

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 SPENCER
COHEN 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, Spencer Cohen, declare:

2 1. I am an economist. I have a PhD in Geography from the University of
3 Washington, a MA in China Studies (also from the University of Washington), and a BA
4 in Mathematics and History from the University of Connecticut. My PhD was in the
5 subfield of economic geography and local political economy in China. I serve as senior
6 economist with a Seattle-based research and data analytics consulting firm, Community
7 Attributes Inc. My CV is attached as **Exhibit A**. I have personal knowledge of the matters
8 set forth herein, and if called as a witness, I could and would competently so testify. I
9 make this declaration in support of Plaintiffs' Motion For Preliminary Injunction.

10 2. For nearly my entire professional and academic career, I have researched and
11 been engaged with issues relating to China. I have advanced fluency in Mandarin,
12 including reading, writing, and spoken, and have spent significant time in China for
13 language study and doctoral research. My doctoral dissertation examined the China
14 economic growth model through the lens of local government finance and land leasehold
15 markets. I am also a leading authority on economic impact and industry cluster analysis,
16 and the importance of international trade and exports for a subnational regional economy.
17 In my current role, which I have held for more than seven years, I supervise and lead
18 projects on international trade policy, economic impact analysis, and regional economic
19 forecasting. My work includes studies on the wine industry, maritime sector, port logistics
20 and shipping, international trade, agriculture and food processing, aerospace, construction,
21 and the tech industry. I am a frequent public speaker on the U.S.-China trade war, the
22 Pacific Northwest economy, and economic impacts of Covid-19, and have written opinion
23 pieces and been interviewed by news media on these topics. I am often sought after for my
24 views and perspective on the U.S.-China trade relationship and its impact and importance
25 to the Pacific Northwest.

26 3. Previously, I served as senior policy advisor for the Washington Economic
27 Development Commission, and as research manager for the Washington State Department
28

1 of Commerce, where he regularly wrote about and presented on Washington’s leading
2 export markets and sources of inbound foreign direct investment.

3 4. In these capacities, I have developed a deep understanding of the importance
4 of WeChat in the building and maintaining business networks and relationships between
5 U.S. companies and Chinese counterparts. Many businesses or organizations I engage
6 with in the Pacific Northwest who do business in China find having a WeChat account
7 critical and invaluable for managing contacts in China. Not having one puts one at a
8 significant disadvantage.

9 5. WeChat is economically important to the United States for at least the
10 following two reasons: (1) as a dynamic and intensively used networking platform
11 facilitating business communication and exchange amongst and between Chinese
12 Americans and Chinese citizens living in the United States; and (2) as an essential tool for
13 U.S. companies doing business in China. This essential role is further accentuated by the
14 push among United States policymakers to expand United States exports to China and
15 meet the targets established in the January 2020 Phase I Trade Deal. Thirdly, there is a
16 strong network effect that makes WeChat an irreplaceable platform for virtual social
17 interactions and communication.

18 **Business Platform in the United States**

19 6. WeChat is the largest mobile texting app in the world, with more than 1
20 billion users. The WeChat platform is multipurpose, with messaging, audio and video
21 calls, social media, and mobile payments functionality. The majority of WeChat users are
22 in China, though a growing share of users reside outside the U.S. and rely on WeChat as a
23 critical platform for communicating with relatives and friends in China. According to the
24 Migration Policy Institute, in 2018 there were 2.5 million Chinese immigrants living in the
25 U.S., a seven-fold increase since 1980, representing 5.5% of the entire foreign-born

26 ///

27 ///

28 ///

1 population in the U.S.¹ Chinese residents and Chinese Americans depend on WeChat as a
2 primary source of communication and commerce. The social networking functionality of
3 WeChat is irreplaceable; prohibition on its use in the U.S. would result in monetary and
4 non-monetary costs borne by both American citizens and legal residents of the U.S.

5 7. Nearly all Chinese businesses in the U.S., including those owned and
6 operated by Chinese Americans, rely on WeChat as a core platform for marketing, client
7 and customer communications, and online orders. Chinese Americans use WeChat to
8 build and foster relationships with potential business partners and customers, while many
9 consumer-facing businesses such as restaurants rely on WeChat as their primary medium
10 for posting deals, menu updates, and events, and in general terms maintaining relationships
11 with their clientele. Within the Chinese community, including both American citizens and
12 legal residents, WeChat is the most common and intensively used platform for managing
13 client relations and business networking. Within the Chinese ethnic community, it is
14 commonly the exclusive platform for businesses and social groups.

