

# **Civil Rights Litigation over Freedom to Use WeChat Came to a Successful and Inspiring Conclusion**

## **Introduction:**

The U.S. WeChat Users Alliance (USWUA) has won a series of complex legal battles against the U.S. government in an unprecedented effort by the Chinese American community to secure their freedom to use their favorite mobile app, WeChat. Because of the victories achieved in court by the USWUA, President Biden in June 2021 was forced to withdraw the WeChat Ban that was issued by former President Trump in August 2020.

Hoping to set a precedent against future U.S. governments' arbitrary and baseless treatment of the Chinese Americans, USWUA commenced and triumphed in yet a second legal battle and recently secured a \$900,000 payment from the government for the legal fees that USWUA incurred as a result of the WeChat Ban litigation.

## **Body:**

June 9, 2021 was in many ways a cheerful day for USWUA and a good number of Chinese Americans: President Biden officially withdrew the "WeChat Ban" which was issued by former President Donald Trump on August 6, 2020. As a result, millions of Americans innocently caught in the geopolitical crossfire between the two largest economies of the world can continue using their favorite mobile app and connecting with family and friends.

Withdrawing a discriminatory executive order that had been a total mistake from the very beginning is by no means sufficient. The WeChat Ban had no legal basis, and now everyone knows that – but that is after-the-litigation, and only with the federal courts' rulings against the government. Before the lawsuit began, at the whim of one person in the Oval Office, millions of Americans' civil rights including their freedom of speech were immediately in danger.

After winning the court battles in stopping the WeChat Ban, USWUA relied upon a federal law called the Equal Access to Justice Act (EAJA) to seek compensation from the government. Under EAJA, if the government loses, without a justifiable reason, in a litigation brought by injured citizens, a court may order the government to compensate the citizens for the legal expenses incurred in the lawsuit. USWUA's lawyers invoked EAJA and engaged in several rounds of settlement negotiations with the Department of Justice (DOJ). Because the law and the evidence are on our side, the DOJ was forced to agree to pay \$900,000 to cover part of the legal expenses that USWUA had incurred during the WeChat Ban litigation process. The following is a screenshot of the Fee Settlement and Release:

**FEE SETTLEMENT AGREEMENT AND RELEASE**  
*U.S. WeChat Users Alliance v. Biden, No. 3:20-cv-05910-LB (N.D. Cal.)*

By and through their respective counsel, Plaintiffs U.S. WeChat Users Alliance, Chihuo Inc., Brent Coulter, Fangyi Duan, Jinneng Bao, Elaine Peng, and Xiao Zhang (collectively “Plaintiffs”), and Defendants Joseph R. Biden, Jr., in his official capacity as President of the United States, and Gina Raimondo, in her official capacity as United States Secretary of Commerce (collectively “Defendants,” and together with Plaintiffs, the “Parties”) hereby agree to settle and compromise Plaintiffs’ request for an award of attorneys’ fees, costs, and other litigation expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* (the “EAJA”), arising from the civil action captioned *U.S. WeChat Users Alliance v. Biden*, No. 20-cv-5910 (N.D. Cal.) (the “Civil Action”), under the terms and conditions set forth in this Settlement Agreement (the “Agreement”).

1. Settlement Payment. Defendants shall pay Plaintiffs, through their undersigned counsel at Rosen Bien Galvan & Grunfeld LLP (“RBGG”), a lump sum of \$900,000.00 for attorneys’ fees, costs, and other litigation expenses incurred in this matter (the “Settlement Payment”) in full and complete satisfaction of Plaintiffs’ EAJA claim and any and all potential claims that Plaintiffs, or any of their counsel (including non-RBGG counsel), may have for

Fighting the government is never easy and always expensive. In the very beginning, USWUA’s bank account had only about 30 thousand dollars. But the five USWUA founders went out and assembled a first-rate legal team for the case. The lead counsel, RBGG, agreed to heavily discount its hourly rates to take on the case. Other law firms including DWT and Sidley Austin as well as two of the USWUA founders (Clay Zhu and Angus Ni) worked entirely pro bono. If these lawyers charged their normal rates, total attorney fees in the WeChat Ban case would easily exceed \$2.5 million.

As of today, USWUA has received a total of \$1,071,618 from over 18,000 individual donations. The vast majority of USWUA’s funds has been used to pay RBGG’s legal bills. There is currently \$128,428.60 in USWUA’s accounts, and at the same time USWUA still owes RBGG \$290,857.07 of attorneys’ fees.

Regarding the \$900,000 received from the US government, after discussion with the five main law firms that worked the case, USWUA has decided to first reimburse out-of-pocket expenses advanced by the law firms (e.g., filing fees, expert witnesses, mailing, etc). The total expenses to be reimbursed is \$28,788.23. The remaining \$871,211.17 will be paid out to the five law firms pro rata based on the time that each of them spent on the case, as follows:

<b>Participating Law Firm</b>	<b>Lead Attorney</b>	<b>Pro Rata Share</b>	<b>Comments</b>
RBGG	Michael W. Bien	\$369,290.30	Any surplus after subtracting previously owed amount has been refunded to USWUA.

DAVIS WRIGHT TREMAINE LLP	David M. Gossett	\$289,028.82	
SIDLEY AUSTIN LLP	Carter G. Phillips	\$47,194.89	
DEHENG LAW OFFICES PC	Clay Zhu (One of the founders of USWUA)	\$124,151.97	Counsel has donated its entire pro rata share to USWUA
AFN LAW PLLC	Angus Ni (One of the founders of USWUA)	\$41,545.79	Counsel has donated its entire pro rata share to USWUA

USWUA has always taken its accounting and finances seriously. Since its inception it has made its accounting practices transparent. An independent third-party auditor has been retained to review USWUA's finances so that every dollar goes to good causes.

On the first day USWUA was formed, it made clear that, if there are any surplus funds when the lawsuit is complete, it will donate everything to non-profit organizations dedicated to the defense and protection of Chinese Americans' civil rights. Therefore, USWUA has decided to wind up its operation as its mission is complete, and then donate all of its surplus funds to its sister organization Chinese American Legal Defense Fund (CALDA, official website at [www.caldausa.org](http://www.caldausa.org)) to build on the success of the WeChat Ban case and continue the legal fight against systematic discrimination against Chinese Americans.

USWUA thanks the litigation team and dozens of volunteers for this unprecedented accomplishment. Their generous support and contributions demonstrated their belief in the legal system and their passion for the rights of Chinese Americans. Without their professional skills and experience, USWUA could not have won a legal battle against the President of the United States.

USWUA would also like to offer our sincere gratitude to each and every individual who contributed to our cause financially. This victory was made possible by the collective effort of over eighteen thousand Chinese Americans. Together we have created a rare legal precedent where the Chinese Americans' civil rights prevailed over the power of the U.S. President.

This is just the beginning. The growing number of Asian Hate incidents and the hostile geopolitical tensions between the U.S. and China mean that we must stand up and speak out. Along with many other organizations, CALDA will use litigation to eliminate the systematic discrimination against Chinese Americans.

Together, let's continue the fight!