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33 UNITED STATES DISTRICT COURT

34 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

35 U.S. WECHAT USERS ALLIANCE,
 36 CHIHOU INC., BRENT COULTER,
 37 FANGYI DUAN, JINNENG BAO, ELAINE
 38 PENG, and XIAO ZHANG,

39 Plaintiffs,

40 v.

41 JOSEPH R. BIDEN, JR., in his official
 42 capacity as President of the United States, and
 43 GINA RAIMONDO, in her official capacity as
 44 Secretary of Commerce,

45 Defendants.

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

70 **JOINT CASE MANAGEMENT
 71 CONFERENCE STATEMENT**

72 Judge: Hon. Laurel Beeler

73 Trial Date: None Set

74

1 Plaintiffs U.S. WeChat Users Alliance (“USWUA”), Chihuo, Inc., Brent Coulter,
 2 Fangyi Duan, Jinneng Bao, Elaine Peng, and Xiao Zhang (“Plaintiffs”), and Defendants
 3 President Joseph R. Biden, Jr. and Secretary of Commerce Gina Raimondo (“Defendants”)
 4 (collectively, “the parties”), through counsel, have met and conferred to the extent required
 5 by Rule 26(f) of the Federal Rules of Civil Procedure¹ and jointly submit the following
 6 Case Management Conference Statement, which includes the parties’ joint report pursuant
 7 to Rule 26(f)(2).

8 **1. JURISDICTION AND SERVICE**

9 The parties agree that venue, service and statutory subject matter jurisdiction under
 10 28 U.S.C. § 1331 are proper.

11 Defendants believe that at this juncture, there is no longer a live controversy
 12 between the parties. On June 11, 2021, the Biden Administration issued a new Executive
 13 Order that, among other things, establishes processes for evaluating and taking appropriate
 14 action with respect to certain risks posed by connected software applications. *See Exec.*
 15 *Order No. 14,034, Protecting United States Persons’ Sensitive Data from Foreign*
 16 *Adversaries, § 2(b)-(d), 86 Fed. Reg. 31,423, 31,424-25 (June 11, 2021).* Without
 17 prejudice to any potential future actions, Executive Order 14,034 revoked the prior
 18 administration’s Executive Order pertaining to WeChat, *see id.* § 1 (revoking Exec. Order.
 19 No. 13,943), and further directed that all Executive Branch agencies “promptly take steps
 20 to rescind any orders, rules, regulations, guidelines, or policies … implementing or
 21 enforcing” that prior Executive Order and abolish “any personnel positions, committees,
 22 task forces, or other entities established pursuant to [that prior Executive Order] as

23

24 ¹ Defendants dispute that Rule 26(f) applies to this proceeding. Plaintiffs seek judicial
 25 review of final agency action, which is presumptively based upon an administrative record,
 26 not civil discovery. *See, e.g., Friends of the Earth v. Hintz*, 800 F.2d 822, 828-29 (9th Cir.
 27 1986) (“With a few exceptions.... judicial review of agency action is limited to a review of
 28 the administrative record.”). Rule 26(f) thus appears to be inapplicable on its own terms.
See Fed. R. Civ. P. 26(a)(1)(B), (f)(1) (exempting from Rule 26(f)’s requirements
 “action[s] for review on an administrative record”). Nevertheless, Defendants do not see
 any benefit to motion practice on the issue, particularly in the current posture, and
 Defendants are therefore jointly submitting this report with Plaintiffs.

1 appropriate and consistent with applicable law.” *Id.* § 2(a). The Secretary of Commerce
 2 has taken all steps necessary to comply with Executive Order 14,034, including by
 3 rescinding the prohibitions regarding the WeChat application that are challenged in this
 4 case. *See Rescission of Identification of Prohibited Transactions With Respect to TikTok*
 5 and *WeChat*, 86 Fed. Reg. 32,757 (June 23, 2021). In Defendants’ view, this case is
 6 therefore moot. *See Kavoosian v. Blinken*, No. 20-55325, 2021 WL 1226734, at *1 (9th
 7 Cir. Feb. 9, 2021); *League of Conservation Voters v. Biden*, 843 F. App’x 937, 939 (9th
 8 Cir. 2021).

9 Plaintiffs do not waive any argument but have agreed that in light of the revocation
 10 of Executive Order 13,943, and based on Defendants’ representations that all necessary
 11 actions have been taken to comply with Executive Order 14,034, they do not anticipate
 12 further litigation in this matter.