15 8. There is also the factor of inertia, or network effect arising from WeChat's
16 size and prominence—WeChat has evolved and grown to be the primary virtual space for
17 online networking and communication, and because of this robust network is the preferred
18 app for Chinese language social networking. Moreover, Americans studying the Chinese
19 language rely on WeChat as a means of staying informed on events in China, practicing
20 their reading and writing skills, and connecting with and developing friendships with both
21 U.S.-based and China based native Chinese language partners.

22 9. There is currently no available substitute to the dynamic functionality offered
23 through the WeChat platform. Businesses and individuals can create and post content,
24

25 ¹ Carlos Echeverria-Estrada and Jeanne Batalova, “Chinese Immigrants in the United
26 States,” Migration Policy Institute, January 15, 2020.

27 <https://www.migrationpolicy.org/article/chinese-immigrants-united-states-2018> (accessed
28 August 26, 2020).

1 share and comment on posts, engage in voice and video conversation, and leverage the
2 WeChat platform for marketing and commerce. Prohibiting or strongly curtailing access
3 to this tool would incur costs borne primarily by Chinese Americans and Chinese legal
4 residents, due to both the existing investments made in this platform and the lack of a
5 comparable near-peer substitute.

6 **Helping United States Companies Export to China**

7 10. No U.S. company can succeed in China without an active WeChat account.
8 At a minimum level, WeChat is an essential tool among those staff and company officers
9 directly engaged in the China market and supply chains. U.S. supply chain managers, for
10 instance, will use WeChat to maintain frequent dialogue with China-based contract
11 suppliers or in-country staff.

12 11. Indeed, nearly all business dealings in China involve some interactions on
13 WeChat. This is just as important for U.S. company personnel based in the U.S., where
14 WeChat is essential to maintaining contacts with Chinese counterparts and clients
15 overseas. Many Chinese businesses have nearly or completely dispensed with email
16 exchanges in favor of shorter WeChat messaging. The importance of WeChat has become
17 further accentuated by the ongoing coronavirus pandemic. Entry into China for U.S.
18 citizens is highly restricted, due to 14-day quarantine requirements and testing. In many
19 cases, U.S.-based frequent business travelers to China have elected to not travel to China at
20 this time, further increasing their reliance on WeChat to manage contracts and supply
21 chain relationships.

22 12. China is also an important source of foreign direct investment (FDI) into the
23 U.S. and was quickly expanding in the U.S. until an erosion in U.S.-China relations and
24 passage of new rules placing Chinese FDI under much greater scrutiny and restrictions.
25 Despite these setbacks, Chinese FDI will continue to expand globally, and is expected to
26 resume expansion in the U.S. in the future. Many of these investments are facilitated by a
27 network of organizations and stakeholders, all of whom rely on WeChat to foster and
28 maintain these trans-Pacific relationships. Companies, site selectors, economic

1 development practitioners, city and state government officials, and various community
2 development organizations have used WeChat to market their respective regions for
3 inbound investment, build and maintain relationships with Chinese counterparts, and
4 coordinate inbound investment delegations. There is no viable alternative to the WeChat
5 platform for engaging in these activities.

6 13. The U.S.-China Phase I Trade Deal, signed on January 15, 2020, establishes
7 a set of ambitious export targets over the next two years, including a net increase of \$200
8 billion in U.S. exports to China of goods and services compared with 2017 levels. In order
9 to achieve these targets, U.S. companies will need to rapidly expand and build out their
10 marketing and commercial channels in China, including intensive utilization of WeChat to
11 connect with Chinese buyers and maintain client relations. WeChat's role in business in
12 China cannot be overstated. If U.S. companies are not able to maintain WeChat accounts
13 while in the U.S., they will be at a significant disadvantage trying to market and sell their
14 goods and services in China. Again, this is due to the network effects of WeChat, since it
15 has gained sufficient critical mass to be the only viable platform for digital interaction and
16 messaging between U.S. and Chinese companies in many cases.

