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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Citizen Power Initiatives for China, and Doe
Plaintiffs 1-6, the latter individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

Tencent America LLC and Tencent
International Service Pte. Ltd.,

Defendants.

Case No. **21CV375169**

CLASS ACTION COMPLAINT FOR

- (1) Declaratory and injunctive relief that certain practices and contractual provisions are unlawful and unenforceable
- (2) Violations of the California constitutional right to privacy
- (3) Violations of the California constitutional right to free speech
- (4) Violations of the California constitutional right to equal protection
- (5) Intrusion on seclusion
- (6) Conversion and trespass to chattels
- (7) Intentional infliction of emotional distress
- (8) Negligence
- (9) Unjust enrichment
- (10) Violations of the California Unfair Competition Law
- (11) Violations of the California Invasion of Privacy Act

DEMAND FOR JURY TRIAL

AMOUNT DEMANDED EXCEEDS
\$25,000

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1 Citizen Power Initiatives for China (“CPIFC”) and Doe Plaintiffs 1-6¹ (together with
2 CPIFC, “Plaintiffs”), bring this action based upon knowledge as to themselves and their own acts,
3 and upon information and belief as to all other matters, against Tencent America LLC and Tencent
4 International Service Pte. Ltd. (collectively “Tencent”), as follows:

5 **I. NATURE OF THE ACTION**

6 1. One out of approximately every six people in the world speaks Chinese. WeChat,
7 a messaging-and-payments mobile application offered by Tencent (and which is sometimes used
8 herein synonymously with the term WeChat), holds an effective monopoly on how the inhabitants
9 of that world communicate with each other electronically. This case is about the portion of that
10 world that uses WeChat in California (“California WeChat users”). California WeChat users are
11 also referred to herein as the “Class.”

12 2. This case arises from Tencent’s practices of profiting from politically motivated,
13 pro-Chinese Communist Party (“CCP”) censorship and surveillance of California WeChat users
14 (“challenged practices”), which includes the practice of turning over private user data and
15 communications to the government of the People’s Republic of China (“PRC government,” and,
16 together with the CCP, the “Party-state”), and which inflicts an array of harms. Specifically, the
17 challenged practices include Tencent’s practices of: (i) turning over private California WeChat
18 user data and communications to the Party-state; (ii) profiting by using California WeChat user
19 data and communications to improve Tencent’s censorship and surveillance algorithms; (iii)
20 censoring and surveilling California WeChat user communications for content perceived as critical

21
22 ¹ California Code of Civil Procedure § 367 does not require the use of real names, but merely “that an
23 action be brought by the real party in interest[,] ... to protect a defendant from harassment by other
24 claimants on the same demand.” *Doe v. Lincoln Unified Sch. Dist.*, 187 Cal.App.4th 1286, 1291 (Cal. Ct.
25 App. 2010). Meanwhile, both California courts and the United States Supreme Court have recognized
26 the propriety of allowing pseudonymous plaintiffs where, as here, important privacy considerations
27 are at stake, including the need to protect plaintiffs from potential retaliation. *Id.* at 1292. As alleged
herein, WeChat users and their family members have endured threats and harassment—including at
the hands of the PRC government—merely for sending *messages* critical of that government over
WeChat. It is therefore reasonable to expect that filing suit against Tencent in connection with
Tencent’s enabling role in such oppression would result in even more threats and harassment. Thus,
Doe Plaintiffs respectfully submit that they are entitled to proceed pseudonymously.

1 of the Party-state; (iv) suspending, blocking, or deleting California WeChat user accounts and/or
2 data over such content; and (v) prohibiting California WeChat users from withdrawing funds
3 stored in their WeChat accounts when those users do not possess an account with a PRC financial
4 institution subject to monitoring by the Party-state.

5 3. This action also challenges provisions in Tencent’s terms of service and privacy
6 policy which, taken together, are oppressive, obfuscatory, and incoherent (“challenged
7 provisions”). The challenged provisions include privacy-related terms that are deliberately vague
8 and ambiguous with respect to whether the challenged practices are permitted or prohibited
9 (“vague and ambiguous privacy provisions”), which in turn benefits Tencent by reserving to it the
10 right to adopt self-interested interpretations. However, California WeChat users are entitled to
11 clear, unambiguous, and testable language with respect to the nature and scope of their privacy on
12 WeChat—in other words, to honesty and transparency.

13 4. Yet, even if the challenged practices *were* unambiguously prohibited under the
14 challenged provisions, the challenged provisions include terms that make it practically impossible
15 for California WeChat users to seek meaningful redress for the harms caused by those practices
16 (“remedy-limiting provisions”).

17 5. Finally, the challenged provisions include terms that impermissibly discriminate
18 against California WeChat users who happen to be citizens of the PRC (“long-arm provisions”).

19 6. The challenged practices and provisions inflict multiple harms on California
20 WeChat users, including financial loss, emotional trauma, and psychological stress. They are
21 unlawful under California law because they:

- 22 • violate California WeChat users’ privacy, speech, and equal protection
23 rights under the California constitution;
- 24 • unlawfully intrude on the privacy and seclusion of California WeChat users;
- 25 • unlawfully interfere with California WeChat users’ property rights;
- 26 • unjustly enrich Tencent at the expense of California WeChat users; and
- 27 • violate California WeChat users’ statutory rights under California law.

1 7. There is no reasonable alternative to WeChat for anyone wishing to maintain
2 regular contact with the Chinese-speaking world, and given the Party-state’s willingness and
3 ability to suppress dissent inside the PRC, none is likely to emerge so long as the Party-state is
4 intent on continuing its policies of suppression. Because of Tencent’s effective monopoly,
5 California WeChat users have no meaningful choice but to accept the challenged practices and
6 provisions as a condition of using WeChat. Thus, because the challenged provisions require
7 California WeChat users to sacrifice a panoply of speech, privacy, and other rights as a condition
8 of using WeChat, these requirements are unconscionable and void against public policy.

9 8. Finally, the challenged practices and provisions hinder CPFIC’s ability to carry out
10 its mission of advocating for a peaceful transition to democracy in China.

11 **II. JURISDICTION AND VENUE**

12 9. This action arises under the laws of the state of California.

13 10. This Court has subject-matter jurisdiction over this action because the amount in
14 controversy is over \$25,000.

15 11. Venue is proper in this Court because Tencent America LLC has its principal place
16 of business in, and because a significant proportion of the misconduct at issue occurred in, Palo
17 Alto, California.

18 **III. PARTIES**

19 **A. Plaintiffs**

20 **1. Citizen Power Initiatives for China**

21 12. Plaintiff Citizen Power Initiatives for China (“CPIFC”) is a 26 U.S.C. § 501(c)(3)
22 nonprofit organization located at 533 5th Street N.E., Washington, D.C. 20002, dedicated to
23 advancing a peaceful transition to democracy in China, including by engaging in pro-Chinese
24 democracy activities in the United States. But for the challenged practices and provisions, CPIFC
25 would be a WeChat user. However, because of the challenged practices and provisions, CPIFC
26 does not have a WeChat account, for fear that the challenged practices and provisions would either
27

1 allow the Party-state to spy on it with impunity, or would result in any account being blocked, or
2 both.

3 13. CPIFC has been investigating Tencent's conduct, including in California, for nearly
4 a year. This ongoing investigation, which has been overseen by CPIFC's attorneys, has included,
5 among other things, hundreds of interviews with WeChat users throughout the United States,
6 including many in California. CPIFC's mission has been impeded by Tencent's actions as it has
7 dedicated resources to combating Tencent's practices that, but for Tencent's malicious actions,
8 could have been dedicated to accomplish other aspects of CPIFC's mission.

9 **1. Doe Plaintiff 1**

10 14. Doe Plaintiff 1 is a California resident and citizen of the United States. Doe Plaintiff
11 1 first created a WeChat account in approximately 2014.

12 **2. Doe Plaintiff 2**

13 15. Doe Plaintiff 2 is a California resident and citizen of the PRC. Doe Plaintiff 2 first
14 created a WeChat account in approximately 2013.

15 **3. Doe Plaintiff 3**

16 16. Doe Plaintiff 3 is a California resident and citizen of the United States. Doe Plaintiff
17 3 first created a WeChat account in approximately 2015.

18 **4. Doe Plaintiff 4**

19 17. Doe Plaintiff 4 is a California resident and citizen of the United States. Doe Plaintiff
20 4 first created a WeChat account sometime between 2012 and 2015.

21 **5. Doe Plaintiff 5**

22 18. Doe Plaintiff 5 is a California resident and citizen of the PRC. Doe Plaintiff 5 first
23 created a WeChat account in approximately 2014.

24 **6. Doe Plaintiff 6**

25 19. Doe Plaintiff 6 is a California resident and citizen of the PRC. Doe Plaintiff 6 first
26 created a WeChat account in approximately 2012.

1 **B. Defendants**

2 **1. Tencent America LLC**

3 20. Tencent America LLC is a Delaware corporation with its principal place of business
4 at 2747 Park Blvd, Palo Alto, California, 94306. According to the Tencent America LLC website,
5 that “Tencent America is the US branch of Tencent.”² As used herein, “Tencent” refers to both it
6 and Tencent International Service Ptd. Ltd.

7 21. Tencent America LLC operates or participates in operating WeChat in California.
8 Its website states its work “include[s] advertising, artificial intelligence, cloud services,
9 entertainment, investments, payments, and security.” Its “artificial intelligence,” “cloud services,”
10 and “security” work includes assisting with the development, operation, and improvement of the
11 censorship and surveillance practices and policies challenged herein.

12 **2. Tencent International Service Pte. Ltd.**

13 22. Tencent International Service Pte. Ltd. is a Singaporean corporation located at 10
14 Anson Road, #21-07 International Plaza, Singapore 079903. It is the relevant contracting entity
15 for WeChat users residing in California, according to WeChat’s terms of service. As used herein,
16 “Tencent” refers to both it and Tencent America LLC. It operates or participates in operating
17 WeChat in California.

18 **IV. STATEMENT OF FACTS**

19 **A. WeChat is the most popular and ubiquitous social media application in the**
20 **global Chinese-speaking community and maintains an effective monopoly on**
21 **electronic communications in that community, including in California.**

22 23. It is difficult to overstate the ubiquity of WeChat in the Chinese-speaking world. It
23 is akin to Facebook, PayPal, WhatsApp, and Instagram combined into a single platform, and is
24 used for business, family, and personal communications.

25 24. For example, a user in, say, downtown Los Angeles might open WeChat to text a
26 friend about lunch plans in Santa Monica. Then, the user might tap on a group they have created
27 for people interested in a certain type of fashion item; let group members know the user is receiving

² About Tencent America, <https://www.exploretencent.com/explore> (last visited Dec. 31, 2020).

1 a shipment soon, and take orders. Then, the user might pay for the shipment; upload pictures of
2 the items to the group; and receive payments for placed orders—all within WeChat’s constellation
3 of services. Then, the user might upload a general missive about what a good mood they are in
4 directed at no one in particular, which anyone in their contact list can see. Then, the user might
5 call their friend over WeChat to say they are on their way to lunch; upload pictures of the lunch to
6 their other friends; and pay for the lunch—again, all within WeChat. Then, the user might
7 participate in a video call with their family back in the PRC to check on how they are doing during
8 the coronavirus pandemic.

9 25. Not only that, but if the user wants to communicate with people in the PRC, or with
10 large swaths of the Chinese diaspora in the United States, including California, they have no choice
11 *but* to use WeChat.

12 26. For people in the PRC, the fact that the Party-state blocks platforms like WhatsApp,
13 Facebook, Twitter, and even Gmail, means that there is no way to easily communicate
14 electronically other than WeChat, with the exception of relatively expensive text messages or
15 phone calls.

16 27. For people outside the PRC who want to communicate with people inside the PRC,
17 WeChat is also the easiest method of communication. By comparison, most other methods are
18 either expensive or inefficient, or require the person inside the PRC to circumvent government
19 controls, or both.

20 28. All this becomes truer by virtue of the well-recognized network effects contributing
21 to the success of social media platforms. Today, a person facing the decision of how to
22 communicate with people in the Chinese-speaking world can only reject WeChat at great practical
23 and even economic cost, considering the time value of money. A feedback loop is created, and
24 WeChat becomes even more ubiquitous.

25 29. There is perhaps no clearer indication of WeChat’s effective monopoly over
26 electronic communications in the Chinese-speaking world than the reaction to the Trump
27 administration’s August 6, 2020 executive order concerning WeChat. Immediately, it was

1 recognized by people with varying views with respect to the CCP that a “ban” on WeChat in the
2 United States would likely result in a significant decrease in communications between people in
3 the two countries.

4 30. For example, a prominent commentator on issues related to the PRC and the United
5 States joked that without WeChat, communications between people in the two countries would
6 have to take place by messenger pigeon:



7
8
9 If US bans WeChat, a lot of Chinese in the US could lose
10 their contacts with families and friends in China. In fact,
11 that applies to some Americans who have a lot China
12 connections. That is a serious violation for the US govt.
13 Pigeon will be the new messenger as some jokes go.



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23 4:30 AM · Aug 7, 2020 · Twitter for iPhone

24 31. As another example, on a public email list for people interested in Chinese legal
25 issues, a Texas-based law professor wrote: “I’ve been using WeChat for many years, for both
26 business and personal reasons. I run our school’s study abroad program in Beijing, and WeChat is
27 essential to the communications between me and our Chinese partners. When students study in

1 China, we use WeChat to connect individually and in group, which makes life so much easier. I
2 am now worried about life without WeChat.”³

3 32. Indeed, on August 21, 2020, a lawsuit was filed challenging the executive order on,
4 *inter alia*, First Amendment grounds. See *U.S. WeChat Users Alliance, et al., v. Donald J. Trump,*
5 *et al.*, No. 20-cv-05910-LB (N.D. Cal.) (“Executive Order Lawsuit”). And, following extensive
6 briefing, the district court found that “WeChat is irreplaceable for its users in the U.S., particularly
7 in the Chinese-speaking and Chinese-American community.” *Id.*, Dkt. 59 at 5. The court then
8 granted the plaintiffs’ request for a preliminary injunction.

9 **B. WeChat is censored and surveilled in California.**

10 33. For all that a WeChat user can do on the WeChat platform, what they *cannot* readily
11 do—including in California—is send messages perceived as critical of the Party-state, including
12 euphemistic and satirical messages like cartoons depicting Xi Jinping as Winnie the Pooh. Such
13 messages tend to be blocked, censored, deleted, and can lead to the blocking, suspension, or
14 deletion of the user’s account—and, as discussed below, much worse.

15 34. WeChat’s terms of service do not explicitly prohibit content critical of the Party-
16 state. However, such content is *de facto* prohibited on WeChat, despite there being no technical
17 reason that such a prohibition might be necessary for WeChat’s proper functioning.

18 35. The Party-state’s censorship and surveillance policies are also a significant factor
19 in WeChat’s ubiquity in the Chinese-speaking world. Because its major competitors are blocked
20 in the PRC, WeChat has essentially no competition in the Chinese-speaking world. Meanwhile,
21 WeChat’s collaboration in the Party-state’s censorship and surveillance system ensures the Party-
22 state will continue to protect and support it and to prevent the emergence of viable competitors
23 who may be less willing to collaborate.

24 **C. WeChat’s censorship and surveillance practices in California harm California**
25 **WeChat users in many ways.**

26
27 ³ Message posted to Chinese Law Discussion List (chinalaw@hermes.gwu.edu) dated August 10, 2020.

1 36. WeChat’s censorship and surveillance practices in California have significant
2 harmful consequences on California WeChat users. CPIFC’s ongoing investigation has uncovered
3 hundreds of examples of such harms, all flowing from WeChat users in the United States, including
4 in California, making comments perceived as critical of the Party-state. They include emotional
5 distress resulting from the loss of cherished memories and photos built up over extended periods
6 of WeChat use, as well as from the inability to communicate with family members in the PRC
7 during a pandemic, after accounts were blocked, suspended, or deleted.

8 37. These harmful consequences also include business losses in amounts as high as
9 millions of dollars resulting from an inability to continue business discussions and negotiations
10 conducted on WeChat, after accounts were blocked, suspended, or deleted.

