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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

**DECLARATION OF FANGYI DUAN
 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, Fangyi Duan, declare as follows:

2 1. I am the CEO of Chihuo Inc., (“Chihuo”), a Plaintiff in the above-captioned
3 action (the “Action”). I have personal knowledge of the matters stated herein and if called
4 as a witness I would and could testify 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 Chinese citizen residing in Santa Clara, California. I am in the process
8 of applying for a green card.

9 4. Chihuo is duly incorporated and existing under the laws of the State of
10 Delaware as a general corporation with its principal office in City of Industry, California.

11 5. I founded Chihuo with a mission of better connecting merchants with
12 customers within various Chinese communities in the United States.

13 6. We are in the business of providing digital marketing and advertising
14 services, first to restaurants, then extending broadly to clients in the food, travel,
15 technology and lifestyle services industries.

16 7. Since our founding, we have grown to be a leading content provider within
17 Chinese communities in the United States, our presence spans Los Angeles, the Bay area,
18 Seattle, Chicago, New York, Washington D.C., Boston, Atlanta, Houston, Philadelphia,
19 Dallas and Las Vegas.

20 8. We are a small business of approximately thirty employees, but our reach
21 goes well beyond the local communities that we live in. We have at least 740,000 active
22 followers on the WeChat homepages we maintain.

23 9. Through our WeChat network, we have built a thriving virtual community of
24 Chinese-language discussions, reviews, and advertising primarily focused on dining, food
25 products, and restaurants. We share content, such as restaurant reviews or recipes, on our
26 network of WeChat homepages. In return, our followers contribute to our content by their
27 commentary on our articles. They also strengthen our influence by sharing our content
28 within their own networks.

1 10. We rely heavily on social media platforms to distribute our content-based
2 marketing services. Since WeChat is the most widely used social media application of our
3 target audience (Chinese communities in the United States), we provide targeted marketing
4 and advertising services primarily on WeChat.

5 11. The success of our business is built upon WeChat's large user base within
6 the Chinese communities in the United States. Approximately 70% of our content
7 subscribers/viewers originate from WeChat.

8 12. We depend on the powerful WeChat network effects. Specifically, WeChat
9 has many users, our business has been successful at tapping that user base's interest in
10 restaurants, food products, and dining, and merchants are attracted to our marketing and
11 advertising services because we leverage WeChat and generate strong WeChat user traffic.

12 13. In particular, the instant messaging function of WeChat coupled with its
13 large user base enables us to deliver marketing and advertising to customers in a targeted
14 manner.

15 14. For example, utilizing WeChat's group chat functionality, our staff has
16 created more than 100 WeChat groups based on factors such as subscribers' personal taste
17 and geographical locations. These groups are populated by more than 50,000 active
18 WeChat users exchanging more than 7,000 messages in group conversations per day. This
19 enables our merchants to push relevant and valuable promotions directly to consumers in
20 an engaging and interactive manner.

21 15. The success of Chihuo's business on WeChat is also associated with
22 WeChat's additional unique social networking features. For example, through WeChat
23 Moments (a WeChat functionality allowing the sharing of pictures with short captions),
24 Chihuo is able to provide product display services in the form of graphics and video
25 advertising that WeChat users can interact with through "likes" and comments.

26 16. Chihuo has also established fourteen different WeChat homepages, each
27 providing geo-located, location-specific content targeting over 740,000 WeChat users in
28 fourteen different cities in the United States.

1 17. On these WeChat homepages, we generate an average of 65,000 visits per
2 day.

3 18. In addition, through WeChat Mini Programs (a feature within the WeChat
4 interface that connects content creators and merchants with viewers), we are able to
5 provide a one-stop mobile marketing solution which permits users to search, discover,
6 review, select, consult and reserve products and services of merchants with the touch of a
7 button.

8 19. Using these features that we offer through WeChat, merchants can reach
9 their most valuable target audience – interested customers – at the exact moment these
10 customers are looking for relevant products and services. These WeChat features are
11 especially beneficial to small enterprises with limited resources.

12 20. Our business model is fundamentally premised on free, continuous and
13 uninterrupted access to WeChat services in the United States. For example, approximately
14 70% of our \$2,500,000 annual revenue generated in the past year was generated from
15 providing services on WeChat.

