

1 MICHAEL W. BIEN – Cal. Bar No. 096891
 VAN SWEARINGEN – Cal. Bar No. 259809
 2 ALEXANDER GOURSE – Cal. Bar No. 321631
 AMY XU – Cal. Bar No. 330707
 3 ROSEN BIEN GALVAN & GRUNFELD LLP
 101 Mission Street, Sixth Floor
 4 San Francisco, California 94105-1738
 Telephone: (415) 433-6830
 5 Facsimile: (415) 433-7104
 Email: mbien@rbgg.com
 6 vswearingen@rbgg.com
 agourse@rbgg.com
 7 axu@rbgg.com

8 KELIANG (CLAY) ZHU – Cal. Bar No. 305509
 DEHENG LAW OFFICES PC
 9 7901 Stoneridge Drive #208
 Pleasanton, California 94588
 10 Telephone: (925) 399-5856
 Facsimile: (925) 397-1976
 11 Email: czhu@dehengsv.com

12 ANGUS F. NI – Wash. Bar No. 53828*
 AFN LAW PLLC
 13 502 Second Avenue, Suite 1400
 Seattle, Washington 98104
 14 Telephone: (773) 543-3223
 Email: angus@afnlegal.com
 15 * *Pro Hac Vice* application forthcoming

16 Attorneys for Plaintiffs

17

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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

22 Plaintiffs,

23 v.

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

26 Defendants.

27

28

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

**DECLARATION OF ELAINE PENG
 IN SUPPORT OF PLAINTIFFS’
 MOTION FOR PRELIMINARY
 INJUNCTION**

Judge: Hon. Laurel Beeler
 Date: September 17, 2020
 Time: 9:30 a.m.
 Crtrm.: Remote

Trial Date: None Set

1 I, Elaine Peng, declare as follows:

2 1. I am a Plaintiff in the above-captioned action (the “Action”). I have personal
3 knowledge of the matters stated herein and if called as a witness I could and would testify
4 competently to them.

5 2. I was assisted in preparing this declaration in English. I primarily write and
6 speak in Chinese, and if called as a witness I would testify in Chinese.

7 3. I am a United States citizen residing in Castro Valley, California.

8 4. I founded the Mental Health Association for Chinese Communities
9 (“MHACC”), a nonprofit organization in 2013, with a mission of raising mental health
10 awareness within the Chinese community through advocacy, education, research, support,
11 and services to Chinese families and individuals afflicted by mental illness. MHACC is
12 subsequently registered as a 501(c)(3) nonprofit organization in the State of California in
13 2018.

14 5. As President and CEO of MHACC, I started multiple Chinese support
15 groups, developed and led numerous mental health programs, and developed the first
16 Chinese language website for the National Alliance on Mental Illness (“NAMI”).

17 6. Mine and MHACC’s mission is to provide mental health education to reduce
18 public prejudice against mental illness, decrease stigma among caregivers, promote mental
19 health and provide mental health programs and peer support to the underserved Chinese
20 community. I received the 2016 NAMI National’s Multicultural Outreach Award and the
21 2017 NAMI California’s Multicultural Outreach Award for my work in this field.

22 7. I first downloaded and used WeChat in 2014. Since then it has become the
23 exclusive means for me to communicate with Chinese family members and friends in both
24 China and in the United States on a daily basis. WeChat’s group chat function also allows
25 me to engage in discussions with a much wider network. I also receive news updates and
26 interact with my WeChat network through likes and comments.

27 8. I use the group chat function frequently for political discussions. I am a
28 member of multiple WeChat groups made up of WeChat users of similar political views

1 for the purpose of facilitating discussions relating to local, state or national politics.

2 9. I also use WeChat to further MHACC's mission. Since many of the Chinese
3 community members we serve are not fluent in English, WeChat is a much friendlier
4 application to them compared with other U.S. developed applications, which only have
5 English user interfaces.

6 10. WeChat is our primary communications tool with our service recipients. I
7 created two WeChat groups. One group consists of approximately 110 MHACC volunteers
8 for our use for internal communications. The second group has approximately 420
9 members, made up of both volunteers, service recipients and their family members.

10 11. In the larger WeChat group, people in similar mental-health situations can
11 share their experiences and organize to support one another. We also host lectures and
12 lessons at least weekly through WeChat using the group discussion function. We also
13 fundraise and share mental health lectures and other resources within these WeChat groups.

14 12. These WeChat groups have been a vital element of our work at MHACC.

15 13. MHACC has also created a WeChat homepage where we share mental health
16 resources on a monthly basis. The MHACC WeChat homepage currently has
17 approximately two hundred followers and has generated thousands of visits.

18 14. During the COVID-19 pandemics when physical mobility is seriously
19 impacted, WeChat has played a bigger role in my daily life and in MHACC's daily
20 operations. As cases of mental illness rise along with COVID-19, we have seen a dramatic
21 increase of the volume of discussion in the MHACC WeChat groups.

22 15. I have also noticed an uptick in the political discussions in my other WeChat
23 groups, since these can no longer take place in physical gatherings due to restrictions
24 requiring social distancing.