11 38. They also include harrowing consequences for California WeChat users’ family
12 members in the PRC, where California WeChat users’ critical comments—made *from*
13 *California*—have led to visits from PRC security agents. Indeed, these consequences, and the fear
14 of similar other consequences, have deterred at least one California WeChat user who was
15 previously interested in being a plaintiff in this action from moving forward.

16 39. They also include interference with California WeChat users’ private property
17 rights. As WeChat itself recognizes, the contents of social media accounts are the property of the
18 account holders. Indeed, WeChat’s terms of service explicitly provide that the only aspects of a
19 WeChat user’s account that constitute WeChat’s property are “Your account name, user ID and
20 other identifiers you adopt within WeChat.” By necessary implication, other aspects of the account,
21 including account content, constitute the user’s property.

22 40. Despite that, WeChat routinely interferes with the property rights of California
23 WeChat users by blocking, suspending, or deleting their accounts for political reasons.

24 41. All this chills constitutionally protected speech. Indeed, many WeChat users have
25 told CPIFC that they feel real fear that the Party-state or its agents will retaliate against them or
26 their family, and that, as a result, they self-censor—despite the fact that they live in California.

1 Indeed, their experiences with WeChat, where even minor or glancing critiques of the Party-state
2 have resulted in non-trivial harms, confirm that their fears are well-founded.

3 42. The net effect of the challenged practices is the suppression of open and honest
4 communication on WeChat on a variety of topics, given that virtually any commentary relating to
5 the PRC short of praise for the Party-state could potentially be interpreted as critical in nature and
6 thereby lead to negative consequences.

7 43. That the challenged practices and provisions inflict serious harm on California
8 WeChat users is confirmed by the experiences of, and harms suffered by, Doe Plaintiffs.

9 **D. The challenged practices and provisions have inflicted significant harm on Doe**
10 **Plaintiffs.**

11 **1. Doe Plaintiff 1**

12 44. Doe Plaintiff 1 is a U.S. citizen born in the PRC. In 2014, he created a WeChat
13 account using a U.S. phone number. One of his main uses for the account is to stay in touch with
14 classmates and professors from his time at university in the PRC. This group is composed of
15 alumni, and comprises a diverse array of people, including people who work inside the PRC
16 government, as well as professionals in the fields of education, economics, and law. Owing to the
17 considerable amount of intellectual and political discussion occurring among this group of friends
18 and acquaintances, including of news Doe Plaintiff 1 transmits from California that is unavailable
19 in the PRC, they have had their WeChat group—of which Doe Plaintiff 1 is usually the
20 administrator—blocked or suspended dozens of times. Each time, he has reconstituted the group.

21 45. In late 2019, Doe Plaintiff 1's account was suspended after he posted politically
22 sensitive information. He was informed the suspension was permanent, but when he complained,
23 he was told that he could get limited access to his account for the purpose of withdrawing any
24 money remaining in his WeChat wallet. After being granted such limited access, he saw another
25 link to unblock his account. When he tried this link, he was given some more access to his account.
26 Specifically, he was able to read messages posted by other people, but he could not post messages
27

1 of his own. Then, one day, he was suddenly able to fully access his account again. He does not
2 know why.

3 46. Not long after, however, his account was partially blocked again. This time, he was
4 still able to access certain of his account's features. However, when conversing with his alumni
5 group, he realized that users inside the PRC were unable to see his postings, while he was able to
6 see theirs. Accordingly, the only way he is able to converse with members of his alumni group
7 who are inside the PRC is to have mutual friends based outside the PRC, who can still see his
8 messages, and who are not themselves subject to the same restrictions as he is, forward his
9 messages. As a result of the adverse actions taken against him by WeChat, Doe Plaintiff 1
10 sometimes feels like an invisible person, given that his messages cannot be read by a large number
11 of people who previously could read them. This has resulted in Doe Plaintiff 1 experiencing
12 significant psychological and emotional distress, including feelings of fear and anxiety.

13 47. Further, Doe Plaintiff 1 has many classmates working at lower levels of the PRC
14 government. They used to be in Doe Plaintiff 1's alumni group. However, as a result of Tencent's
15 actions against the group, these classmates have not rejoined Doe Plaintiff 1's various reconstituted
16 alumni groups. On a recent trip to the PRC, Doe Plaintiff 1 met with some of these classmates, and
17 encouraged them to rejoin the group. These classmates declined, saying that, because Doe Plaintiff
18 1 has been targeted by the Party-state and Tencent for monitoring, they are fearful of associating
19 with him. The ostracization of Doe Plaintiff 1 in this manner has also caused Doe Plaintiff 1
20 psychological and emotional distress.

21 48. Additionally, in 2019, one of Doe Plaintiff 1's university classmates told him about
22 events of concern arising out of the alumni group's conversations. The classmate said that he had
23 been summoned by PRC security agents to discuss the group's activities. The security agents asked
24 about the group's overseas members, such as Doe Plaintiff 1, and warned the classmate not to
25 criticize the Party-state. Further, the security agents revealed to the classmate that they had private
26 information about the group's members and administrators, including about persons living
27

1 overseas. As a result, the classmate warned Doe Plaintiff 1 to be careful, because the Party-state
2 was monitoring him.

3 49. Another episode causing concern occurred in 2019 with respect to a friend who
4 lives in Toronto. The friend's account had been blocked, and Doe Plaintiff 1 advised the friend to
5 try to get it unblocked by going through Tencent's internal processes. The friend tried various
6 means of resolving the issue, but to the friend's surprise, he was asked to file a report against Doe
7 Plaintiff 1, presumably as a condition of being able to use WeChat again. The friend refused, and
8 thus, to this day, uses his wife's account.

9 **2. Doe Plaintiff 2**

10 50. Doe Plaintiff 2 is a PRC citizen and former member of the People's Liberation
11 Army living in California. He left the PRC for the United States in 2017 to seek a better life and
12 future for himself and his family.

13 51. One of the aspects of living in California that he most appreciates, especially as
14 compared to living in the PRC, is his ability to enjoy the fundamental human right to free speech,
15 protected by the California constitution. Additionally, he chose to live in California because of the
16 large number of Chinese-speaking people in the state, which allowed him to pursue a living as a
17 practitioner of traditional Chinese massage, which has been his profession for over 20 years.

18 52. Doe Plaintiff 2 first created a WeChat account in approximately 2013. In early 2020,
19 he posted messages relating to the coronavirus pandemic. Suddenly, and without any warning,
20 Tencent blocked his account, initially for approximately 18 days. When he used the in-app
21 complaint feature to try to get his account unblocked, Tencent *extended* the block for 31 days.
22 Ultimately, his account was blocked for a total of approximately 42 days. As a result, the Chinese
23 traditional massage business he ran was unable to communicate with clients. Meanwhile, he had
24 to keep paying expenses for his business, which includes a physical clinic location. But his clients
25 were not able to communicate with him, resulting in revenue losses of approximately \$500 per
26 day. Moreover, Tencent's blockage of his account meant that he was unable to communicate with
27 his parents still living in the PRC.

1 53. Doe Plaintiff 2 tried to do what he could to mitigate his business losses, including
2 attempts to engage the Chinese-speaking community using other forms of media. Yet, because of
3 WeChat’s dominance and ubiquity in the Chinese-speaking community, all this was largely to no
4 avail.

5 54. As the days passed, then weeks, without being able to access his account—his
6 lifeline to earning a living—Doe Plaintiff 2’s financial situation deteriorated to the point of nearly
7 being unable to feed his family and pay living expenses. This caused him to feel helpless,
8 powerless, desperate, and useless, affecting his marriage and romantic life. Only when his WeChat
9 account was restored, after over 40 days, did his situation improve. Yet, even then, the experience
10 left him a changed man. He now feels a deep sense of fear when using WeChat, aware that one
11 stray comment might result in a repeat of the foregoing events. Moreover, his feelings of
12 powerlessness and helplessness remain, and continue to harm his marital relationship.

13 **3. Doe Plaintiff 3**

14 55. Doe Plaintiff 3 runs a high-end jewelry business in Southern California. In 2015,
15 she created a WeChat account for her business to network with the Chinese-speaking community.
16 She created groups for discussing jewelry-related issues, such as design. The groups quickly grew,
17 and she was able to form many useful professional relationships through them. She also used
18 WeChat to have one-on-one conversations with her Chinese-speaking clients.

19 56. For example, in December 2019, she was introduced to a wealthy potential
20 customer at a party. The potential customer expressed admiration at the jewelry Doe Plaintiff 3
21 was wearing, and Doe Plaintiff 3 invited the potential customer to a yearly function she holds in
22 February, where there would be an opportunity to buy jewelry. The potential customer expressed
23 interest, and gave her WeChat contact information to Doe Plaintiff 3.

24 57. Then the coronavirus outbreak began, and politically heated conversations arose on
25 WeChat, including in the groups Doe Plaintiff 3 administered. Doe Plaintiff 3 was known to be an
26 outspoken and influential person in the Chinese-speaking community in Southern California, and
27 she was pressured to express support for the Party-state. However, as someone who grew up in

1 free and democratic countries, and as a United States citizen, Doe Plaintiff 3 declined. In response
2 to another’s comment about wanting to return to the days of Mao, Doe Plaintiff 3 criticized the
3 idea, noting that Xi Jinping was now the country’s leader.

4 58. Not long after—and before the February event—Doe Plaintiff 3 found her WeChat
5 account non-functional. The groups she’d created still existed, but she was no longer their
6 administrator. Nor could she communicate with anyone. As a result, she was unable to
7 communicate with the wealthy potential customer she’d met in December, losing the potential sale
8 of the specific gem she’d intended for the customer. Her business also suffered from the loss of
9 the ability to communicate with the network of Chinese-speaking people interested in high-end
10 jewelry that she’d spent years building and cultivating.

11 59. Around the same time, Doe Plaintiff 3 realized she was being followed. One night,
12 she drove to her apartment, located in a neighborhood that did not have many residents of Asian
13 descent. As she pulled up, she saw two Asian-looking people. She then heard one of them say in
14 Chinese, “That’s her,” before pointing a camera at her and taking a picture. They then left. She
15 filed an incident report with the FBI.

16 60. Doe Plaintiff 3 also contacted Tencent about her account in an effort to regain
17 access to it, and to the networks she’d spent years cultivating. Initially, in December 2019, she was
18 informed her account would be restored to its full functionality on or around February 5, 2020.
19 But then, as that date came and went, such did not happen. In response to further inquiries, Tencent
20 said her account was suspended because of suspicions of fraud, but gave her no meaningful way
21 of disputing such accusations, which were false.

22 61. Currently, Doe Plaintiff 3’s account still exists, but likely only because she still has
23 some money in her WeChat wallet, a feature that facilitates financial transactions over WeChat.
24 She has gotten notifications to withdraw her money, but because she fears that doing so will result
25 in the complete deletion of her account, she has refrained from doing so.

26 62. As a result of the foregoing, and particularly the politically motivated actions taken
27 against her account by Tencent, Doe Plaintiff 3 has suffered not just financially, but

1 psychologically and emotionally as well. In effect, the challenged practices and policies, which
2 are responsible for her current inability to use her WeChat account and for her associated business
3 losses, have made her feel like an unfree subject of the Party-state, as opposed to a free citizen of
4 the United States. As a result, she feels extremely angry and agitated. She also feels afraid, not
5 least for other members of her network living in California, who are now also apparently under
6 increased scrutiny by Tencent as a result of her political comments.

7 **4. Doe Plaintiff 4**

8 63. Doe Plaintiff 4 is a United States citizen living in California. She works as a
9 translator, notary, and immigration paralegal. She immigrated from the PRC to the United States
10 in 2001. She became a United States citizen in 2014. She created her WeChat account between
11 2012 and 2015. At all relevant times, her WeChat account was linked to a U.S. phone number. At
12 some point, she also linked her WeChat account with her U.S. passport and California driver's
13 license.

14 64. Doe Plaintiff 4's WeChat circle includes nearly 5,000 contacts both inside and
15 outside the PRC. She uses WeChat, including this group, to stay in touch with and obtain clients.
16 As part of her outreach, she posts Chinese-language articles about current events, including current
17 events in California and the United States. However, in recent years, some of her postings have
18 prompted her to receive warnings that continued posting will lead to adverse actions being taken
19 against her account, presumably because they contained news and information considered by
20 Tencent, and the Party-state, to be politically sensitive. For example, in 2020, she received
21 warnings against posting and forwarding content relating to the coronavirus pandemic.

22 65. Doe Plaintiff 4 has also been, and continues to be, a member of multiple private
23 WeChat groups organized around political and religious topics. These groups are routinely
24 suspended or otherwise rendered non-functional by WeChat because of their content, which
25 Tencent monitors, censors, and surveils.

26 66. As a result of the foregoing monitoring, censorship, and surveillance, Doe Plaintiff
27 4 has become extremely cautious and fearful when using WeChat, in large part because having her

1 account blocked or suspended would result in economic harm. Thus, she must refrain from posting
2 about politics, and especially about topics like human rights or democracy, and to hide who she
3 really is. She is also afraid that if she were to go to the PRC, she would get into trouble with the
4 authorities because of her WeChat use.

5 67. Additionally, Doe Plaintiff 4 has a WeChat wallet. When she first registered for the
6 service, she was able to link her WeChat wallet with her accounts with U.S. financial institutions.
7 However, in 2019, with over \$2,000 USD still in her WeChat wallet, such was suddenly no longer
8 permitted. Instead, WeChat requires that she link her wallet to a PRC financial institution to access
9 her funds. Presumably, that is because Tencent and the Party-state want to be able to better monitor
10 and control her finances. Given that she does not have an account at a PRC financial institution,
11 she is unable to access her funds. She has tried to resolve the issue through WeChat's internal help
12 functions, to no avail.

13 5. Doe Plaintiff 5

14 68. Doe Plaintiff 5 moved to the United States from the PRC in 2016. One of his
15 sources of income is installing home security systems. Many potential customers reach him over
16 WeChat.

17 69. When news that a PRC doctor, Li Wenliang, had been punished for using WeChat
18 to warn about the coronavirus, Doe Plaintiff 5 expressed on his WeChat account anger with respect
19 to the Party-state's policies. As a result, his account was suspended. During this time, he could see
20 that others were trying to contact him, but he could not respond. One of the people who tried to
21 contact him was a potential customer who wanted a security system installed. The deal was worth
22 approximately \$2,000. But Tencent prevented Doe Plaintiff 5 from responding to the inquiry.

23 70. When Doe Plaintiff 5's account functions were finally restored, he contacted the
24 customer. She told him that because she had been unable to get in touch with him, she had taken
25 her business elsewhere.

26 71. Moreover, over the years, Doe Plaintiff 5's account has been suspended multiple
27 times in response to politically charged comments, resulting in an inability to communicate with

1 family and friends. This has caused Doe Plaintiff 5 to feel significant fear and anxiety when using
2 WeChat.

3 **6. Doe Plaintiff 6**

4 72. Doe Plaintiff 6 moved to Japan from the PRC in 2009. In 2012, he created a WeChat
5 account using a Japanese number. He came to the United States in June 2019. He then created a
6 WeChat account using a U.S. phone number because his understanding was that doing so would
7 avoid censorship and surveillance. Yet, to his chagrin, that wasn't true. Instead, since coming to
8 the United States, his WeChat account has been suspended at least three times, for one to two
9 weeks each time, and always for posting anti-CCP content. And, although his WeChat account is
10 currently unblocked, his account is subject to many distressing restrictions. In particular, his public
11 postings and messages are essentially not viewable by his friends or family in the PRC. Nor are
12 his private postings and messages in group chats. No notice was given to Doe Plaintiff 6 that his
13 account was being treated this way, and he only discovered that this was happening by deducing
14 it after posting and messaging for several weeks without getting expected responses, which made
15 him feel like a non-existent person. Additionally, given that Doe Plaintiff 6 has accumulated more
16 than nearly a decade's worth of memories on WeChat, his inability to share these memories with
17 large swaths of his friends and family in the PRC has caused psychological and emotional distress.