13 **2. FACTS**

14 On August 6, 2020, then-President Trump issued Executive Order 13,943, 85 Fed.
 15 Reg. 48,641, pertaining to WeChat, a mobile application created and operated by the
 16 Chinese firm Tencent Holdings Ltd. (“Tencent”). Executive Order 13,943 directed the
 17 Secretary of Commerce to identify a set of prohibited WeChat-related transactions.
 18 Plaintiffs brought this lawsuit shortly afterward, and on September 18, 2020, the Secretary
 19 issued a notice (the “Identification”) identifying for prohibition six categories of
 20 technological services that facilitate operation of the WeChat mobile app. The
 21 prohibitions in the Identification were preliminarily enjoined by the Court on
 22 September 19, 2020. *See* ECF No. 59.

23 On February 12, 2021, this case was stayed to permit the incoming Administration
 24 the opportunity to review the actions at issue in this lawsuit. *See* ECF Nos. 150, 151. On
 25 June 11, 2021, the Biden Administration revoked Executive Order 13,943 and directed that
 26 all Executive Branch agencies “promptly take steps to rescind any orders, rules,
 27 regulations, guidelines, or policies … implementing or enforcing” that prior Executive
 28 Order and abolish “any personnel positions, committees, task forces, or other entities

1 established pursuant to [that prior Executive Order] as appropriate and consistent with
 2 applicable law.” Exec. Order 14,034 § 2(a). On June 23, 2021, the Secretary of
 3 Commerce rescinded the prohibitions at issue in this case. *See Rescission of Identification*
 4 *of Prohibited Transactions With Respect to TikTok and WeChat*, 86 Fed. Reg. 32,757
 5 (June 23, 2021). The Secretary has taken all necessary actions to comply with Executive
 6 Order 14,034.

7 **3. LEGAL ISSUES**

8 This case initially presented claims challenging Executive Order 13,943 and the
 9 Identification pursuant to the First Amendment, the Fifth Amendment, the International
 10 Emergency Economic Powers Act (IEEPA), the Religious Freedom and Restoration Act,
 11 and the Administrative Procedure Act (APA), as well as issues regarding the scope of the
 12 Court’s jurisdiction to resolve the Plaintiffs’ claims. However, in light of the above
 13 developments, the parties do not anticipate further litigation on the merits.

14 **4. MOTIONS**

15 Plaintiffs filed a Motion for Preliminary Injunction on August 28, 2020. ECF
 16 No. 17. Plaintiffs also moved for expedited discovery on September 3, 2020, ECF No. 18,
 17 which the Court denied on September 10, 2020. ECF No. 25. Following the issuance of
 18 the Secretary’s Identification and at the Court’s request, Plaintiffs filed a Renewed Motion
 19 for Preliminary Injunction on September 18, 2020. ECF No. 48. On September 19, 2020,
 20 the Court granted “the plaintiffs’ motion for a nationwide injunction against the
 21 implementation of Executive Order 13,943 (limited to the Secretary of Commerce’s
 22 Identification of Prohibited Transactions 1 through 6).” ECF No. 59.

23 On September 24, 2020, Defendants filed a Motion to Stay Injunction Pending
 24 Appeal (“Motion to Stay,” ECF No. 68), which the Court denied on October 23, 2020
 25 (ECF No. 105).

26 The Court granted administrative motions brought by Plaintiffs (ECF No. 85) and
 27 Defendants (ECF No. 94) asking the Court to seal business information and related
 28 references that non-party Tencent Inc. designated as confidential business information

1 when it produced such information in response to an administrative subpoena served by
 2 the Department of Commerce, and which was included in the Administrative Record and
 3 produced to counsel for Plaintiffs subject to a stipulated protective order. *See* ECF
 4 Nos. 92, 103, 108. On November 3, 2020, non-party Tencent Inc. moved to intervene for
 5 the limited purpose maintaining its mitigation proposal and related references under seal
 6 (ECF No. 125), which the Court granted-in-part on November 24, 2020 (ECF No. 133).

7 Defendants moved to dismiss the First Amended Complaint on November 16, 2020
 8 (ECF No. 130). On December 8, 2020, Plaintiffs filed a Second Amended Complaint
 9 (ECF No. 136), thereby mooted the pending Motion to Dismiss. On December 23, 2020,
 10 Defendants moved to dismiss the Second Amended Complaint in part. ECF No. 141.
 11 Plaintiffs filed an Opposition on February 1, 2021, ECF No. 149. Defendants' Reply
 12 deadline was stayed on February 12, 2021. ECF No. 151.

13 As set forth above, the parties do not anticipate further litigation on Plaintiffs'
 14 claims, including on Defendants' pending motion to dismiss, except that Plaintiffs intend
 15 to seek attorneys' fees and costs, which may involve motion practice.

16 **5. AMENDMENT OF PLEADINGS**

17 The parties do not anticipate any amendment of pleadings.

18 **6. EVIDENCE PRESERVATION**

19 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
 20 Stored Information and taken adequate steps to ensure that evidence will be preserved.