25 16. The daily operation of MHACC largely depends on the free, continuous and
26 uninterrupted access to WeChat services in the United States. MHACC provides, and
27 people in need of mental health assistance receive, a substantial amount of MHACC's
28 services on WeChat.

1 17. I learned about the Executive Order on WeChat from contacts sharing the
2 news to me, and from discussions in group chats and from media reports. I also read the
3 Executive Order itself, read news articles, and discussed with others to try to understand its
4 scope.

5 18. So far I have not fully understood, and no one can give me a definitive
6 answer, on the meaning of the words “transaction that is related to WeChat”.

7 19. I understand that the Executive Order will take effect forty-five days after its
8 issuance, and that violation of the Executive Order may subject one to administrative, civil
9 or criminal liabilities.

10 20. I am not certain whether WeChat can still be used in the United States after
11 the Executive Order takes effect, or that if WeChat can be used, what uses will cause me to
12 violate the Executive Order and what uses will not. For example, I don’t know if I will be
13 violating the Executive Order if I simply log onto WeChat, send a message to my service
14 recipients, make a voice or video call to my family, or share mental health resources with
15 my service recipients. The possibility of being penalized for using WeChat leaves me in
16 fear of violating the law simply by communicating with people.

17 21. To the extent access to WeChat is denied to users located in the United
18 States because of the Executive Order, the mission and operation of MHACC will be
19 negatively impacted in a very significant way. Since the Executive Order, we have
20 received hundreds of inquiries from our service recipients and their family members who
21 expressed serious concerns about not being able to get help from us if WeChat is banned.

22 22. I am concerned that, as a result of the Executive Order, MHACC will not be
23 able to serve its current users with much needed mental health services, and that I will lose
24 contact with the providers, care recipients, and family members with whom I am in regular
25 contact.

26 23. My ability to maintain my own social ties, and to communicate with other
27 Chinese community members in China and in the United States will also be adversely
28 affected. For example, I created a WeChat family group chat with all my thirty-eight

1 family members. I video chat with my elderly parents-in-law in China frequently on
2 WeChat to check on their health. Without WeChat, I will have to go back to the old way
3 of buying calling cards and making expensive international calls. I will also not be able to
4 reach all of my family members with one click. I will not be able to look at them through
5 video calls with my own eyes. Nor can they see that I am well with their own eyes.

6 24. Since WeChat is the most popular social media platform among Chinese
7 speakers in the U.S., it is practically impossible for me and MHACC to seek an alternative
8 social media platform that has the same or substantially similar reach.

9 25. Faced with the threats of losing access to WeChat posed by the Executive
10 Order, MHACC and I have been forced to expend our limited time, energy and resources
11 to explore other U.S. based social media platforms. However, we have not found a good
12 alternative.

13 26. We resorted to switching to Line (another, Korean-made social media
14 application) for our MHACC group sharing function as an imperfect temporary solution.
15 However, the process so far has been slow and ineffective and the solution problematic for
16 a number of reasons.

17 27. For example, the majority of our four hundred plus service recipients are
18 either elderly, or deficient in English, or both. When we first founded MHACC in 2013,
19 we went to great trouble just to instruct them on how to set up WeChat accounts, how to
20 use WeChat to message and share, as many of them do not know how to use a smart phone.
21 In some cases we had MHACC staff drive hours to recipients' homes, or recipients drive
22 hours to our office, just to have WeChat set up. The process took an enormous amount of
23 time and effort.

24 28. Since we started the project of switching to Line, we received countless
25 inquiries and requests for help with setting up Line. We now have no choice but to repeat
26 the same process as we did with WeChat set-up. The process this time is proving to be
27 more time and energy consuming, as Line only has an English user interface and is thus
28 unfriendly to our audience. I had to pull two MHACC staff from their routine work and

1 designated them to help with Line related inquiries specifically. Nonetheless, the process
2 has been slow and inefficient and only a small percentage of recipients have switched to
3 Line so far.


4 29. Additionally, almost all of MHACC's data is stored on WeChat. We store
5 our service recipients' names, addresses, contact information, and other vital information
6 on WeChat. We sent out intake questionnaires on WeChat for them to complete. Our staff
7 conducts one-on-one counselling with them on WeChat. We rely on the chat history to
8 evaluate their case and design their treatment, and then deliver it to them on WeChat. We
9 share articles on WeChat. In one case we even used the real-time location sharing function
10 on WeChat to prevent a suicide attempt.

11 30. Since WeChat is its own ecosystem, I am not aware of any method to
12 transfer this information outside of WeChat. Banning WeChat will mean erasing all this
13 valuable information and destroying the informational foundations that MHACC has
14 strived for years to build.

15 31. Further, we regularly invite guest speakers and mental health experts in
16 China to host lectures or lessons on WeChat in Chinese to our service recipients. This will
17 be impossible to do without WeChat.

18 32. Despite the mitigation measures we have been forced to take, it is my sincere
19 belief that the harm being caused by the Executive Order, if it is allowed to stand, cannot
20 be fully redressed.

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct, and that this declaration is executed at Castro Valley,
23 California this 26th day of August, 2020.

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26 
27 Elaine Peng
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