18 **E. Researchers at The Citizen Lab have conducted experiments proving that**
19 **California WeChat users' communications are censored and surveilled, and**
20 **that WeChat uses those communications to "improve" WeChat's censorship**
21 **and surveillance apparatus.**

22 73. In addition to CPIFC's investigation, The Citizen Lab, an organization housed at
23 the University of Toronto, has conducted meticulous research confirming that WeChat users
24 outside the PRC are subjected to censorship and surveillance.⁴ And, given that the WeChat product
25 on which the research was conducted appears to be substantially the same as the one offered in

26 ⁴ See generally Jeffrey Knockel, Christopher Parsons, Lotus Ruan, Ruohan Xiong, Jedidiah Crandall, and
27 Ron Deibert, *We Chat, They Watch: How International Users Unwittingly Build up WeChat's Chinese Censorship*
Apparatus, Citizen Lab Research Report No. 127, University of Toronto, May 2020.

1 California, the research findings appear to fully apply to California WeChat users. On that basis,
2 what the researchers at The Citizen Lab have proven is that:

- 3 • the communications of California WeChat users are monitored;
- 4 • the communications of California WeChat users are censored; and
- 5 • WeChat effectively profits from the monitoring and censorship of the
6 communications of California WeChat users by using such communications
7 to improve its censorship and surveillance practices, software, algorithms,
8 etc.

74. In particular, its researchers have proven that even communications sent from
9 devices that have never been registered in the PRC are censored and surveilled, such that politically
10 sensitive communications are prevented from appearing on certain devices, such as those
11 registered in the PRC—even if those latter devices are physically located outside the PRC,
12 including the United States and Canada.

75. The Citizen Lab researchers did this by conducting a series of experiments sending
13 messages between devices registered to PRC numbers and devices registered to non-PRC numbers.
14 By observing what messages went through and what messages did not, they were able to confirm
15 that devices registered to non-PRC numbers were subject to censorship and surveillance.

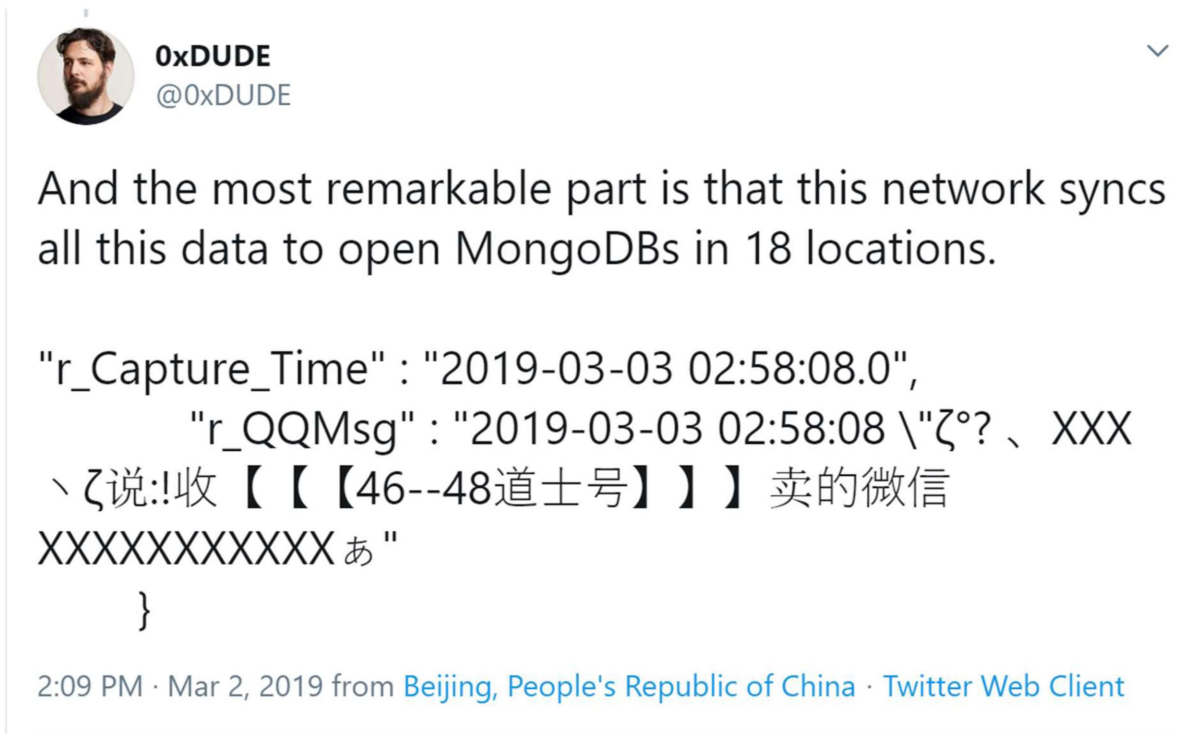
76. They have also proven that WeChat uses politically sensitive communications sent
17 from outside the PRC, such as from Canada or the United States, to improve its censorship and
18 surveillance systems. They did this by conducting an ingenious experiment using a digital
19 fingerprint known as an MD5 hash.

77. Normally, files run through the MD5 hash algorithm will generate a fingerprint, or
21 “hash.” In theory, it is very difficult to create different files that result in the same hash. But there
22 are ways to do so, and the researchers created two image files with the same hash. One image file
23 contained politically sensitive content. The other was benign. Using only devices registered to
24 non-PRC numbers, they uploaded the image with the politically sensitive content. Then, using
25 only devices registered to PRC numbers, they tried to send the benign image, which they found
26 was censored. The only plausible explanation for this phenomenon, given the benign nature of the
27

1 second version of this file, is that communications between non-PRC-registered WeChat users are
2 used by Tencent to fine tune WeChat’s censorship and surveillance systems. In this particular case,
3 WeChat did so by incorporating MD5 hash information into its system.

4 **F. A white-hat hacker has uncovered evidence that California WeChat user data
5 and communications are made available to the Party-state.**

6 78. Victor Gevers, a hacker focused on discovering internet-related security
7 vulnerabilities, has also uncovered evidence that California WeChat user data and communications
8 are made available to the Party-state. In 2019, Gevers discovered at least 18 databases in the PRC
9 that store enormous amounts of detailed data gathered from WeChat and make them available to
10 police stations across the country:



22

23 79. Gevers later revealed that on a single day—March 18, 2019—the system he had
24 uncovered had automatically captured over 3.7 billion individual WeChat messages, or over 1
25 billion dialogues/conversations, for “reviewing,” triggered by certain “keywords.” Among the
26 information Gevers was able to read included:

- Message content

- GPS location
- Device information
- User address
- User ID number (for users with a PRC ID)
- Police station to which data was routed/assigned

```

> db.wxmsg_20190318.find().limit(1).pretty()
{
  "_id": "wxmsg_20190318",
  "_index": "wxmsg_20190318",
  "_type": "审计_wxmsg",
  "_score": 1,
  "_source": {
    "UnitsType": "g",
    "Auth_Type": "",
    "Auth_Account": "",
    "WXID": "",
    "PerID": "",
    "Action": "私聊",
    "Session_ID": "",
    "IDName": "",
    "Certificate": "",
    "CertificateNo": "",
    "Account": "",
    "WZNO": "",
    "TIDNO": "",
    "NCA": "",
    "NCB": "",
    "Msg": "2019-03-18 00:00:00 了 \n2019-03-18 00:01:58 \n2019-03-18 00:02:05 - -, \n",
    "Capture_Time": "2019-03-18T01:00:00.000Z",
    "Longitude": "",
    "Latitude": "",
    "Device_Num": "",
    "Area": "0003",
    "PoliceStation": "3001",
    "Orgcode": "",
    "TypeID": 1,
    "address": "大丰欧晋莎城市广场儿童乐园",
    "device_class": "",
    "msgcount": 3,
    "PersonType": [ ],
    "PersonNo": "00",
    "Source": "120",
    "Updated": 1,
    "systemTime": "2019-03-18T00:02:14.000Z",
    "total": 3
  }
}
> db.wxmsg_20190318.count()
1081231257
> exit
bye
GDI-foundation:~ neos

```

OxDUDE @OxDUDE · Apr 22, 2019

Replying to @OxDUDE

What we have learned from 1.081.231.257 "captured" WeChat dialogues (3,784,309,399 messages) made on the 18 March 2019 is that were automatically selected for "reviewing" based on a "keyword" trigger.

Not all the dialogues were in Chinese or only had GPS coordinates in China.

4 replies, 19 retweets, 44 likes

80. Gevers was able to read individual messages:

Thread

CHINEES - GEDETECTEERD CHINEES ENGELS NEDERLANDS ENGELS CHINEES (VEREENVOUDIGD) NEDERLANDS

```

{
  "r_Capture_Time": "2019-03-03 03:08:06.0",
  "r_QQMsg": "2019-03-03 03:08:06 你自己还知道啊 2019-03-03 03:08:49 你还用说我大 2019-03-03 03:08:52 那是衣服紧 2019-03-03 03:09:23 前天看错了 2019-03-03 03:11:36 你是猪嘛 2019-03-03 03:11:52 跟谁学的发表情"
}

```

```

{
  "r_Capture_Time": "2019-03-03 03:08:06.0",
  "r_QQMsg": "2019-03-03 03:08:06 You know it yourself 2019-03-03 03:08:49 You still use to say that I am 2019-03-03 03:08:52 That is Clothes are close to 2019-03-03 03:09:23 Did you read the wrong day? 2019-03-03 03:11:36 You are a pig, 2019-03-03 03:11:52 Who is learning? "
}

```

Meer weergeven 272/5000

OxDUDE @OxDUDE

The most dialogs which are being monitored are typical teenager conversations. Which conversations need to be reviewed by a human based on "trigger words" is at this moment still not entirely clear.

2:27 PM · Mar 2, 2019 from Beijing, People's Republic of China · Twitter Web Client

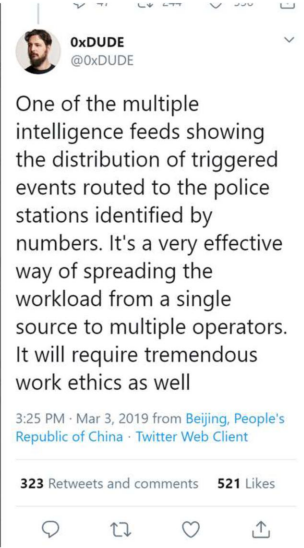
244 Retweets and comments 359 Likes

OxDUDE @OxDUDE · Mar 3, 2019

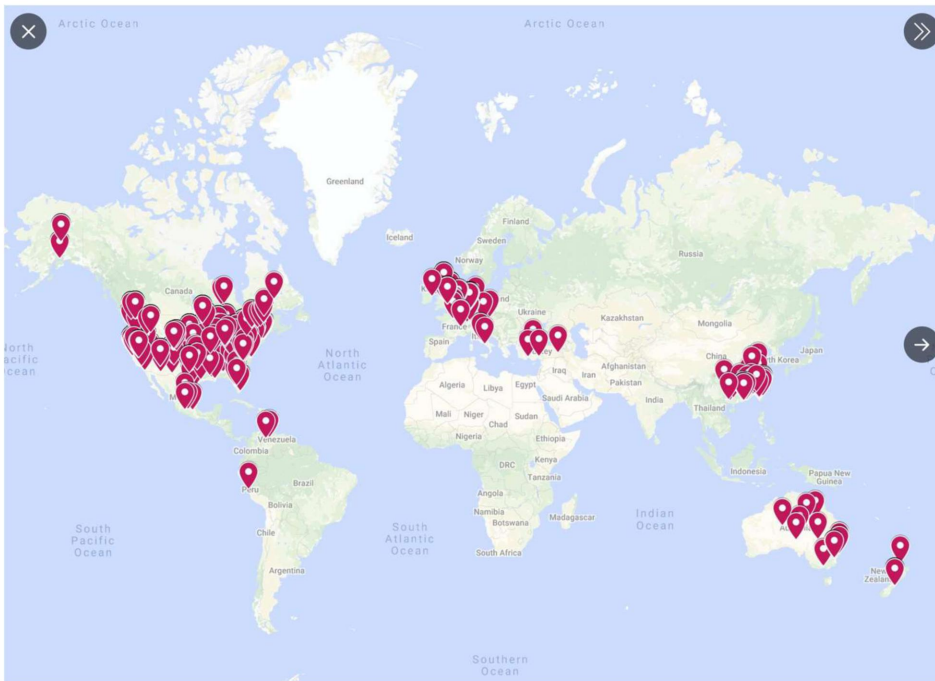
Replying to @OxDUDE

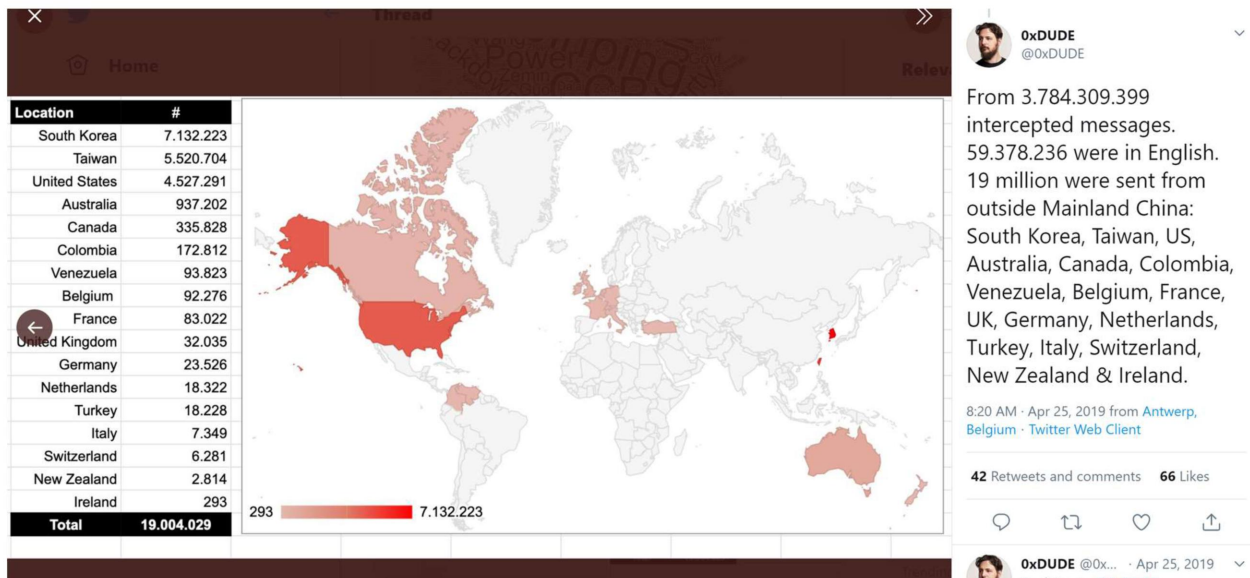
One of the multiple intelligence feeds showing the distribution of triggered events routed to the police stations identified by numbers. It's a very effective way of spreading the workload from a

81. He was also able to trace how messages were routed to different police stations:



82. Gevers also revealed that, of the WeChat messages captured on March 18, 2019 for “reviewing” by WeChat’s systems, nearly 20 million had been sent by users *outside* the PRC, including 4.5 million from the United States. Further, as a map of his findings reveal, a significant number of those messages originated from California:





83. Gevers’ work adds to, reinforces, and confirms many of the findings from CPIFC’s investigation, as well as the experiments conducted by The Citizen Lab, namely that California WeChat user data and communications are subject to massive politically motivated censorship and surveillance, and are made available to the Party-state.

G. Tencent’s censorship and surveillance practices have negative emotional, psychological, and behavioral consequences on California WeChat users.

84. The English philosopher and social theorist Jeremy Bentham designed a mechanism of social control called the Panopticon, a circular building where every person in the building could be monitored by a single guard in the center of the building who could not be directly observed. Bentham’s insight was that even though it was impossible for the guard to watch everyone at the same time, the inability of the people in the building to know whether they were being watched would tend to make them act as if they *were* being watched.

85. WeChat’s censorship and surveillance practices function like a Panopticon—even in California. Indeed, CPIFC has heard from hundreds of WeChat users in the United States, including many in California, who describe living in fear that they or their loved ones will be punished for their postings critical of the Party-state, and who describe having to suppress the human urge to voice their thoughts and feelings to their social networks out of such fear—that is, to engage in extreme self-censorship.