17 14. Even setting aside the goals of the Phase I trade deal, China's economy will
18 continue to expand, albeit at slower annual rates than those experienced over the last two
19 decades. Concomitant with this overall economic growth will be the continued emergence
20 of a robust, consumer-oriented middle class made of urban households that exhibit a strong
21 preference for foreign products and services. Moreover, China's population is ageing; in
22 2019, the ratio of individuals 65 and over to the working age population reached 16.2%, up
23 from 10% in 2001. As the Chinese population gets older, there will be growing demand
24 for various high-end medical devices and equipment produced in the U.S. Again, if U.S.
25 companies are prevented from using WeChat while based in the U.S., these companies will
26 be at a competitive disadvantage vis-à-vis other nations that have not enacted a similar ban
27 on WeChat access. For example, a recent (August 24-24) survey by the American
28 Chamber of Commerce in Shanghai found that, among 142 respondents, 88% indicated

1 they use WeChat primarily as a communication tool with employees and 76.8% with local
 2 government, while 77.5% use the platform as a marketing tool. According to the survey
 3 findings, if the executive order is limited only to transactions inside the U.S.,
 4 approximately three quarters still expected a negative impact to their operations, with 9.2%
 5 indicating a “substantial impact that included a loss of revenue greater than 10% and loss
 6 of competitiveness.”²

7 **Irreplaceability of WeChat**

8 15. Social networks are sticky and create deep, resilient network effects. Once
 9 enough users become engaged in a platform, and once each individual develops a robust
 10 and growing audience on such a platform, it becomes increasingly difficult to stop using
 11 the tool and/or find a near-peer replacement. There is no viable alternative for Chinese
 12 language correspondence, especially for communications between the U.S. and China.
 13 WeChat will also continue to be the dominant platform for multipurpose social networking
 14 in China, meaning a ban on use in the U.S. will simply lock out U.S.-based users from
 15 these interactions. This network effect of WeChat means that, if this tool was banned, it
 16 would be place significant monetary and nonmonetary costs on its user base, many of
 17 whom would lose access to the deep web of connections they’ve developed through the
 18 platform—relationships deeply entwined with the infrastructure of the platform and often
 19 developed over multiple years of use—with no viable replacement.

20 ///

21 ///

22 ///

23 ///

24 _____

25 ² American Chamber in China, “AmCham Shanghai Flash Survey on Impact of WeChat
 26 Executive Order,” August 26, 2020. [https://www.amcham-](https://www.amcham-shanghai.org/en/article/amcham-shanghai-flash-survey-impact-wechat-executive-order)
 27 [shanghai.org/en/article/amcham-shanghai-flash-survey-impact-wechat-executive-order](https://www.amcham-shanghai.org/en/article/amcham-shanghai-flash-survey-impact-wechat-executive-order)
 28 (accessed August 26, 2020).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Seattle, Washington this 28th day of August, 2020.



Spencer Cohen

EXHIBIT A

Spencer Cohen, PhD

Economics Consultant, Regional Economist, and Expert in Chinese Economics and Politics

Greater Seattle

Mobile: 206 295 0980

Email: scohenke@gmail.com

Chief economist for research and data analytics consulting practice in Seattle. Expertise on China's domestic economy, U.S.-China trade relations, regional economics in the U.S., input-output modeling, forecasting, and economics research. Frequent panelist and public speaker. Advanced fluency (spoken, reading, writing) in Mandarin Chinese language.

PROFESSIONAL ACCOMPLISHMENTS

Expertise on China—advanced fluency in Mandarin Chinese (spoken, reading, writing) and doctoral research on China's urban economy and land leasehold markets.

Public speaker—frequent presenter on the U.S.-China relationship, regional economic trends, and economic impacts, including effects of U.S.-China trade war and Covid-19.

Leadership—recruited and managed a team of economics and data analysts. Serves as principal-level chief economist and public facing member of consulting practice.

PROFESSIONAL EXPERIENCE

SENIOR ECONOMIST, 2013-present

Community Attributes, Inc., Seattle, WA

An economics and data analytics consulting firm.

Chief economist leading economic and fiscal analyses, regional industry reports,

- Subject-matter leadership on: communication technology, maritime, aerospace, agriculture, information & communication technology, and wine industries; input-output modeling; forecasting; international trade; seaport and airport operations; and workforce supply-demand analytics.
- Notable clients: Washington State Joint Transportation Committee, Port of Seattle, Washington State Department of Commerce, Washington Aerospace Partnership, Washington State Wine Commission.