21 **7. DISCLOSURES**

22 The parties previously agreed to delay any exchange of initial disclosures, and to
 23 meet and confer regarding whether discovery is appropriate. At this juncture, the parties
 24 do not anticipate further litigation on Plaintiffs' claims and therefore do not expect to
 25 exchange disclosures or otherwise engage in discovery or motion practice pertaining to
 26 discovery.²

27
 28 ² Defendants do not believe that discovery would be appropriate in this administrative
 review case.

1 **8. DISCOVERY**

2 See Section 7, above.

3 **9. CLASS ACTIONS**

4 This case is not a class action.

5 **10. RELATED CASES**

6 The parties are not currently aware of any related cases.

7 **11. RELIEF**

8 As noted above, the parties do not expect further litigation on Plaintiffs' claims for
9 relief, but they will meet and confer with regarding Plaintiffs' anticipated demand for
10 attorneys' fees and litigation expenses.

11 **12. SETTLEMENT AND ADR**

12 This action was assigned to the Alternative Dispute Resolution (ADR) Multi-Option
13 Program governed by ADR Local Rule 3. *See* ECF No. 4. Counsel for the parties have
14 discussed the selection of an ADR process but do not believe such process is warranted in
15 light of the current posture. As required by the Court's November 20, 2020 Order (ECF
16 No. 132), the parties filed their ADR certification forms on January 21, 2021. ECF
17 Nos. 147, 148.

18 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

19 The parties have consented to Magistrate Judge Beeler conducting all proceedings
20 in this case.

21 **14. OTHER REFERENCES**

22 This case is not suitable for reference to binding arbitration, a special master, or the
23 Judicial Panel on Multidistrict Litigation.

24 **15. NARROWING OF ISSUES**

25 As discussed above, the parties have overwhelmingly narrowed the issues in this
26 lawsuit. Specifically, in light of Defendants' revocation of Executive Order 13,943 and the
27 Commerce prohibitions at issue, and Defendants' representation that Commerce has
28 completed all steps required under section 2(a) of Executive Order 14034, Plaintiffs do not

1 anticipate further litigation in this matter. However, Plaintiffs do expect to prepare a
 2 demand for attorneys' fees and costs under the Equal Access to Justice Act, and the parties
 3 intend to confer on that issue.

4 **16. EXPEDITED TRIAL PROCEDURE**

5 This case is not the kind of case that should be handled on an expedited basis with
 6 streamlined procedures.

7 **17. SCHEDULING**

8 During the week of August 2, 2021, Plaintiffs intend to present Defendants with a
 9 demand for attorneys' fees and costs under the Equal Access to Justice Act, for fees and
 10 costs incurred in both the district court and Ninth Circuit. The parties jointly request that
 11 this Court continue the Case Management Conference presently set for August 5, 2021
 12 until September 16, 2021, or the Court's next availability, with an updated statement due
 13 one week in advance of the Case Management Conference. In the interim, the parties
 14 anticipate meeting and conferring to see if they can resolve the remaining issues without
 15 motion practice. In the event the parties do resolve the issue of attorneys' fees and costs,
 16 the parties anticipate filing a stipulation of dismissal. The parties will notify the Court in
 17 the event the parties are unable to resolve the issue of attorneys' fees and costs, at which
 18 time they will seek to confirm a briefing schedule for Plaintiffs' fees motion.

19 **18. TRIAL**

20 The parties do not anticipate this case to go to trial.

21 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

22 Plaintiffs filed a disclosure of interested entities or persons on January 19, 2021,
 23 identifying no interested entities other than Plaintiffs themselves. Plaintiffs filed a
 24 supplemental certification on January 20, 2021 stating that Tencent Holdings Ltd. is an
 25 interested entity within the meaning of Civil L.R. 3-15 in that it (i) has a financial interest
 26 in the subject matter in controversy or in a party to the proceeding, or (ii) has a non-
 27 financial interest in that subject matter or in a party that could be substantially affected by
 28 the outcome of this proceeding. No such disclosure is required of the Government. *See*

1 Local Rule 3-15.

2 **20. PROFESSIONAL CONDUCT**

3 All attorneys of record have reviewed the Guidelines for Professional Conduct for
4 the Northern District of California.

5 **21. OTHER MATTERS**

6 In light of the ongoing pandemic and the limited issues remaining for resolution, the
7 parties propose that the parties and the Court continue their practice of using remote
8 procedures to convene any necessary and appropriate remaining proceedings in this case.

9
10 DATED: July 29, 2021

Respectfully submitted,

11 ROSEN BIEN GALVAN & GRUNFELD LLP

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13 By: /s/ Van Swearingen
14 Van Swearingen

15 Attorneys for Plaintiffs

1 DATED: July 29, 2021

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Bv: /s/ Van Swearingen

Van Swearingen