1 86. Various U.S. news outlets have also documented this reality. For example, an
2 August 2019 report by Emily Feng of NPR included an interview with a Chinese-American doctor
3 who shared “politically charged articles,” and who began to notice that his posts were not going
4 through.⁵ When he nevertheless kept sharing, his ability to send group messages was blocked.
5 “Although I was able to read the other people’s messages, when I posted my message, nobody
6 could see it. It was like I wasn’t there,” he was quoted as saying.

7 87. The doctor reduced his rate of political postings, and the functionality of his
8 WeChat account began to return. When he resumed sharing political posts again, his account was
9 again blocked.

10 88. The doctor’s experiences had lasting consequences. “Now I am very careful [on
11 WeChat]. I feel like this censorship has affected both my psychology and my behavior,” he was
12 quoted as saying.

13 89. Similar accounts have been documented by Wang Yaqiu, a researcher for Human
14 Rights Watch. In an August 2020 article, she notes that despite living in the United States, many
15 recent Chinese immigrants rely heavily, even exclusively, on the WeChat ecosystem, including
16 for news consumption.⁶ In turn, much as traditional media in the United States have in recent years
17 sought to reach readers who rely mostly on Facebook for their news, Chinese-language media has
18 done the same with WeChat—including Chinese-language media based in the United States. As a
19 result, she notes, even “news produced by a local Chinese-language outlet in New York goes
20 through censors in Beijing before it reaches the Chinese-speaking community in New York.”
21
22
23

24 ⁵ Emily Feng, *China Intercepts WeChat Texts From U.S. And Abroad, Researchers Say*, NPR (Aug. 29, 2019),
25 <https://www.npr.org/2019/08/29/751116338/china-intercepts-wechat-texts-from-u-s-and-abroad-researcher-says> (last visited Dec. 31, 2020).

26 ⁶ Yaqiu Wang, *WeChat Is a Trap for China’s Diaspora*, FOREIGN POLICY (Aug. 14, 2020)
27 <https://foreignpolicy.com/2020/08/14/wechat-ban-trump-chinese-diaspora-china-surveillance> (last visited Dec. 31, 2020).

1 90. The net effect for the Chinese diaspora is that even immigrating to the United States
2 cannot put them out of the Party-state’s reach. As for the emotional, psychological, and behavioral
3 consequences, Wang described them as follows, drawing on her own experience:

4 The impact of living online in WeChat’s ecosystem means that people outside
5 China are subjected to the same censorship and propaganda, which shapes their
6 worldview in ways more amenable to the Chinese government. Even people who
7 only use WeChat to communicate with people in China are generally aware of its
8 censorship and surveillance capabilities and may self-censor, even unconsciously.
9 The effects can be insidious, as I remember firsthand from my own youth in China.
10 The government’s censorship rules are never clear, and enforcement is consistent.
11 Nobody knows where the red line is. So to play it safe, you try to stay far away
12 from sensitive issues. When you can’t talk about something, you gradually learn to
13 avoid thinking about it in the first place. After self-censorship becomes a deeply
14 ingrained behavior, shifting to live in a free environment doesn’t mean you can
15 immediately shake off old habits. It can take a lifetime.

16 **H. Tencent broadly denies that the challenged practices occur.**

17 91. In 2018, Tencent issued a broad denial of an accusation that Tencent was
18 monitoring its users’ accounts.

19 92. In particular, in response to an accusation that it was doing so, Tencent publicly
20 stated:

21 WeChat does not store any users’ chat history. That is only stored in users’ mobiles,
22 computers and other terminals. ... WeChat will not use any content from user chats
23 for big data analysis. Because of WeChat’s technical model that does not store or
24 analyse user chats, the rumour that “we are watching your WeChat everyday” is
25 pure misunderstanding.⁷

26 93. Similarly, in 2021, Tencent responded to similar allegations by publicly stating:

27 With regard to the suggestion that we engage in content surveillance of
international users, we can confirm that all content shared among international
users of WeChat is private.⁸

 94. In light of the facts described above, these statements were, at best, materially
misleading to WeChat users, if not outright false.

⁷ Sijia Jiang, *China’s WeChat denies storing user chats*, REUTERS (Jan. 2, 2018),
[https://www.reuters.com/article/us-wechat-privacy/chinas-wechat-denies-storing-user-chats-
idUSKBN1ER0C3](https://www.reuters.com/article/us-wechat-privacy/chinas-wechat-denies-storing-user-chats-idUSKBN1ER0C3) (last visited Dec. 31, 2020).

⁸ Jeanne Whalen, *Chinese censorship invades the U.S. via WeChat*, THE WASHINGTON POST (Jan. 7, 2021),
<https://www.washingtonpost.com/technology/2021/01/07/wechat-censorship-china-us-ban> (last
visited Jan. 7, 2021).

1 95. Significantly, they demonstrate Tencent’s awareness that (i) admitting that the
2 challenged practices occur would be extremely unpopular, and (ii) WeChat users care deeply about
3 their privacy.

4 96. Further demonstrating Tencent’s awareness is that it takes steps to assure WeChat
5 users that their privacy *is* protected.

6 **I. Tencent’s “WeChat Help Center” makes a slew of privacy-related assurances.**

7 97. Tencent operates an online “WeChat Help Center.” It expressly provides, on a page
8 titled “How secure are my chat messages and conversations on WeChat? Can third-parties snoop
9 or read my messages?”, that “automated big data analysis of user data does not access our users’
10 private data such as the content of their chat messages. As content of messages are not permanently
11 stored to our servers nor are data-mined for commercial purposes, any claims that third-parties
12 including members of the WeChat team are ‘snooping’ on your chat messages are incorrect
13 misunderstandings.”

14 98. The same webpage further provides: “At WeChat, user privacy and data protection
15 are our top priorities. WeChat considers user privacy and data protection not just our company’s
16 responsibility, but also a key part of our users’ experience.”

17 99. On another Help Center page titled “What personal data does WeChat store and
18 how does it use my data?”, Tencent assures users that “We highly value your privacy, as we know
19 you also do.”

20 100. This language evinces an awareness that users care about their privacy. But given
21 the challenged practices, as detailed above, it is deeply misleading. It is designed to leave the user
22 with the impression that their privacy is protected from large-scale “snooping,” and in fact tends
23 to leave that impression, when the reality is to the contrary. At best, this language is deliberately
24 vague and ambiguous, with the purpose and effect of being misleading.

25 101. WeChat’s privacy policy and terms of service are similarly deliberately vague and
26 ambiguous.

1 **J. WeChat’s privacy policy and terms of service exacerbate the harms associated**
2 **with the challenged practices.**

3 **1. WeChat’s privacy policy and terms of service are unclear as to whether**
4 **the challenged practices are permitted or prohibited.**

5 102. WeChat publishes an extensive privacy policy that includes the following promises:

6 • “We do not share your information with any third parties, except where we
7 need to in order to provide the service (e.g., use SMS service providers for
8 account validation; for mapping services; for other point-of-interest
9 services; using our affiliates around the world to help us to deliver WeChat)
10 or if we are instructed to by a court, authority or compelled by law.”

11 • “Our servers are located in Ontario, Canada and Hong Kong. We also have
12 support, engineering and other teams that support the provision of WeChat
13 to you, located around the world. Your data may be accessed from such
14 locations. Rigorous internal control measures are undertaken to strictly limit
15 access to your data by designated team members.”

16 • “We will not transfer your Personal Information to any other third parties
17 except as specified below, or in circumstances where you consent to such
18 transfer.

19 Only where necessary will we share your information with selected
20 recipients who have a legal basis and valid jurisdiction to request such data.
21 These categories of recipients include:

22 government, public, regulatory, judicial and law enforcement bodies
23 or authorities: there are circumstances in which we are legally required to
24 disclose information, including to comply with a legal obligation or
25 processes, such as a court order, subpoena or other legal process, to enforce
26 our terms, address issues relating to security or fraud, or protect our users
27 and provided the requesting entity has valid jurisdiction to obtain your
28 personal information;

29 related group companies: we share your Personal Information within
30 our group of companies (and all related group companies may only use your
31 personal information in accordance with this policy), including Tencent
32 International Service Europe BV (located in the Netherlands), Tencent
33 International Service Pte. Ltd (located in Singapore), WeChat International
34 Pte Ltd (located in Singapore) and Oriental Power Holdings Limited
35 (located in Hong Kong) and WeChat International (Canada) Limited
36 (located in Canada) that run the Hong Kong and Canadian Servers, for the
37 purpose of:

38 providing WeChat to you, assisting us in carrying out the purposes set out
39 under the “How do we use Your Information” section above, and carrying
40 out our obligations and enforcing our rights under the WeChat Terms of
41 Service or this Privacy Policy; and

42 in the event of an internal restructuring of our or our affiliates
43 businesses, or the sale of WeChat or any of its assets to a third party, the
44 entity that consequently operates WeChat may be a different entity to us
45 and we will transfer your information accordingly so that your service can
46 continue;

47 service providers: service providers supplying services to support,
48 improve, or promote other products or features through our services,

1 including the service providers listed here. These include communication
2 service providers who send SMSs on our behalf, VoIP providers for
3 connection to traditional telephony services card processing and
4 verification, and translation services. We also use service providers to help
5 speed up content delivery to you in your region using acceleration points
6 and content delivery networks; and to provide location and mapping data.
7 Any third party (selected by us) with whom we share user data is required
8 to provide the same or equal protection of user data as stated in this policy
9 and is prohibited from retaining, using, or disclosing your information
10 except as necessary to provide services to us.”

11 103. WeChat’s terms of service further state that WeChat is allowed to:

- 12 • “retain and continue to use Your Content after you stop using WeChat”
- 13 • “retain or disclose Your Content ... where we believe it is reasonably
14 necessary to comply with applicable laws or regulations ... whether such
15 applicable law or regulation, legal process or government body is of your
16 jurisdiction or elsewhere”
- 17 • “retain or disclose Your Content in order to enforce these Terms or to
18 protect any rights, property or safety of ours, our affiliate companies or
19 other users of WeChat”
- 20 • “block or remove Your Content for any reason, including as is in our
21 opinion appropriate, as required by applicable laws and regulations or in
22 accordance with the Copyright Policy.”

23 104. What WeChat’s privacy policy and terms of service do *not* say, however, is whether
24 the challenged practices are permitted. Indeed, such ambiguity is likely by design, to disable any
25 meaningful attempt to hold Tencent accountable for its promises.

26 105. For example, WeChat states that it will “share your information with selected
27 recipients who have a legal basis and valid jurisdiction to request such data,” such as “government,
public, regulatory, judicial and law enforcement bodies or authorities” and when “we are legally
required to disclose information, including to comply with a legal obligation or processes, such as
a court order, subpoena or other legal process, to enforce our terms, address issues relating to
security or fraud, or protect our users and provided the requesting entity has valid jurisdiction to
obtain your personal information.”

106. Left unsaid is whether there is a “valid” “legal basis” for sharing California WeChat
user data with the Party-state at the scale uncovered by Gevers, or in the way that certain Doe
Plaintiffs, and others contacted by CPIFC, have experienced. Indeed, the reality is that in the PRC,

1 the CCP’s authority overrides the written law, such that the “validity” or “legality” of such sharing
2 would depend on little more than the CCP’s whims—a reality obscured by the vague and
3 ambiguous nature of the language quoted above.

4 107. As another example, Tencent claims the right to “retain or disclose Your Content ...
5 where we believe it is reasonably necessary to comply with applicable laws or regulations ...
6 whether such applicable law or regulation, legal process or government body is of your jurisdiction
7 or elsewhere.”

8 108. This statement might be read to mean that even if the CCP does *not* explicitly ask
9 Tencent to share California WeChat user data or communications with it, and even if such sharing
10 is not technically required under the PRC’s written laws, Tencent has the right to do so if it
11 *subjectively believes* such sharing is required. Yet, that interpretation cannot be squared with the
12 claim in its privacy policy that it will share private user data “[o]nly where necessary.”

13 109. The net effect of such vague and ambiguous language is to leave California WeChat
14 users hopelessly unclear about what is and isn’t permitted—and therefore, whether or not their
15 contractual rights have been violated. Such a lack of clarity, in turn, permits self-interested and
16 selective interpretation and enforcement of the written rules.

17 **2. WeChat’s terms of service relating to Tencent’s right to use California**
18 **WeChat user data and communications to improve WeChat’s offerings.**

19 110. WeChat’s terms of service also purport to give WeChat the right to:

- 20 • “use Your Content ... for the purposes of providing, promoting, developing
21 and trying to improve WeChat and our other services, including new
22 services that we may provide in the future.”

23 111. Again, it is unclear whether this language permits the challenged practice of
24 profiting from California WeChat users’ data and communications by using it to tune and improve
25 WeChat’s censorship and surveillance algorithms.

26 **3. WeChat’s terms of service purport to require California WeChat users**
27 **to give up a host of legal rights and remedies.**

112. WeChat’s terms of service also include the following remedy-limiting provisions,
which require that California WeChat users agree:

- 1 • to “binding individual arbitration before the American Arbitration Association”;
- 2 • that “[c]lass action lawsuits, class-wide arbitrations, private attorney-
- 3 general actions, and any other proceeding where someone acts in a
- 4 representative capacity are not allowed”;
- 5 • that “[i]f you use WeChat or the services or features for any commercial or
- 6 business purpose we will have no liability to you for any loss of profit, loss
- 7 of business, business interruption, or loss of business opportunity”; and
- 8 • that any damages “WILL BE LIMITED TO THE GREATER OF THE
- 9 FOLLOWING AMOUNTS: (A) THE AMOUNT THAT YOU HAVE
- PAID TO US FOR YOUR USE OF WECHAT OR WECHAT
- SOFTWARE TO WHICH THE CLAIM RELATES IN THE 6 MONTHS
- IMMEDIATELY PRECEDING THE DATE OF THE MOST RECENT
- CLAIM; AND (B) USD100 (ONE HUNDRED US DOLLARS).”

10 113. They also require that users agree that Tencent will not be liable for any:

- 11 • “LOSS OF USE;
- 12 • LOSS OR INTERRUPTION OF BUSINESS;
- 13 • LOSS OF REVENUES;
- 14 • LOSS OF PROFITS;
- 15 • LOSS OF GOODWILL; and
- 16 • LOSS OR DESTRUCTION OF CONTENT OR DATA.”

17 114. They also require that users

- 18 • “WAIVE[] ANY AND ALL RIGHT TO TRIAL BY JURY OR TO
- 19 PARTICIPATE IN A CLASS ACTION IN ANY LEGAL PROCEEDING
- ARISING OUT OF OR RELATING TO THESE TERMS.”

20 115. The investigations conducted by CPIFC and the various researchers described
21 above have revealed widespread privacy abuses resulting in serious emotional, psychological,
22 behavioral, and financial harm. However, these terms of service purport to require California
23 WeChat users to give up a slew of legal rights and remedies against Tencent, effectively leaving
24 them with *no* legal rights or remedies.

1 **4. WeChat’s terms of service purport to subject California WeChat users**
2 **who happen to be PRC citizens to even more onerous terms of service.**

3 116. WeChat’s terms of service purport to provide that “a citizen of the People’s
4 Republic of China using ... WeChat anywhere in the world” is subject to “the Terms of Service
5 (PRC Users),” even if they live and work in California.

6 117. Many PRC citizens come to California, where there is a large Chinese-speaking
7 community, in part to escape the Party-state’s totalitarian political system. Yet, WeChat’s terms
8 of service purport to deny them the protection of the California legal system, by purporting to
9 subject them to the same terms of service that apply to WeChat users in the PRC.

10 **V. CPIFC HAS STANDING TO BRING THESE CLAIMS.**

11 **A. CPIFC’s mission is to help Chinese people defend their human rights and to**
12 **advance a peaceful transition to democracy in the PRC.**

13 118. CPIFC was founded in 2008 as a non-membership, not-for-profit corporation in
14 Washington, D.C. Its mission is to help Chinese people defend their human rights and to advance
15 a peaceful transition to democracy in the PRC. It has five paid employees and numerous unpaid
16 volunteers and associates.