16 21. I learned about the Executive Order on WeChat from contacts sharing the
17 news to me, from discussions in group chats and from media reports. Almost my entire
18 WeChat network was talking about it. I also read the Executive Order itself, read news
19 articles, and discussed with others to try to understand its scope. So far I have not fully
20 understood, and no one can give me a definitive answer, on the meaning of the words
21 “transaction that is related to WeChat”.

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

25 23. I am not certain whether WeChat can still be used in the United States after
26 the Executive Order takes effect. Even if WeChat can still be used by then, I am not sure
27 what uses will cause me to violate the Executive Order and what uses will not. For
28 example, I don’t know if I will be violating the Executive Order if I simply log onto

1 WeChat, send a message to my employees, make a voice or video call with my business
2 partners, or post a promotion for a client. The possibility of being penalized for using
3 WeChat leaves me in constant fear of violating the law.

4 24. Since WeChat is the most popular social media among the global Chinese
5 population, we have found that it is commercially impracticable to seek alternative social
6 marketing solutions and still maintain our core business.

7 25. Since the Executive Order, we have received many client inquiries regarding
8 our operations. Some clients have suspended their business relationship with us while
9 other clients have ceased to renew their business relationship with us. In the past two
10 weeks, the Executive Order has cost us approximately US\$40,000 to US\$50,000 in lost
11 revenue. This is approximately 30% of our average monthly revenue. We are attempting to
12 mitigate the impact of the Executive Order, but a full out ban on WeChat will effectively
13 destroy our current business model.

14 26. Many of our employees have also expressed concerns about possible pay
15 cuts and losing their jobs. Our employees are suffering from low morale. In the worst
16 situation, only a quarter of the current employees will keep their jobs.

17 27. If access to WeChat is delayed, impaired or altogether denied to users
18 located in the United States as a result of the Executive Order, I do not know whether our
19 business will survive. I constantly fear that the Executive Order's prohibition on
20 transactions that are related to WeChat will cause me to lose my business, my employees,
21 my customers, and my professional relationships.

22 28. My ability to access the outside world, to maintain my own personal social
23 ties, and to communicate with my family members and friends in China and in the United
24 States will also be adversely affected. For example, I message my parents on WeChat
25 every few days. I am also subscribed to hundreds of WeChat homepages and rely on them
26 for information and news updates.

27 29. Faced with the threat of losing access to WeChat posed by the Executive
28 Order, we have been forced to expend our limited resources to explore switching to other

1 U.S. based social media platforms. However, we have not found any good alternatives.
2 The thought of losing my company, which I built with my sweat and blood, as a result of
3 the Executive Order, has caused me great anxiety.

4 30. Currently, we have multiple teams working on redesigning our website and
5 opening new Chihuo accounts on other social media platforms. The website redesign
6 project is expected to take at least 300 hours of work, adding two to three extra hours of
7 work to the team members on top of their daily work. The content production team
8 members are working five to ten extra hours a day to re-launch Chihuo on other platforms
9 and to attract our followers there. Nonetheless, so far only a small percentage of our
10 original followers have followed us to our new platforms. The fact that these efforts have
11 been ineffective showcases the “stickiness” of WeChat’s network effects and its
12 irreplaceability.

13 31. In short, because people use WeChat for its network effects, it is extremely
14 difficult to attract them to other platforms that do not have the same networks.

15 32. Additionally, almost all of Chihuo’s business data is stored on WeChat. We
16 store our promotion materials, business contacts, work communication and other vital
17 information on WeChat. We grew and maintain our user base on WeChat. We share and
18 interact with our followers on WeChat. Since WeChat is its own ecosystem, I am not
19 aware of any method to transfer such data outside of WeChat in the same form and with
20 the same content. Banning WeChat will mean erasing all this valuable data and destroying
21 the informational foundations of Chihuo’s business that we built over the years.

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1 33. Despite the mitigation measures we have been forced to take, it is our sincere
2 belief that the harm caused by the Executive Order, if it is allowed to stand, cannot be fully
3 redressed. None of the alternatives that we are exploring can replace the functionality and
4 user base of WeChat.

5 I declare under penalty of perjury under the laws of the United States of America
6 that the foregoing is true and correct, and that this declaration is executed at Foster City,
7 California this 26th day of August, 2020.

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