SENIOR POLICY ADVISOR, 2011-2013

Washington Economic Development Commission, Seattle, WA

Mini state agency responsible for statewide economic development strategy. Supported development of economic development strategy for Washington state and evaluating economic development programs receiving state funding.

RESEARCH MANAGER, 2008-2011

Washington State Department of Commerce, Seattle, WA

Served as lead economist for Business Services division, including public outreach, international analysis, publications and public presentations on state's economic performance.

- As Mandarin speaker, served as translator for high profile delegations from China and presentations (in Chinese) to inbound Chinese delegations.
- Served as Washington State Governor Gregoire's personal translator for meeting with Commercial Aircraft Corporation of China in executives in 2011.

CONTRACT RESEARCHER, 2007

Washington State Department of Community, Trade, and Economic Development, Seattle, WA

Prepared Washington State Investment Competitiveness Report used by the state officials for more than five years to strategize and promote FDI opportunities in Washington. FDI?

SPECIAL PROJECTS MANAGER, 2006

Washington State Department of Community, Trade, and Economic Development, Seattle, WA

- Planned and organized Washington State Trade Week, an annual event promoting the importance of international trade to the state economy.
- Directly supported Governor Chris Gregoire's trade mission to Australia and New Zealand and served as delegate on mission on behalf of the Washington Technology Center.

EDUCATIONAL BACKGROUND, MEMBERSHIPS, AND AFFILIATIONS

PhD, Economic Geography, University of Washington 2016.

Dissertation: *Local States, Markets, and the Geography of Political Economy and Land in China*.

- Examined the intersection of local government finance, land leasehold markets, and local state-owned enterprise restructuring and recapitalization process.
- Time series cross-sectional data analysis of land-revenue dependency at the prefectural level
- Interviews and doctoral fieldwork in Chongqing and Guangzhou.

MA, China Studies, University of Washington, 2005

BA, Mathematics and History (double major), University of Connecticut, 2001

LANGUAGE SKILLS AND TRAINING

Mandarin Chinese—Advance fluency (spoken, reading, writing, scientific)

Overseas Language Training:

- Beijing Language Training Center, 2007, Beijing, China
- Inter-University Program (IUP) for Chinese Language Training, 2004, Beijing, China
- Northeastern University (东北大学) Chinese Language Program, 2003, Shenyang, China

TECHNICAL SKILLS

MS Excel, MS Word, R statistics programming, economic input-output modeling, econometrics methods.

PROJECTS LED OR MANAGED

Select list of projects I have either served as chief author, project manager, and/or lead analyst.

Global Trade and Port Operations

Washington Council on International Trade (2018-2020). *Bi-Monthly Trade Briefings*. On-going set of periodic trade policy briefings on topics including U.S.-China Trade War, U.S.-Mexico-Canada Agreement (USMCA), United Kingdom-U.S. Free Trade Negotiations, and digital trade trends.

Highline College Center of Excellence in Global Trade & Supply Chain Management Center of Excellence (2018, 2020). *Global Trade and Supply Chain Management Sector Economic*

Analysis. Economic assessment of the Global Trade and Supply Chain Management sector in Washington state, including activities ranging from rail freight, air cargo, freight forwarding, trucking, and procurement and supply chain management within manufacturing and e-commerce operations in the state.

City of Kent (2018). *Global Trade and Supply Chain Analysis*. An economic assessment of the global trade and supply chain management sector within the Kent Valley region.

Washington State Joint Transportation Committee (2017-2018). *Washington State Marine Pilotage Study*. Analysis of best practices and recommendations for state maritime pilotage recruitment, tariff and fee rate setting process, and administrative oversight.

Washington State Department of Commerce (2015, 2017, 2020). *Washington State Military and Defense Economic Modeling and Forecasting Tool*. Led model development of interactive analytic tool for evaluating defense contracting activities in Washington state. Project funded by the U.S. Department of Defense Office of Economic Adjustment.

Port of Seattle (2017-2018). *Economic Impacts of Sea-Tac International Airport*. Analyzed the direct and secondary jobs and fiscal revenues across several categories of airport operations and off-site visitor spending activities.