17 119. CPIFC’s founder is Dr. Yang Jianli (“Dr. Yang”). Dr. Yang was born in the PRC
18 and is the son of a CCP official. As a child, he became aware of the Party-state’s deleterious effect
19 on PRC citizens through interactions with peasants and laborers who bitterly bemoaned the Party’s
20 oppression. Given that his father had claimed to him that the Party was the savior of the Chinese
21 people, these contrary views by members of the country’s underclass shattered his worldview.

22 120. A math prodigy, Dr. Yang was accepted into university in 1978, at age 15. In 1982,
23 after obtaining a Bachelor of Science in mathematics, he enrolled in graduate school. During this
24 time, he was persuaded by like-minded students that the only way to change the PRC for the better
25 was from within the Party itself, so he reluctantly joined. In 1986, he was accepted into the
26 University of California, Santa Cruz’s Ph.D. mathematics program, and transferred to the
27 University of California, Berkeley in 1987. In 1989, he flew back to the PRC to participate in the

1 Tiananmen Square protests. He witnessed the ensuing crackdown but escaped, which left him with
2 survivor's guilt.

3 121. In 1991, he completed his Ph.D. In 2001, he earned another Ph.D. in Political
4 Economy from Harvard University. In between, he made television appearances and gave speeches
5 on college campuses around the country criticizing the CCP. He also founded a pro-democracy
6 organization. In response, he was banned by the Party-state from returning to the PRC. He also co-
7 authored a constitution for a democratic China, which was endorsed by the Dalai Lama, and
8 founded the online magazine *Yibao* (Civic Forum). In 2000, he also created the annual
9 Interethnic/Interfaith Leadership Conference to bring together civic leaders from all walks of life
10 with an interest in China in a gathering based on the themes of understanding, trust, and
11 cooperative action.

12 122. In 2002, farmers and laborers in the PRC's industrial northeast protested en masse,
13 unhappy with being treated like government slaves. Dr. Yang snuck into the country to help the
14 labor movement develop strategies for non-violent struggle. However, when he tried to leave, PRC
15 border guards discovered he'd used a fake I.D., and arrested him. The central government soon
16 learned his true identity, and imprisoned him for five years.

17 123. While in prison, Dr. Yang endured significant psychological and emotional torture,
18 including long periods of isolation. To survive, he drew on feelings of solidarity with his fellow
19 protestors who had died at Tiananmen Square, vowing to honor their memory, to not give up in
20 the face of the Party-state's oppression, and to keep up the fight for democracy and fundamental
21 human rights.

22 124. In 2007, he was released from prison but exiled to the United States. A few months
23 later, he founded CPIFC. Dr. Yang is the recipient of multiple international awards for his human
24 rights and pro-democracy work.

25 **B. Tencent's policies and practices, including those challenged here, have**
26 **significantly hampered CPIFC's mission.**

1 **1. WeChat’s censorship and surveillance practices and policies frustrate**
2 **CPIFC’s ability to communicate with Chinese people inside and outside**
3 **the PRC.**

4 125. CPIFC’s work requires that it maintain contact with Chinese-speaking people
5 around the world, including in California, where a plurality of Chinese Americans live. Indeed,
6 according to U.S. government data (available at <https://data.census.gov>), of the approximately 4.4
7 million Chinese people living in the United States in 2019, approximately 1.6 million, or 36%,
8 lived in California—more than any other state.

9 126. The challenged practices and policies significantly undermine CPIFC’s ability to
10 carry out its mission. The challenged practices and policies significantly undermine CPIFC’s
11 ability to maintain contact with Chinese-speaking people in California, as well as elsewhere in the
12 United States, much less the PRC.

13 127. Indeed, the organization’s *very name* is censored on WeChat. So too is that of Dr.
14 Yang and several of CPIFC’s employees. So too is discussion of several related topics, such as
15 human rights and democracy—to say nothing of discussions about political organizing and
16 activism informed by such ideas.

17 128. CPIFC itself does not have a WeChat account. And even though certain of its
18 employees, volunteers, and associates do maintain WeChat accounts, the challenged practices and
19 provisions mean that, in practical effect, they cannot communicate freely and openly with that
20 community, for fear of losing access to their personal accounts; causing others to lose access to
21 *their* accounts; or even putting themselves, their interlocutors, and their family members in
22 physical danger. In short, the challenged practices and provisions deter CPIFC and its employees,
23 volunteers, and associates from using WeChat. Given the centrality of WeChat to communicating
24 with the Chinese-speaking world, including the portion of that world living in California, these
25 obstacles significantly hamper CPIFC’s work.

26 129. Tencent profits by incorporating user data and communications into its algorithms.
27 This likewise hampers CPIFC’s work and mission because efforts to evade WeChat’s censorship
and surveillance by using euphemisms, image posts, or other methods of circumventing the

1 algorithms actually make those algorithms stronger and more effective. This, in turn, makes the
2 Party-state view WeChat more favorably; which in turn makes WeChat more profitable; which in
3 turn gives WeChat more resources to plow into censorship and surveillance; which in turn renders
4 CPIFC's work and mission more difficult.

5 **2. The personal experience of CPIFC's founder is illustrative.**

6 130. Approximately two years ago, Dr. Yang was contacted on his personal WeChat
7 account by a friend in the PRC. The friend had been Dr. Yang's fellow inmate during Dr. Yang's
8 politically motivated imprisonment in the PRC between 2002 and 2007 (though the friend was not
9 himself a political prisoner). The friend had recently suffered business setbacks and his sister had
10 lost her job, so he asked Dr. Yang if he (Dr. Yang) might be able to provide financial support to
11 the friend and his family. Dr. Yang agreed, and asked another friend living in Beijing to deliver
12 his friend some Renminbi.

13 131. Despite the innocuous—indeed, charitable—nature of the conversations, PRC
14 authorities, whom Tencent had permitted to monitor the conversations, detained both Dr. Yang's
15 inmate-friend, as well as the second friend Dr. Yang had asked to help deliver the financial
16 assistance. The authorities told them not to be in contact with Dr. Yang. Moreover, they visited
17 the family members of Dr. Yang's inmate friend to deliver the same message. The visits had their
18 intended *in terrorem* effect; Dr. Yang's communications with both friends has ceased.

19 132. As for Dr. Yang's use of WeChat to communicate with Chinese-speaking people
20 in the United States, including California, that too has been hampered by WeChat's censorship
21 and surveillance practices and policies, which have caused Dr. Yang to avoid joining chat groups
22 (which could cause those groups to be shut down), and which have caused Dr. Yang to engage in
23 significant self-censorship (though Dr. Yang's account has nonetheless at times been suspended).
24 Because of this, Dr. Yang cannot use WeChat as much as he would but for WeChat's censorship
25 and surveillance practices and policies, and, indeed, is largely deterred from using WeChat at all.

1 **3. The challenged provisions also harm CPIFC.**

2 133. WeChat’s terms of service and privacy policy are enabling features of WeChat’s
3 censorship and surveillance practices and for that reason alone harm CPIFC in the same way the
4 practices themselves do.

5 134. They also harm CPIFC by making it difficult for CPIFC’s supporters to effectively
6 challenge WeChat in a California court. The vague and ambiguous provisions make costly
7 litigation more likely. The remedy-limiting provisions make it more difficult to find attorneys
8 willing to represent them. And the long-arm provisions make those with recent, deep, and close
9 ties with the PRC (for example, those who frequently travel between the PRC and California, or
10 those who reside in California and have recently applied for political asylum in the United States),
11 less able to effectively challenge the censorship and surveillance of their WeChat accounts. All
12 this deters challenges to WeChat’s censorship and surveillance practices in California, leading to
13 their perpetuation, which harms CPIFC for the reasons described above.

14 135. For example, neither CPIFC nor, as a general matter, the supporters who have
15 contacted CPIFC regarding WeChat’s various abuses have the financial wherewithal to pay
16 qualified attorneys to bring a complex lawsuit such as this one on an hourly basis. Thus, for
17 practical purposes, such a lawsuit can only be brought on contingency. But the remedy-limiting
18 provisions make bringing an action against WeChat on contingency less attractive. Indeed, it has
19 made it more difficult for CPIFC to find lawyers willing to bring this action than it would have
20 been but for the remedy-limiting provisions. Considering the vagueness and ambiguity of
21 WeChat’s written privacy policies, as well as the novelty of the long-arm provision, that difficulty
22 is heightened in this case.

23 136. Indeed, perhaps in response to CPIFC’s public announcement made in early 2020
24 that it was launching an effort to hold WeChat accountable for its censorship and surveillance
25 practices in a U.S. court, in May 2020, an “alliance” of Chinese Americans claimed it had retained
26 Liu & Shields LLP, a New York law firm catering to Chinese-speaking clients, to sue WeChat:
27

美国华人维权联盟委员会

发表声明

美国华人维权联盟委员会正式聘请凯撒律师楼 LIU&SHIELDS LLP, 依法对腾讯公司提起集体法律诉讼, 将腾讯公司告上美国联邦法院。

美国宪法与法律赋予和保护美国公民言论自由的权利, 腾讯 Tencent 作为在美国注册的外国企业机构, 其微信被允许在美国境内华人普遍使用的社交平台, 但, 腾讯公司无视美国宪法违反美国法律, 对在美国境内华人注册建立的个人和团体微信群, 使用大陆的法规进行管控和横加干涉, 对发布在美国境内华人相关的政治, 经济, 科学, 文化, 医疗等微信群里的言论文章, 帖文, 图片及视频进行偷窥监控, 并以内容敏感和违规为由进行审查和单向封闭, 封号, 封群, 导致相关政治等微信群的瘫痪。

腾讯公司的行为干扰和破坏了华人在美国正常的言论自由, 伤害了华人在美国参政议政的热情与信心, 给美国华人在参政议政上带来负面影响, 构成对华人在美国参政议政和提高地位争取权益的破坏; 相关华人政治和助选群被封, 构成干涉美国华人言论自由, 干预和破坏美国华人政治, 干预美国总统大选, 其行为严重触犯美国法律, 是在美国宪法下对公民言论自由及合法权益的严重侵犯!

联盟委员会以委托律师向美国联邦法庭提请美国联邦通信委员会(fcc.gov)对中国腾讯公司 Tencent 在香港上市和在美国境内证监会注册, 并在美国股票市场上注册 (<https://sec.report/CIK/0001293451/amp>) 其股票在美国 (ADR) 上市, (TCEHY) 在纽约股市进行交易, U.S. Security & Exchange Commission 是否遵守和违反美国证监会监管机构的约束以及管理条款等展开调查。

2020 年是美国总统大选年。当前, 在全球新型冠状病毒扩散之际, 个人和团体的微信账户需要畅通, 但被腾讯无端肆意封号, 封群阻碍了信息传递, 中断了医疗等咨询信息畅通。显然, 腾讯的行为与其职能背道而驰, 需要给用户造成的损失和精神伤害承担政治, 经济, 法律责任, 凯撒律师楼代表客户将依法向腾讯提出经济索赔。

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有想加入联盟委员会的个人和团体请打电话或发 Email 联络, 联盟委员会设立 Paypal 账户接受居住在外州市的人士加入集体法律诉讼。希望坚持正义人士给予联盟赞助与支持。联系电话: 929-204-2995

Email: uscnwqlm@gmail.com

Paypal: alliancelawofficial@gmail.com

美国华人维权联盟委员会
05/30/2020

137. An English translation is as follows:

Chinese American Rights Defense Alliance Issues Statement

The Chinese American Rights Defense Alliance has officially retained Liu & Shields LLP to file a class action lawsuit against Tencent Holdings Ltd in U.S. federal court.

The U.S. Constitution grants and protects the freedom of speech of American citizens. Tencent Holdings Ltd (“Tencent”) is a foreign corporation registered in the United States. The company’s WeChat social media software is widely used by Chinese Americans. However, Tencent has ignored the U.S. Constitution and violated U.S. laws, using mainland Chinese laws and regulations to monitor and control WeChat accounts and groups registered by Chinese Americans. Tencent conducts surveillance of articles, posts, photos and videos shared in WeChat groups

1 by Chinese Americans, including content related to politics, economics, science,
2 culture, and medicine. Tencent censors or blocks individual posts, suspends
3 WeChat accounts, and
4 shuts down entire WeChat groups under the pretense of “sensitive” content or
5 policy violations. This has had an especially paralyzing effect on WeChat groups
6 focused on discussing politics.

7 Through its actions, Tencent has interfered with and undermined the freedom of
8 speech of Chinese Americans, and diminished their enthusiasm and confidence to
9 participate in U.S. politics. In other words, Tencent has deterred Chinese Americans
10 from participating in the U.S. political process and fighting to advance their rights.
11 Tencent has shut down politics- and election-related WeChat groups registered by
12 Chinese Americans, hindering their political freedom and freedom of speech, and
13 interfering in the U.S. presidential election. Tencent’s actions constitute a serious
14 violation of U.S. law and of citizens’ freedom of speech and legal rights under the
15 U.S. Constitution.

16 The Chinese American Rights Defense Alliance has retained legal counsel to
17 request that the Federal Communications Commission (FCC) launch an
18 investigation to determine whether Tencent Holding Ltd has violated the
19 requirements of the U.S. Securities and Exchange Commission.

20 With the 2020 U.S. presidential election and the global spread of the COVID-19
21 pandemic, people needed to be free to communicate through personal WeChat
22 accounts and groups. However, Tencent has wantonly suspended WeChat accounts
23 and groups, and obstructed the transmission of information – including information
24 related to the pandemic. Clearly, Tencent’s actions are unacceptable and the
25 company must bear political, economic and legal responsibility for the monetary
26 and psychological damages sustained by affected WeChat users. Accordingly, Liu
27 & Shields LLP is launching a class action lawsuit to seek economic compensation
from Tencent Holdings Ltd.

Anyone whose personal WeChat account(s) and/or group(s) have been suspended
or shut down is welcome to join the Chinese American Rights Defense Alliance’s
class action lawsuit against Tencent Holdings Ltd in pursuit of financial relief. For
related legal inquiries, please contact Liu & Shields LLP:

Tel: 718-463-1868
Address: 41-60 Main Street, #208A, Flushing, NY 11355
Email: liushieldslaw@gmail.com

Individuals and groups who wish to join the class action lawsuit against Tencent
can also call or email the Chinese American Rights Defense Alliance. We have set
up a PayPal account to accept donations in support of our class action lawsuit
against Tencent. Your support is greatly appreciated.

