANCE, *et al.*,

16 Plaintiffs,

17 v.

18 DONALD J. TRUMP, President of the United
 19 States, and WILBUR ROSS, Secretary of
 20 Commerce,

21 Defendants.

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

**NOTICE OF REDACTED VERSION
 OF CLASSIFIED FILING AND
 OBJECTION AND RESPONSE TO
 PLAINTIFFS' SUPPLEMENTAL
 BRIEF, ECF NO. 96**

22 **NOTICE OF REDACTED FILING**

23
 24 Defendants hereby file a redacted version of a classified Counterintelligence Risk Assessment
 25 relating to WeChat that was prepared by the Office of the Director of National Intelligence (ODNI),
 26 Director of the National Counterintelligence and Security Center, in connection with the Identification
 27 of Prohibited Transactions issued by Defendant Secretary Ross on September 18, 2020. The unredacted

1 version of this document was lodged with the Court on September 25, 2020. *See* ECF No. 71. The
2 version appended to this filing has been redacted to remove classified or otherwise sensitive material
3 and was cleared on October 20, 2020 for release.

4 **OBJECTION AND RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEF**

5 Defendants object to Plaintiffs' Response to the Declaration of John Costello, docketed as a
6 supplemental brief on October 20, 2020, ECF No. 96 ("Supplemental Brief"). The Supplemental Brief
7 violates Local Rule 7-3(d), which provides that "[o]nce a reply is filed, no additional memoranda, papers
8 or letters may be filed without prior Court approval," except for narrow exceptions that do not apply.
9 Moreover, Mr. Costello's Declaration—which Defendants filed only after obtaining leave of Court at
10 the motion hearing on October 15, 2020 (October 15, 2020 transcript at 6:16-7:15)—was itself a
11 response to an earlier, post-reply filing of Plaintiffs, ECF No. 84, that also violated Local Rule 7-3(d).

12 To the extent the Court is nevertheless inclined to consider the Supplemental Brief, only two
13 points warrant response. First, contrary to Plaintiffs' assertions, Supp. Br. at 3, the fact that the
14 functionality of the WeChat app for current users (*i.e.*, those that have already downloaded the app) will
15 degrade gradually over the course of 1-2 years does not negate the irreparable harms to the United States
16 that emanate from the Court's injunction. The transactions identified by the Secretary represent the
17 Executive Branch's considered determination of the measures necessary to address the national security,
18 foreign policy, and economic threats posed by the WeChat app with due consideration for the impact on
19 United States users and considerations of technological feasibility. Every day that those measures are
20 enjoined is a day that extends and postpones their protective impact and undermines the Executive
21 Branch's authority over national security and foreign policy, including the important secondary effects
22 of the Secretary's Identification through which users would be encouraged to transition away from the
23 app. Moreover, Plaintiffs do not explain how they will imminently and irreparably be harmed by
24 restrictions that will have only a gradual and incremental impact over the course of 1-2 years; they
25 simply speculate that the restrictions "may" limit "voice and video" calls but do not address why, in the
26 event that occurs, they could not use other means of communication, such as the telephone or Skype.

27 Second, Plaintiffs assert that Mr. Costello did "not quantify" the risk of an "unpatched security
28

1 vulnerability.” Supp. Br. at 3. Neither did Plaintiffs’ declarant, Mr. Roach. And Mr. Costello, unlike
2 Mr. Roach, was at least able to inform the Court of the general magnitude of the risk. *See* Costello Decl.
3 ¶¶ 8-9 (stating that such security incidents “are rare” and occur only “on occasion” and that the “chance
4 of an urgent software vulnerability in the WeChat app arising” before the app aged out through the lack
5 of updates “is small”). Moreover, that risk can be avoided altogether if a user deletes the app from his or
6 her device. *Id.* ¶ 9. Thus, the speculative, small, and avoidable risk of a security vulnerability raised by
7 Plaintiffs in untimely Court filings should not alter the Court’s assessment of Defendants’ motion to
8 stay.

9 The remainder of Plaintiffs’ arguments are redundant of their earlier filings, and Defendants have
10 addressed them elsewhere. *See* Defs.’ Reply at 3-4, ECF No. 83.

11 Dated: October 21, 2020

Respectfully submitted,

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