Washington Council on International Trade (2015). *Economic Impact of Port Congestion*. Assessed the impact of port slowdowns during labor negotiations between the International Longshore and Warehouse Union and the Pacific Maritime Association began in May of 2014 and continued into the beginning of 2015.

Cluster and Industry Studies

Washington Maritime Federation (2013, 2017). *Washington State Maritime Sector Economic Impact Study*. Detailed analysis of the maritime industry in Washington state, including direct and total economic impacts.

Washington Aerospace Partners (2013, 2016-2018). *Washington State Aerospace Economic & Fiscal Impact Study* (with 2016, 2017, and 2018 updates for Aerospace Works for Washington and Aerospace Futures Alliance).

Washington State Department of Commerce (2016). *Defense Market Export Reports*. Produced reports for defense activities across five major industry clusters (maritime, aerospace, clean tech, information communication technology, and life science and global health); work used by state government to design strategies to help contractors diversify away from defense-only work.

Washington State Department of Agriculture (2016). *Economic Impact of Invasive Species*. Analysis quantified the effects of more than 15 invasive species on the Washington state economy.

Washington State Farm Bureau (2015). *Agriculture Industry Economic Impact Analysis*. Analysis of the economic and fiscal benefits associated with agriculture and the food & beverage processing supply chain and return on investment of Washington state.

Washington State Wine Commission (2015, 2020). *Wine Industry Economic Impact Analysis*. Created a data-rich analysis of the wine and grape industries in Washington, and provided an estimate of the industry's total economic contribution to the state.

Washington Technology Industry Alliance (2015). *Information and Communications Technology Industry Cluster Study*. Produced a quantitative and qualitative assessment of the ICT sector.

Washington Beer Commission (2018). *Economic Impact Analysis*. Analyzed the economic impacts of craft beer production in Washington state, including: direct and multiplier effects of the industry statewide; sales and distribution channels; industry growth, opportunities, and challenges; the beer production business model; the importance and impact of tourism and festival-related spending; tax revenues supported by the industry; and an outlook for further growth and expansion.

Workforce and Government Policy Analysis

Sound Transit (2016, 2020). *Construction Workforce Analysis*. Comprehensive construction workforce gap analysis for Sound Transit high demand occupations.

Coastal Villages Region Fund (2017). *Economic Needs Assessment*. Evaluated the socioeconomic conditions across the 65 communities in Western Alaska that participate in the Community Development Quota program, a federal program that sets aside 10% of fisheries quotas in Western Alaska for impoverished communities to support economic development.

Port of Seattle (2016). *Potential Economic Impacts of Proposed SoDo Arena*. Evaluation of potential economic costs borne by industrial district tenants in the SoDo district from proposed sports arena.

PUBLICATIONS, ARTICLES, AND SPEAKING ENGAGEMENTS

Op-ed Articles

Cohen, Spencer, "Opinion: Subsidies in China impact Washington state businesses," Puget Sound Business Journal, May 13, 2019.

Cohen, Spencer, "The Tariff Threat Is Real," Seattle Business Magazine, August 2019.

Presentations and Panels (2019-2020)

Cohen, Spencer, "Economic Impacts of Covid-19." Rainier Club. May 21, 2020. Seattle, WA.

Cohen, Spencer, "Unpacking the U.S.-China Phase I Trade Deal." Washington State China Relations Council. February 6, 2020. Seattle, WA.

Cohen, Spencer, "U.S.-China Trade War and Impacts to Washington State." Presentations to Pacific Northwest Waterways Association (October 10, 2019); Washington State Governor's Council of Economic Advisors (October 2, 2019); Washington State China Relations Council (August 22, 2019: Seattle, WA); Economic Alliance Snohomish County (August 13, 2019: Everett, WA); Washington Public Ports Association (May 15, 2019: Spokane, WA).

Cohen, Spencer, "Unpacking the Belt and Road Initiative." Presentation to Pangea Giving, September 5, 2019. Seattle, WA.

Panelist on Impacts of Trade War, Washington Council on International Trade Annual Trade Summit. April 23, 2019, Seattle, WA.

Cohen, Spencer, "Annual Snohomish County Economic Forecast." Presentation to Economic Alliance Snohomish County Annual Forecast Conference, February 21, 2019. Lynwood, WA.