Chinese American Rights Defense Alliance
Tel: 929-204-2995
Email: uscnwqlm@gmail.com
PayPal: alliancelawofficial@gmail.com

138. Two months later, a news article appeared mentioning CPIFC’s initiative as well
as the one involving Liu & Shields LLP:

美国华人向腾讯提起诉讼 状告其侵犯言论自由

2020-07-15

腾讯 微信



7月12日（周日），美国白宫贸易顾问纳瓦罗（Peter Navarro）在接受福克斯新闻采访时表示，川普总统将会对TikTok（抖音国际版）及WeChat（微信）等来自中国的应用程序采取强硬行动，并且不排除对抖音和微信实行禁令的可能，称此举是为了打击中共对美国展开的“信息战”。

早在今年2月，美国的部分华人曾计划联合起来起诉微信的母公司腾讯。“公民力量”创办人杨建利今年4月告诉“自由亚洲电台”说：“李文亮事件发生后，我们产生了起诉腾讯的想法，但李文亮事件其实只是起诉腾讯的一个引爆点。一直以来，中共利用微信监控、限制、打压海外华人的言论，早有海外华人想起诉腾讯。截至今年4月，已有数千人加入对腾讯的起诉。”

据知情人爆料，一些支持川普的美国华人的微信号和微信群被莫名其妙地封号、封群。支持川普的华人大多是华人中的菁英，他们表示：“微信在公然干涉美国人的言论自由，甚至可以说是干预美国总统大选。”

在海外，很多华人因为在微信中发表对中国大陆时政看法而被封号。一位姓袁的先生近日被封微信号，他13日接受采访时表示：“很多华人为了追寻自由来到美国，而到了美国后，却因为在微信上发表不同见解，而受到中共的言论控制。中国的微信可以在美国使用，而美国的推特、脸书等社交媒体软件却不可以在中国使用，这本身就是不对等。中共钻了美国言论自由的空子，输出它的东西，甚至把在中国实行的言论控制延伸到了海外。”

今年5月30日，美国华人维权联盟委员会发出了公开信，呼吁被微信封号、封群的个人或团体加入到起诉腾讯的集体诉讼中。联盟委员会表示，腾讯公司把中国大陆的法律搬到美国来实施，对美国境内注册的微信个人帐号和微信群运用中国大陆的法规进行管控，对美国境内人士的帖文、文章、图片及视频进行偷窥、监控，并以内容敏感和违规为由进行审查和单向封闭、封号、封群，导致有关美国政治的微信群瘫痪；腾讯公司的行为干扰、破坏华人在美国正常的言论自由，干预和破坏美国华人政治。“其行为严重触犯美国法律，是在美国宪法下对公民言论自由及合法权益的严重侵犯。”

美国华人维权联盟委员会提请美国联邦通信委员会（FCC）注意，腾讯的股票通过美股存托凭证（ADR）在美国市场交易（代码为TCEHY），美国证券委员会（U.S. Security & Exchange Commission）应对微信是否违反美国证券会监管机构的约束以及管理条款等展开调查。

美国华人维权联盟委员会呼吁凡遭到腾讯封号、封群的个人和团体组织，加入对腾讯的集体法律诉讼，向腾讯提出索赔，可联系凯撒律师楼（Liu & Shields LLP），电话：718-463-1868，地址：41-60 Main Street, #208A, Flushing, NY 11355，邮箱：liushieldslaw@gmail.com。

139. An English translation is as follows:

Chinese Americans sue Tencent for violating their freedom of speech

1 On Sunday, July 12, 2020, in an interview with Fox News, White House trade
2 advisor Peter Navarro said that President Trump would take tough action against
3 TikTok, WeChat, and other apps from China. Navarro did not rule out the
4 possibility that the United States would impose a ban on TikTok and WeChat, and
5 added that such a move would be aimed at combating the “information war”
6 launched by the CCP against the U.S.

7 As early as February 2020, some Chinese Americans planned to join forces to sue
8 WeChat’s parent company, Tencent Holdings Ltd (“Tencent”). In April 2020, Yang
9 Jianli, founder of the pro-democracy NGO Citizen Power Initiatives for China, told
10 Radio Free Asia: “Following the Li Wenliang incident, we thought about suing
11 Tencent, but the Li Wenliang incident was really just the ‘tipping point’ that made
12 us determined to sue Tencent. The Chinese Communist Party (CCP) has always
13 used WeChat to monitor, restrict and suppress the speech of overseas Chinese. In
14 fact, the overseas Chinese community has long wanted to sue Tencent. As of April
15 2020, thousands of people have already joined the lawsuit against Tencent.”

16 According to insiders, the WeChat accounts and groups of some Chinese
17 Americans who support Trump have been inexplicably suspended or shut down.
18 Most Chinese Americans who support Trump are elites among the Chinese diaspora.
19 As one of them pointed out, “WeChat is blatantly interfering with the freedom of
20 speech of Americans. It can even be said that WeChat is meddling with the [2020]
21 U.S. presidential election.”

22 Many overseas Chinese have had their WeChat accounts suspended simply for
23 posting their opinions regarding current affairs in mainland China. In early July
24 2020, a WeChat account belonging to a Chinese American named Mr. Yuan was
25 suspended. In an interview on July 13, 2020, Mr. Yuan stated: “Many Chinese
26 people came to the United States in search of freedom. However, since arriving in
27 the United States, their speech has been suppressed by the CCP – through its control
of WeChat – simply because they expressed views that run counter to the CCP’s
propaganda and ideology. Although WeChat is owned by a Chinese company, it
can be used in the United States.

In contrast, U.S.-owned social media platforms like Twitter and Facebook cannot
be used in China. This is obviously unfair.” Mr. Yuan added that the CCP is taking
advantage of freedom of speech in the United States to disseminate and broadcast
CCP propaganda throughout the U.S., and extending its surveillance and censorship
activities abroad.

On May 30, 2020, the Chinese American Rights Defense Alliance (“Alliance”)
published an open letter calling for individuals and groups whose WeChat accounts
or groups have been suspended or shut down to join a class action lawsuit against
Tencent. The Alliance noted that Tencent is essentially operating in the United
States under the laws of the People’s Republic of China. In other words, Tencent is
using mainland Chinese laws and regulations to control personal WeChat accounts
and groups registered in the United States. Tencent maliciously monitors and
surveilles posts, articles, photos and videos shared on WeChat by Americans on
U.S. soil, and capriciously suspends or shuts down WeChat accounts and groups
under the pretense of “sensitive content and violations.” This has had an especially
paralyzing effect on WeChat groups that actively discuss American politics. Such
actions undertaken by Tencent have interfered with and undermined the freedom
of speech of Chinese Americans. These actions constitute a wanton violation of
American citizens’ legal rights and freedom of speech under the U.S. Constitution.

1 The Chinese American Rights Defense Alliance wishes to remind the Federal
2 Communications Commission (FCC) that shares of Tencent Holdings Ltd are
3 traded in the United States on the OTC Markets Group under the ticker symbol
4 "TCEHY." The U.S. Security [sic] & Exchange Commission (SEC) should
investigate whether Tencent and WeChat have violated the SEC's legal and
regulatory requirements.

5 The Chinese American Rights Defense Alliance calls upon every individual and
6 group whose WeChat account(s) and/or WeChat group(s) have been suspended or
shut down to join our class action lawsuit against Tencent.

7 Interested parties can contact Liu & Shields LLP: Tel: 718-463-1868, Address: 41-
8 60 Main Street, #208A, Flushing, NY 11355, Email: liushieldslaw@gmail.com

9 140. CPIFC volunteers contacted Liu & Shields LLP about their effort, and were told
10 that the law firm wanted a \$500 fee, paid upfront, to investigate a potential client's claims. That,
11 combined with the fact that Liu & Shields LLP has apparently yet to file any action against WeChat,
12 further evidences the deterrent effect of the challenged provisions.

13 141. The challenged provisions' deterrent effect is also confirmed by the fact that a
14 member of the California bar has been in touch with certain of the attorneys bringing this action
15 on Plaintiffs' behalf. This person said he has been trying to find a way to sue Tencent for some
16 time, but has been deterred from doing so by, among other things, the challenged arbitration clause.

17 **C. The requested relief would redress the harms experienced by CPIFC.**

18 142. An injunction prohibiting WeChat from engaging in pro-CCP censorship and
19 surveillance in California, and a related declaratory judgment that such practices are unlawful,
20 would self-evidently redress the harm of CPIFC's inability to discuss democratic values and ideas
21 such as human rights and the rule of law with WeChat users in California. Being able to engage in
22 such discussions would greatly benefit CPIFC's work and mission, because such users could then
23 engage in similar discussions with friends and family in the PRC using methods other than WeChat,
24 including in person and in private, over voice (as opposed to text) communications, which are
25 more technically difficult to censor and surveil, etc. That, in turn, would allow people inside the
26 PRC to more effectively engage in the work of defending their human rights, and in working
27 toward a peaceful transition to democracy.

1 143. An injunction requiring Tencent clarify in detail how WeChat user data originating
2 in California is shared with PRC authorities, and to articulate clear, enforceable standards for such
3 sharing, would also redress the harms experienced by CPIFC (as would a related declaratory
4 judgment). As things stand, WeChat’s vague and ambiguous privacy policies allow it to broadly
5 claim users’ privacy is generally protected against such sharing, giving WeChat users in California
6 a false sense of security. Yet they also allow it to claim that specific instances of sharing are
7 permitted by those policies, without ever articulating testable standards against which such claims
8 might be measured or challenged. Indeed, letting Tencent have it both ways—claiming to value
9 privacy in public while cooperating with the Party-state to undermine privacy behind the scenes—
10 is the likely reason for such vagueness and ambiguity. An injunction mandating that Tencent
11 clarify in detail how WeChat user data and communications originating in California are shared
12 with PRC authorities, and to articulate clear, enforceable standards for such sharing, would force
13 WeChat to choose. It can either alienate its non-PRC users, including California users, who
14 increasingly put a premium on privacy, particularly privacy from the government. Or it can alienate
15 the Party-state, which depends on violating privacy as a tool of governance, and which would
16 likely not appreciate one of the PRC’s leading technology companies essentially stating as much
17 to the rest of the world. Either way, California WeChat users are entitled to honesty from Tencent.
18 And such honesty would benefit CPIFC’s work and mission by forcing all concerned parties to
19 have more open discussions about democratic values and human rights, including the right to
20 privacy, which in turn will put pressure on the Party-state to relax its grip on the information
21 environment in the Chinese-speaking community over time.

22 144. An injunction striking down some or all of the challenged provisions—as well as a
23 declaratory judgment that such provisions are unlawful—would also redress the harm experienced
24 by CPIFC by increasing the risk and cost to Tencent of censoring and surveilling California
25 WeChat users. If such users could more easily mount legal challenges to such censorship and
26 surveillance, WeChat would be incentivized to reduce such behavior, which benefits CPIFC for
27 the reasons described above. WeChat might also decide to stop operating in California, which

1 would create demand for a competitor to enter the market for electronic communication for
2 Chinese-speaking people in California, and the market for communications between such people
3 and people in the PRC. It would also put organic, domestic pressure on the CCP to permit such a
4 competitor to operate inside the PRC without being subject to censorship or surveillance, or to less
5 onerous censorship or surveillance. For self-evident reasons, that too would benefit CPIFC.

6 145. Finally, because the challenged provisions materially understate the risk of WeChat
7 censorship and surveillance, that artificially enhances WeChat’s market dominance. That, in turn,
8 makes it harder for CPIFC to engage the Chinese-speaking world on other platforms. An injunction
9 requiring Tencent to accurately state the risk of censorship and surveillance would reduce
10 WeChat’s market dominance, which, in turn, would make it easier for CPIFC to engage the
11 Chinese-speaking world on other platforms.

12 VI. CLASS ACTION ALLEGATIONS

13 146. With respect to certain of the claims for relief, this action should proceed under
14 California Code of Civil Procedure § 382, which provides that “one or more may sue ... for the
15 benefit of all” “when the question is one of a common or general interest, of many persons, or
16 when the parties are numerous, and it is impracticable to bring them all before the court[.]” Further,
17 Rule 3.765(b) of the California Rules of Court provides that “[w]hen appropriate, an action may
18 be maintained as a class action limited to particular issues.” It also provides that “[a] class may be
19 divided into subclasses.”

20 147. Accordingly, in addition to their own claims, and with the exception of damages
21 claims necessitating individualized damages determinations, Doe Plaintiffs sue on behalf of all
22 California WeChat users, excluding Tencent and its officers and directors (the “Class”), as well as
23 the following Subclasses:

- 24 • **Account Suspension Subclass:** All California WeChat users who, as a
25 result of posting content deemed to be politically sensitive or critical of the
26 CCP, had their accounts suspended, blocked, or deleted.
- 27 • **Lost Business Subclass:** All California WeChat users who, as a result of
posting content deemed to be politically sensitive or critical of the CCP, had
their accounts suspended, blocked, or deleted, and who lost business as a

1 result.

- 2 • **Lost Funds Subclass:** All California WeChat users who, as a result of not
3 having an account with a PRC financial institution, are unable to withdraw
4 funds they previously stored in WeChat.
- 5 • **PRC Citizen Subclass:** All California WeChat users who are PRC citizens,
6 thereby subjecting them to the challenged long-arm provision.
- 7 • **Algorithm Improvement Subclass:** All California WeChat users whose
8 private data was used by Tencent to improve WeChat's censorship and
9 surveillance algorithms.
- 10 • **PRC Disclosure Subclass:** All California WeChat users whose private data
11 and communications were shared by Tencent with the Party-state.

12 148. **Community of interest.** The Class and each Subclass have a well-defined
13 community of interests in the litigation and are ascertainable, particularly upon discovery from
14 Tencent, which has access to detailed information about its users.

15 149. **Numerosity.** The members of the Class and each Subclass are too numerous for
16 joinder to be practical, and number at least in the thousands. Membership in the Class and each
17 Subclass will be determined based on, among other things, discovery from Tencent into its user
18 database.

19 150. **Commonality.** Doe Plaintiffs' claims and those of the members of the Class and
20 each Subclass share numerous common questions and issues of fact and law that predominate over
21 individual issues. These include:

- 22 • whether the challenged practices violate the California constitution;
- 23 • whether enforcement of the challenged provisions would violate the
24 California constitution;
- 25 • whether the challenged provisions are enforceable under California law;
26 and
- 27 • whether the challenged practices violate the California Invasion of Privacy
Act.

151. **Typicality.** Doe Plaintiffs' claims are typical, in that their injuries and damages
arose out of and were caused by Tencent's common course of conduct in violation of California
law.

1 152. **Superiority of class action.** Because the injuries or damages suffered by any given
2 member of the Class may not rise to a level that would justify the expense and burden of individual
3 litigation, it would be economically impractical, if not impossible, for each member of the Class
4 to seek individual redress for the alleged misconduct. Individual actions would also unduly burden
5 the Court and the litigants. They would also create a risk of inconsistent rulings that might be
6 dispositive of the claims of absent Class members, or that may substantially impede their ability
7 to protect their interests.

8 153. **Adequacy of representation.** Doe Plaintiffs are adequate representatives of the
9 Class in that their claims are typical and they have the same interests in this litigation as do the
10 Class members. Doe Plaintiffs are committed to the vigorous prosecution of this action, and have
11 retained experienced counsel. Doe Plaintiffs are not subject to any unique defenses not applicable
12 to the Class as a whole.

13 154. Finally, to the extent there are elements of Class members' claims that are too
14 individualized for resolution on a class basis, Rule 3.765(b) permits class certification of the
15 common elements. Thus, Doe Plaintiffs reserve the right to seek such certification under Rule
16 3.765(b).

17 **VII. STATUTE OF LIMITATIONS**

18 155. All applicable statutes of limitations should be subject to equitable tolling, the
19 discovery rule, the continuous accrual doctrine, or the continuing violation doctrine, or some
20 combination thereof, in light of Tencent's repeated denials relating to invasions of California
21 WeChat users' privacy, and in light of the ongoing nature of the challenged practices, among other
22 considerations.

23 **VIII. CLAIMS FOR RELIEF**

24 **COUNT I:**
25 **Declaratory judgment that the challenged practices are unlawful and that the challenged**
26 **provisions are unenforceable, and related injunctive relief**
 By all Plaintiffs against Tencent

1 156. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
2 if fully restated herein.

3 157. Plaintiffs seek a declaratory judgment that the challenged practices and provisions
4 are unlawful and unenforceable under California law for several reasons.

5 158. The challenged practices are unlawful because they violate the California
6 constitutional rights to privacy, and, coupled with the challenged provisions that enable them, the
7 rights to free speech and equal protection.

8 159. They are also unlawful because they are tortious, at least with respect to Doe
9 Plaintiffs, because the challenged practices intrude upon Doe Plaintiffs' seclusion; convert and
10 trespass upon their property; and cause them emotional distress, negligently and intentionally.

11 160. They are also unlawful because they unjustly enrich Tencent at Doe Plaintiffs'
12 expense.

13 161. They are also unlawful because they violate the Unfair Competition Law, Cal. Bus.
14 Prof. Code §§ 17200, *et seq.*

15 162. They are also unlawful because they violated the California Invasion of Privacy
16 Act, Cal. Penal Code §§ 630, *et seq.*

17 163. The challenged provisions are unenforceable because Doe Plaintiffs and the Class
18 never meaningfully assented to them, and particularly to their application to the challenged
19 practices, which Tencent did not meaningfully disclose at the time Doe Plaintiffs and the Class
20 created their WeChat accounts.

21 164. Even if there were meaningful assent, they are procedurally and substantively
22 unconscionable because there is no reasonable alternative to WeChat for communicating
23 electronically with the Chinese-speaking world. In addition, forcing users to agree to accept
24 massive censorship and surveillance as a condition of so communicating shocks the conscience.

25 165. The challenged provisions violate public policy because, for a California court to
26 uphold provisions enabling massive censorship and surveillance that harms and chills political
27 speech, and to uphold even more onerous terms to California WeChat users who happen to be PRC

1 citizens, would be anathema to the California constitution’s guarantees of privacy, free speech,
2 and equal protection.

3 166. The remedy-limiting provisions are additionally unlawful and unenforceable
4 because they constitute a prohibition on seeking public injunctive relief, in violation of *McGill v.*
5 *Citibank, N.A.*, 2 Cal.5th 945 (2017).

6 167. Accordingly, Plaintiffs seek a declaratory judgment that the challenged practices
7 and provisions are unlawful and unenforceable. Plaintiffs also seek injunctive relief against the
8 challenged practices, and against enforcement of the challenged provisions. CPIFC has standing
9 to seek such relief for the reasons described above. Doe Plaintiffs seek such relief on behalf on
10 themselves and on behalf of the Class.

11 **COUNT II:**
12 **Violation of the right to privacy under the California constitution**
13 **By all Plaintiffs against Tencent**

14 168. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
15 if fully restated herein.

16 169. California WeChat users—including Doe Plaintiffs—have a legally protected
17 privacy interest in their data and communications on WeChat. They also have a reasonable
18 expectation of privacy under the circumstances, which include Tencent’s affirmative—if vague
19 and ambiguous—promises of privacy, including in the WeChat Help Center and in Tencent’s
20 written policies. The circumstances also include the fact that they have chosen to make their lives
21 in California, rather than the PRC.

22 170. The reasonableness of these expectations is also supported by the fact that Tencent
23 has previously—and continually—broadly denied that it engages in certain of the challenged
24 practices. Tencent also fails to affirmatively disclose to users or would-be users that their data and
25 private communications are being monitored, including in a way that discloses them to the Party-
26 stateParty-state. The reasonableness of these expectations is also supported by the fact that
27 California WeChat users do not broadcast their data or communications to the public at large, but

1 only to WeChat users they have approved. This is particularly true of data and communications
2 shared in group chats and one-on-one chats.

3 171. Tencent’s practice of sharing confidential communications and data about
4 California WeChat users—including that of Doe Plaintiffs—with PRC authorities constitutes a
5 serious invasion of their constitutional right to privacy.

6 172. Tencent’s practice of monitoring, surveilling, and censoring the private
7 communications of California WeChat users—including that of Doe Plaintiffs—constitutes a
8 serious invasion of their constitutional right to privacy.

9 173. Tencent’s practice of using the private data for California WeChat users to improve
10 their censorship and surveillance algorithms, and profiting from that improvement, constitutes a
11 serious invasion of their privacy.

12 174. The vague and ambiguous privacy provisions constitute, contribute to, and
13 exacerbate constitutional privacy violations by making it unreasonably confusing and unclear as
14 to whether the challenged practices are, as a matter of contract, permitted or prohibited. And even
15 if the challenged practices are so permitted, the challenged provisions are still unlawful because
16 they unreasonably force California WeChat users—including Doe Plaintiffs—to give up their
17 constitutional right to privacy as a condition of using WeChat.

18 175. Further, to the extent the foregoing challenged practices are prohibited under the
19 vague and ambiguous privacy provisions, the remedy-limiting provisions constitute, contribute to,
20 and exacerbate constitutional privacy violations by making it unreasonably difficult for California
21 WeChat users—including Doe Plaintiffs—to vindicate their constitutional right to privacy.

22 176. Finally, the challenged long-arm provisions constitute, exacerbate, and contribute
23 to constitutional privacy violations because they purport to deny the constitutional right of privacy
24 to PRC citizens living in California—including certain Doe Plaintiffs.

25 177. Plaintiffs seek declaratory relief to the effect that the challenged practices and
26 policies constitute a violation of the right to privacy under the California constitution, and an
27 injunction against those practices and policies. CPIFC has standing to seek such relief for the

1 reasons described above. Doe Plaintiffs seek such relief on behalf of themselves and on behalf of
2 the Class.

3 178. Doe Plaintiffs, who were harmed by the violation of their right to privacy under the
4 California constitution, also seek damages and punitive damages on their own behalf in an amount
5 to be determined at trial. Doe Plaintiffs also seek punitive damages on their own behalf because
6 Tencent’s conduct, which was malicious, oppressive, and willful, was calculated to injure Doe
7 Plaintiffs and made in conscious disregard of their rights. Punitive damages are warranted to deter
8 Tencent from engaging in future misconduct.

9 **COUNT III:**
10 **Violation of the right to free speech under the California constitution**
11 **By all Plaintiffs against Tencent**

12 179. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
13 if fully restated herein.

14 180. The challenged provisions violate the California constitutional right to free speech.
15 Given a reading most favorable to Tencent, and taken to their logical conclusion, they would
16 require California courts to enforce contract provisions with the fundamental purpose and effect
17 of suppressing and eliminating speech on the basis of political viewpoint.

18 181. For California courts to enforce the vague and ambiguous privacy provisions in
19 Tencent’s favor—*i.e.*, to rule that the challenged practices are not contractual violations—would
20 require California courts to uphold, as a matter of California law, politically motivated censorship
21 and surveillance of California WeChat users. That, in turn, cannot be squared with the California
22 constitution’s guarantee of free speech.

23 182. For California courts to enforce the remedy-limiting provisions in Tencent’s
24 favor—*i.e.*, to rule that, even if the challenged practices were contractually prohibited, California
25 WeChat users could not seek meaningful redress for being forced to endure politically motivated
26 censorship and surveillance—cannot be squared with the California constitution’s guarantee of
27 free speech.

1 opposed to pro-CCP views) cannot seek meaningful redress for violations of their rights—in
2 violation of the California constitution’s guarantee of equal protection.

3 189. For California courts to enforce the long-arm provisions in Tencent’s favor—*i.e.*,
4 to rule that PRC citizens residing in California are not entitled to the same legal protections as non-
5 PRC citizens as a matter of California law—would also violate the California constitution’s
6 guarantee of equal protection, which is not limited to California residents or citizens.

7 190. Plaintiffs seek declaratory relief that enforcement of the challenged provisions
8 would constitute a violation of the right to equal protection under the California constitution, an
9 injunction against those policies, and an injunction against such enforcement. Doe Plaintiffs seek
10 such relief on behalf of themselves and on behalf of the Class.

11 **COUNT V:**
12 **Intrusion upon seclusion**
13 **By all Plaintiffs against Tencent**

14 191. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
15 if fully restated herein.

16 192. California WeChat users—including Doe Plaintiffs—have a legally protected
17 privacy interest in their data and communications on WeChat. They also have a reasonable
18 expectation of privacy under the circumstances, which include Tencent’s affirmative—if vague
19 and ambiguous—promises of privacy, including in the WeChat Help Center, and in Tencent’s
20 written policies. The circumstances also include the fact that they have chosen to make their lives
21 in California, as opposed to the PRC.

22 193. The reasonableness of these expectations is also supported by the fact that Tencent
23 has previously—and continually—broadly denied that it engages in certain of the challenged
24 practices. Tencent also fails to affirmatively disclose to users or would-be users that their data and
25 private communications are being monitored, including in a way that discloses them to the Party-
26 state. The reasonableness of these expectations is also supported by the fact that California WeChat
27 users do not broadcast their data or communications to the public at large, but only to WeChat

1 users they have approved. This is particularly true of data and communications shared in group
2 chats and one-on-one chats.

3 194. Tencent's practice of monitoring, surveilling, and censoring these data and
4 communications constitutes an intentional intrusion on the solitude, seclusion, and private affairs
5 of California WeChat users, including Doe Plaintiffs. So too does Tencent's practice of sharing
6 the data and communications with the Party-state. These intrusions are highly offensive to a
7 reasonable person, as evidenced by the fact that countless laws, rules, and regulations exist in all
8 democratic societies to prevent precisely such indiscriminate sharing, and by the fact that concerns
9 about privacy continue to grow and are increasingly shaping public policy and public debate.

10 195. Plaintiffs seek declaratory relief that Tencent's practices of censoring and
11 surveilling the private data and communications of California WeChat users, and of sharing such
12 with PRC authorities, constitute the tort of intrusion, and an injunction against those practices.
13 CPIFC has standing to seek such relief for the reasons described above. Doe Plaintiffs likewise
14 seek such relief on behalf of themselves and on behalf of the Class.

15 196. Doe Plaintiffs, who were harmed by the intrusion into their private affairs as
16 detailed above, also seek damages and punitive damages on their own behalf in an amount to be
17 determined at trial. Doe Plaintiffs also seek punitive damages because Tencent's conduct, which
18 was malicious, oppressive, and willful, was calculated to injure Doe Plaintiffs and made in
19 conscious disregard of their rights. Punitive damages are warranted to deter Tencent from engaging
20 in future misconduct.

21 **COUNT VI:**
22 **Intentional infliction of emotional distress**
23 **By all Plaintiffs against Tencent**

24 197. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
25 if fully restated herein.

26 198. The challenged practices, which include the politically motivated censorship and
27 surveillance of the private data and communications of California WeChat users—including that
of Doe Plaintiffs—in favor of an autocratic and totalitarian regime, is conduct that is so extreme

1 as to exceed all bounds of behavior customarily tolerated in a civilized community. Evidence of
2 the extremity and outrageousness of such conduct lies in Tencent’s broad denials of engaging in
3 such conduct; in the outrage felt by, among others, Doe Plaintiffs, including those who grew up in
4 the PRC, over such conduct; in the existence of protections for free speech and privacy under the
5 written law of many societies and communities, including California, the United States, many
6 societies in East Asia, and even the PRC itself; and in widespread critical media coverage of the
7 challenged practices.

8 199. Tencent directed the challenged practices at California WeChat users—including
9 Doe Plaintiffs—with the intention of causing, or reckless disregard of the probability of causing,
10 emotional distress. California WeChat users—including Doe Plaintiffs—suffered severe or
11 extreme emotional distress, including intense feelings of fear, anxiety, and dehumanization, as a
12 result of the challenged practices. The challenged practices were the actual and proximate cause
13 of such extreme distress.

14 200. Tencent’s misconduct was done with malice, oppression, and in reckless disregard
15 of the rights of California WeChat users, including Doe Plaintiffs.

16 201. Plaintiffs seek declaratory relief that the challenged practices constitute the tort of
17 intentional infliction of emotional distress, and an injunction forbidding those practices. CPIFC
18 has standing to seek such relief for the reasons described above. Doe Plaintiffs seek such relief on
19 behalf of themselves and on behalf of the Class.

20 202. Doe Plaintiffs, who were harmed by Tencent’s intentional infliction of emotional
21 distress as detailed above, also seek damages and punitive damages on their own behalf in an
22 amount to be determined at trial. Doe Plaintiffs also seek punitive damages because Tencent’s
23 misconduct, which was malicious, oppressive, and willful, was calculated to injure Doe Plaintiffs
24 and made in conscious disregard of their rights. Punitive damages are warranted to deter Tencent
25 from engaging in future misconduct.

26 **COUNT VII:**
27 **Negligence**
By all Plaintiffs against Tencent

1 203. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
2 if fully restated herein.

3 204. That the challenged practices would cause severe or extreme emotional distress to
4 California WeChat users was eminently foreseeable by Tencent, as evidenced by, among other
5 things, Tencent’s broad denials that it engages in the challenged practices; the existence of
6 protections for free speech and privacy under the written law of many societies and communities,
7 including California, the United States, many societies in East Asia, and even the PRC itself; and
8 widespread critical media coverage of the challenged practices.

9 205. Tencent engages in the challenged practices not as a matter of technical necessity,
10 but for profit.

11 206. The challenged practices directly cause severe or extreme emotional distress; there
12 are no meaningful intervening causes.

13 207. For these and other reasons, Tencent owed, and continues to owe, a duty to refrain
14 from engaging in the challenged practices against California WeChat users, including Doe
15 Plaintiffs. By engaging in the challenged practices, Tencent breached its duties, thereby causing
16 California WeChat users—including Doe Plaintiffs—severe or extreme emotional distress,
17 entitling Doe Plaintiffs and California WeChat users to damages.

18 208. Tencent’s misconduct was done with malice, oppression, and in reckless disregard
19 of the rights of California WeChat users, including Doe Plaintiffs.

20 209. Plaintiffs seek declaratory relief that the challenged practices constitute the tort of
21 negligence, and an injunction against those practices. CPIFC has standing to seek such relief for
22 the reasons described above. Doe Plaintiffs seek such relief on behalf of themselves and on behalf
23 of the Class.

24 210. Doe Plaintiffs, who were harmed by Tencent’s negligence as detailed above, also
25 seek damages and punitive damages on their own behalf in an amount to be determined at trial.
26 Doe Plaintiffs also seek punitive damages because Tencent’s misconduct, which was malicious,
27

1 oppressive, and willful, was calculated to injure Doe Plaintiffs and made in conscious disregard of
2 their rights. Punitive damages are warranted to deter Tencent from engaging in future misconduct.

3 **COUNT VIII:**
4 **Conversion and trespass to chattels**
5 **By all Plaintiffs against Tencent**

6 211. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
7 if fully restated herein.

8 212. California WeChat users have a property right in their WeChat accounts and the
9 associated data, as Tencent recognizes. Tencent has substantially interfered with, and has denied
10 numerous California WeChat users—including Doe Plaintiffs—enjoyment of that property right
11 by engaging in the challenged practices, constituting an unlawful conversion of, or trespass upon,
12 that property.

13 213. Plaintiffs seek declaratory relief that the challenged practices constitute the torts of
14 conversion or trespass to chattels, and an injunction against those practices. CPIFC has standing
15 to seek such relief for the reasons described above. Doe Plaintiffs seek such relief on behalf of
16 themselves and on behalf of the Class.

17 214. Doe Plaintiffs, who were harmed by the conversion and trespass, also seek damages
18 and punitive damages on their own behalf in an amount to be determined at trial. Doe Plaintiffs
19 seek punitive damages because Tencent’s misconduct, which was malicious, oppressive, and
20 willful, was calculated to injure Doe Plaintiffs and made in conscious disregard of their rights.
21 Punitive damages are warranted to deter Tencent from engaging in future misconduct.

22 **COUNT IX:**
23 **Unjust enrichment**
24 **By all Plaintiffs against Tencent**

25 215. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
26 if fully restated herein.

27 216. Tencent’s enrichment by the challenged practices at the expense of California
WeChat users is unjust because that enrichment depends upon politically motivated censorship

1 and surveillance, and on the use of California WeChat users' data and communications for
2 improving Tencent's censorship and surveillance algorithms.

3 217. It would be inequitable for Tencent to be permitted to retain the benefits obtained
4 from use of such data.

5 218. Plaintiffs seek declaratory relief that the challenged practices constitute unjust
6 enrichment, and an injunction against those practices. CPIFC has standing to seek such relief for
7 the reasons described above. Doe Plaintiffs seek such relief on behalf of themselves and on behalf
8 of the Class.

9 219. Doe Plaintiffs are entitled to the establishment of a constructive trust impressed
10 upon the benefits to Tencent from its unjust enrichment and inequitable conduct.

11 220. Alternatively or additionally, Tencent should pay restitution of its unjust
12 enrichment to Doe Plaintiffs.

13 **COUNT X:**
14 **Violation of the Unfair Competition Law ("UCL), Cal. Bus. & Prof. Code § 17200, et seq.**
15 **By all Plaintiffs against Tencent**

16 221. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
17 if fully restated herein.

18 222. Tencent has engaged in a pattern and practice of acts of unfair competition in
19 violation of California's UCL, which prohibits "unlawful," "unfair," and "fraudulent" business
20 practices.

21 223. The Cal. Bus. & Prof. Code § 17204 provides that an action for violation of the
22 UCL may be brought by persons who have suffered injury in fact and have lost money or property
23 as a result of such unfair competition, and Bus. & Prof. Code § 17203 provides that a court may
24 grant injunctive and equitable relief to such persons.

25 224. Doe Plaintiffs have suffered injury in fact and have lost money and property as a
26 result of Tencent's unfair competition and are therefore entitled to injunctive relief, including
27 restitution, under the UCL.

1 225. **Unlawful practices.** The challenged practices and provisions constitute unlawful
2 business practices under the UCL because, as set forth above and below, they violate the California
3 constitution, are tortious, are inequitable, and violate the California Invasion of Privacy Act.

4 226. **Unfair practices.** The challenged practices and provisions constitute unfair
5 practices under the UCL. California WeChat users are subjected to relentless censorship and
6 surveillance for Tencent’s profit, while exposing such users and their families to the security
7 services of a totalitarian, dictatorial government. They result in California WeChat users suddenly
8 losing access to some or all of their account for no reason other than sharing content that reflects
9 poorly on the Party-state. Such business practices are immoral, unethical, oppressive, unscrupulous,
10 and substantially injurious to consumers.

11 227. **Fraudulent practices.** The challenged practices and provisions constitute
12 fraudulent business practices under the UCL. In particular, the challenged vague and ambiguous
13 provisions, combined with the claims about privacy made in the WeChat Help Center and
14 Tencent’s other privacy-related public statements, are deceptive and likely to mislead the
15 consuming public about the nature and extent of WeChat’s politically motivated censorship and
16 surveillance.

17 228. Plaintiffs seek declaratory relief that the challenged practices and provisions violate
18 the UCL, and an injunction against those practices. CPIFC has standing to seek such relief for the
19 reasons described above. Doe Plaintiffs seek such relief on behalf of themselves and on behalf of
20 the Class.

21 229. Doe Plaintiffs also seek restitution and disgorgement in an amount to be
22 determined at trial.

23 **COUNT XI:**
24 **Violation of the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§ 630, *et***
25 ***seq.***
26 **By all Plaintiffs against Tencent**

27 230. Plaintiffs re-allege and incorporate all allegations with the same force and effect as
if fully restated herein.

1 231. Doe Plaintiffs, individually and on behalf of the Class, assert violations of
2 California’s Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§ 630, *et seq.*, specifically §§
3 631, 632, 632.5, 632.7, 635, and 637, for Tencent’s intentional interception, use, disclosure, and
4 recording of WeChat message content Doe Plaintiffs sent to or received from WeChat users.
5 Tencent knowingly took such actions in reckless disregard for Doe Plaintiffs’ and Class members’
6 privacy rights and for its own financial benefit to profit from California WeChat user data in part
7 by using it to tune Tencent’s censorship and surveillance algorithms operating on WeChat.

8 232. Tencent’s acts in violation of CIPA occurred in California because those acts
9 resulted from business decisions, practices, or operating policies that Tencent developed,
10 implemented, or used in California and that are unlawful and constitute criminal conduct in the
11 state of Tencent’s residence and principal business operations. Tencent profited in California as a
12 result of its repeated and pervasive violations of CIPA. Tencent’s unlawful conduct that occurred
13 in California harmed Doe Plaintiffs and Class members.

14 233. Cal. Penal Code § 630 provides: “The Legislature hereby declares that advances in
15 science and technology have led to the development of new devices and techniques for the purpose
16 of eavesdropping upon private communications and that the invasion of privacy resulting from the
17 continual and increasing use of such devices and techniques has created a serious threat to the free
18 exercise of personal liberties and cannot be tolerated in a free and civilized society.”

19 234. Tencent, as a corporation, is a person as defined under Cal. Penal Code §§ 7 and
20 632(b).

21 **Cal. Penal Code § 631**

22 235. Cal. Penal Code § 631(a) imposes liability on any person who, “by means of any
23 machine, instrument, or contrivance, or in any other manner,”: (i) “intentionally taps, or makes
24 any unauthorized connection, whether physically, electrically, acoustically, inductively or
25 otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line,
26 cable, or instrument of any internal telephonic communication system,” or (ii) “willfully and
27 without the consent of all parties to the communication, or in any unauthorized manner, reads or

1 attempts to read or learn the contents or meaning of any message, report, or communication while
2 the same is in transit or passing over any wire, line or cable or is being sent from or received at
3 any place within this state,” or (iii) “uses, or attempts to use, in any manner, or for any purpose, or
4 to communicate in any way, any information so obtained,” or (iv) “aids, agrees with, employs, or
5 conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the
6 acts or things mentioned above in this section.” Cal. Penal Code § 631(a).

7 236. Doe Plaintiffs and Class members sent and received confidential and sensitive
8 communications in California through Tencent’s mobile messaging application, WeChat. Doe
9 Plaintiffs’ and Class members’ WeChat communications constitute “electronic communications,”
10 defined as “any transfer of signs, signals, writings, images, sounds, data, or intelligence of any
11 nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photooptical
12 system....” Cal. Penal Code § 629.51(a)(2). Tencent is not and was not at any time a party to Doe
13 Plaintiffs’ and Class members’ private communications.

14 237. Tencent created, used, and uses an advanced censorship algorithm to automatically
15 identify certain politically sensitive keywords in WeChat users’ electronic communications while
16 in transmission over WeChat. Tencent’s software program captures WeChat users’ electronic
17 communications containing such keywords in real time and contemporaneously routes the
18 communications to PRC officials for potential review. Tencent’s algorithm and software programs
19 are a “machine, instrument, contrivance, or ... other manner” used to willfully read or learn the
20 content or meaning of WeChat users’ private and confidential communications, as well as to use
21 and disclose the information obtained. Cal. Penal Code § 631(a).

22 238. Interception of Doe Plaintiffs’ and Class members’ private and confidential
23 communications without their consent occurs when Tencent’s software identifies individual
24 WeChat messages, dialogues, conversations, or image/data shared with other WeChat users,
25 triggered by certain keywords or MD5 hash signatures that may be perceived as being associated
26 with politically sensitive content. This interception occurs during transmission, as the software
27 automatically captures WeChat users’ communications when it detects particular trigger words or

1 MD5 hash signatures, and shares the intercepted communications with, among other entities,
2 police stations in the PRC. Additionally, Tencent automatically intercepts communications sent
3 on WeChat that have previously been identified by its software as problematic, which are then
4 prevented from appearing on certain users' devices, including in private communications on those
5 devices.

6 239. The contents of Doe Plaintiffs' and Class members' messages and communications
7 that Tencent intercepted, disclosed, used, or recorded includes the actual message content of
8 WeChat users' dialogues and conversations.

9 240. WeChat data, communications, and messages are written messages sent
10 electronically from users' cellular phones to remote locations. As such, the wires, lines, cables
11 and/or instruments which carry and facilitate the transmission of Doe Plaintiffs' and Class
12 members' WeChat data messages are telegraph wires, lines, cables and/or instruments under
13 § 631(a). Additionally, because WeChat is a mobile application that is downloaded onto users'
14 cellular phones, the wires, lines, cables and/or instruments which carry and facilitate the
15 transmission of Doe Plaintiffs' and Class members' WeChat messages are telephone wires, lines,
16 cables and/or instruments under § 631(a).

17 241. Additionally, Tencent uses WeChat's censorship and surveillance algorithms and
18 programs to willfully read, attempt to read, or learn the contents or meaning of Doe Plaintiffs' and
19 Class members' confidential WeChat messages or communications while the messages or
20 communications are in transit or passing over any wire, line, or cable, or are being sent from or
21 received at any place within California. Cal. Penal Code § 631(a). Doe Plaintiffs and Class
22 members, parties to the communications, at no time consented to or authorized Tencent to obtain
23 and surveil the contents of their confidential communications for political purposes, or for the
24 purpose of improving WeChat's censorship and surveillance algorithms and programs. Nothing in
25 Tencent's written policies—and likewise nothing in other publicly available information provided
26 by Tencent—indicates to WeChat users that Tencent would obtain and surveil the content of their
27

1 communications in this manner, such that Doe Plaintiffs and Class members cannot be fairly be
2 said to have agreed to or authorized Tencent's actions.

3 242. Tencent intentionally used and uses, attempts to use, and communicates the
4 information unlawfully obtained through WeChat's censorship algorithm and programs to improve
5 WeChat's censorship and surveillance abilities, in violation of Cal. Penal Code § 631(a). Tencent
6 intentionally communicated and communicates the contents of Doe Plaintiffs' and Class members'
7 WeChat data, messages, and communications while in transmission to PRC officials or other third
8 parties for purposes not authorized by Doe Plaintiffs and Class members. Through WeChat's
9 censorship and surveillance algorithm and programs, Tencent automatically captures WeChat
10 users' data, messages, and conversations, and shares them via MongoDB—a type of database that
11 stores data as separate documents—in at least eighteen locations for review by PRC officials.

12 243. Further, as detailed above, Tencent aids, agrees with, employs, or conspires with
13 persons to unlawfully do, or permit, or cause to be done the above-mentioned acts set forth in §
14 631(a).

15 244. Doe Plaintiffs and Class members reasonably expected that Tencent was not
16 intercepting, disclosing, or using the contents of their confidential messages and communications
17 for the above-described unauthorized purposes based on: Tencent's affirmative—if vague and
18 ambiguous—promises of privacy, including in the WeChat Help Center, and in Tencent's written
19 policies; the fact that they have chosen to make their lives in California, as opposed to the PRC;
20 the fact that Tencent has previously broadly denied that it engages in certain of the challenged
21 practices; Tencent's failure to affirmatively disclose to users or would-be users that their data and
22 private communications are being monitored, including in a way that makes them available to the
23 Party-state; the fact that California WeChat users do not broadcast their data or communications
24 to the public at large, but only to WeChat users they have approved, which is particularly true of
25 data and communications shared in group chats and one-on-one chats; and Tencent's status as a
26 person who was not an intended party to or recipient of Doe Plaintiffs' and Class members'
27 sensitive and confidential communications sent via WeChat.

1 members' confidential communications sent via WeChat without their consent or authorization for
2 purposes of political censorship and surveillance.

3 250. Doe Plaintiffs and Class members reasonably believed that their private,
4 confidential messages sent and received through WeChat were confined to the intended recipients
5 and were not being recorded for purposes of political censorship or surveillance. WeChat's privacy
6 policy provides that the content of users' communications "only passes through our servers so that
7 it can be distributed to the users you have chosen to send communications to[,]” and states that
8 such content is processed “to facilitate delivery of communication to another user.” The privacy
9 policy also states that Tencent retains users' communications sent through WeChat's chat feature
10 for 120 hours and retains chat media such as images, videos, audio, and files for 72 hours. Further,
11 the WeChat Help Center expressly provides that “[a]s content of messages are not permanently
12 stored to our servers nor are data-mined for commercial purposes, any claims that third-parties
13 including members of the WeChat team are ‘snooping’ on your chat messages are incorrect
14 misunderstandings.”

15 **Cal. Penal Code § 632.5**

16 251. Cal. Penal Code § 632.5(a) imposes liability on any person who “maliciously and
17 without the consent of all parties to the communication, intercepts, receives, or assists in
18 intercepting or receiving a communication transmitted between cellular radio telephones....” Cal.
19 Penal Code § 632.5(a).

20 252. “Cellular radio telephone” means a wireless telephone authorized by the Federal
21 Communications Commission to operate in the frequency bandwidth reserved for cellular radio
22 telephones. Cal. Penal Code § 632.5(c).

23 253. Because Doe Plaintiffs' and Class members' communications were sent through
24 the WeChat mobile application on their cellular phones, the communications were transmitted
25 between cellular radio telephones within the meaning of § 632.5.

1 254. In violation of Cal. Penal Code § 632.5, Tencent maliciously intercepted, received,
2 and assisted in intercepting or receiving Doe Plaintiffs’ and Class members’ WeChat
3 communications without their consent or authorization.

4 255. Tencent’s lawless conduct was exercised knowingly and maliciously to advance
5 the unconscionable purpose of political censorship and surveillance.

6 **Cal. Penal Code § 632.7**

7 256. Cal. Penal Code § 632.7(a) imposes liability on any person who, “without the
8 consent of all parties to a communication, intercepts or receives and intentionally records, or assists
9 in the interception or reception and intentional recordation of, a communication transmitted
10 between two cellular radio telephones....” Cal. Penal Code § 632.7(a).

11 257. “Communication” includes, but is not limited to, communications transmitted by
12 voice, data, or image, including facsimile. Cal. Penal Code § 632.7(c)(3).

13 258. In violation of Cal. Penal Code § 632.7(a), Tencent intercepted or received and
14 intentionally recorded, and assisted in the interception or reception and intentional recordation of,
15 Plaintiffs’ and Class members’ communications transmitted between cellular phones without their
16 consent or authorization, as fully described above.

17 **Cal. Penal Code § 635**

18 259. Cal. Penal Code § 635(a) imposes liability on any person who “manufactures,
19 assembles, sells, offers for sale, advertises for sale, possesses, transports, imports, or furnishes to
20 another any device which is primarily or exclusively designed or intended for eavesdropping upon
21 the communication of another, or any device which is primarily or exclusively designed or
22 intended for the unauthorized interception or reception of communications between cellular radio
23 telephones or between a cellular radio telephone and a landline telephone in violation of Section
24 632.5....” Cal. Penal Code § 635(a).

25 260. In violation of Cal. Penal Code § 635, Tencent created, manufactured, used, uses,
26 and furnishes to others a censorship and surveillance algorithm and program to automatically
27 identify certain politically sensitive keywords in WeChat users’ data, messages, and

1 communications while in transmission over WeChat. WeChat’s censorship and surveillance
2 algorithms and programs were primarily or exclusively designed or intended to unlawfully
3 intercept and receive communications between cellular phones, as evidenced by the fact that the
4 algorithm only intercepts communications containing certain keywords or images that could be
5 perceived as critical of the Party-state, while other messages are delivered to recipients without
6 issue.

7 **Cal. Penal Code § 637**

8 261. Cal. Penal Code § 637 imposes liability on “[e]very person not a party to a
9 telegraphic or telephonic communication who willfully discloses the contents of a telegraphic or
10 telephonic message, or any part thereof, addressed to another person, without the permission of
11 that person....”

12 262. In violation of Cal. Penal Code § 637, and as fully described above, Tencent
13 unlawfully disclosed the contents of Doe Plaintiffs’ and Class members’ confidential telegraphic
14 or telephonic messages to PRC officials without their permission, consent, or authorization.

15 **Cal. Penal Code § 637.2**

16 263. As a result of Tencent’s violations of CIPA, Doe Plaintiffs and Class members have
17 suffered harm and injury, including but not limited to the invasion of their privacy rights.

18 264. Doe Plaintiffs, individually and on behalf of the Class, seek: (1) declaratory relief
19 that the challenged practices and provisions violate CIPA, and an injunction against those practices;
20 (2) damages of \$5,000 per violation under Cal. Penal Code § 637.2; and (3) costs and reasonable
21 attorneys’ fees under Cal. Civ. Proc. Code § 1021.5.

22 265. CPIFC also seeks declaratory and injunctive relief on this count, and has standing
23 to do so for the reasons above.

24 **IX. PRAYER FOR RELIEF**

25 Plaintiffs respectfully requests that the Court enter judgment against Tencent and in
26 Plaintiffs’ favor, and award the following relief:
27

- 1 A. An order determining that this action may be maintained as a class action under
2 California Code of Civil Procedure § 382, that Doe Plaintiffs are proper
3 representatives of the Class, that Doe Plaintiffs' attorneys should be appointed
4 counsel for the Class, and that notice to the Class be promptly issued.
- 5 B. Damages on behalf of Doe Plaintiffs and the Class, including under Cal. Pen. Code
6 § 637.2.
- 7 C. An injunction against the challenged practices.
- 8 D. A declaratory judgment that the challenged provisions are unlawful.
- 9 E. An injunction requiring all California WeChat users to be able to use WeChat
10 without being subject to politically motivated censorship and surveillance.
- 11 F. An injunction requiring Tencent to prevent California WeChat user data from being
12 used to improve WeChat's censorship and surveillance systems.
- 13 G. Attorneys' fees and litigation costs, including but not limited to under California
14 Code of Civil Procedure § 1021.5.
- 15 H. Any and all other relief, including any additional equitable relief, that the Court
16 may deem just and proper.

17 **X. DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a jury trial on all issues so triable.

19 Dated: January 8, 2021

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