

1 Chun-Hui Miao
2 1014 Greene St.
3 Columbia, SC 29208
4 Telephone: (803) 777-2583
5 E-Mail: miao@moore.sc.edu

6 *Pro Se*

FILED

FEB 20 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DMR

9 DONGXIAO YUE,

10 Plaintiff,

11 vs.

12 CHUN-HUI MIAO, BIAN-WANG.COM

13 Defendants

Case No.

18

1074

14 NOTICE OF REMOVAL

15 Defendants, Chun-Hui Miao ("Miao") and Bian-wang.com ("Bian-wang") (herein
16 after collectively referred to as "Defendant") pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
17 hereby give notice of the removal of this action from the California Superior Court of Contra
18 Costa County to the United States District Court for the Northern District of California. As
19 addressed below, this federal court has original jurisdiction over this matter under 28 U.S.C. §
20 1332 because Plaintiff and Defendant are citizens of different states. In support of this removal,
21 Defendant states as follows:

22 **INTRODUCTION AND NATURE OF ACTION**

23
24 1. Plaintiff initiated this action on December 15, 2017, by filing a Complaint against Defendant
25 in the California Superior Court of Contra Costa County (the "state court action"). Defendant
26 received a copy of the Complaint by personal service on January 17, 2018. The state court
27 action is **Case No. C17-02449**. The Contra Costa Superior Court is a state court within this
28

1 judicial district. The complete state court file, including copies of all process, pleadings, and
2 orders served upon Defendant, is attached as Exhibit A.

3 2. This is an action stemming from a dispute over blog articles and comments posted on the
4 Bian-wang website. Plaintiff claims that he was attacked by various posts on the site.

5 3. Plaintiff asserts three causes of action: Breach of Contract, Tortious Breach of Implied
6 Covenant of Good Faith and Fair Dealing, and Unfair Competition under California Business
7 & Professions Code § 17200 *et esq.*

8 4. In addition to various forms of injunctive and declaratory relief, Plaintiff seeks restitution on
9 his unfair competition claim and money damages on his contract and tort claims.
10 Significantly, Plaintiff also seeks exemplary and/or punitive damages apparently based on his
11 allegation that Defendant acted with “malice, oppression and/or fraud.” He also seeks
12 attorneys’ fees.
13
14

15 GROUND FOR REMOVAL

16 5. This action is properly removable under 28 U.S.C. § 1441 because this Court has original
17 jurisdiction over this action under 28 U.S.C. § 1332.

18 A. Removal Is Proper Because Plaintiff And Named Defendant Are Citizens Of Different 19 States.

20 6. Plaintiff states that he “is an individual residing in Contra Costa County” (Compl. #2). As a
21 domiciliary of California, Plaintiff is a citizen of California.

22 7. Defendant Miao is a citizen of South Carolina (See Compl. #5).

23 8. Although the complaint fails to seek a specific dollar amount in damages, the jurisdictional
24 amount is plainly satisfied by the extensive damages sought in the complaint.
25
26
27
28

1 9. The Ninth Circuit has stated: "where it is unclear or ambiguous from the face of a state-court
2 complaint whether the requisite amount in controversy is pled. In such a circumstance, we
3 apply a preponderance of the evidence standard." ("[T]he removing defendant bears the
4 burden of establishing, by a preponderance of the evidence, that the amount in controversy
5 exceeds [the jurisdictional amount]. Under this burden, the defendant must provide evidence
6 establishing that it is 'more likely than not' that the amount in controversy exceeds that
7 amount."). *Guglielmino v. McKee Foods, Inc.*, 506 F.3d 696, 699 (9th Cir. 2007) (citing
8 *Sanchez v. Monumental Life Insurance Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

10 10. Plaintiff seeks substantial contract and tort damages on his first two claims, and restitution on
11 his third claim. He also requests extensive injunctive and declaratory relief. In addition, he is
12 seeking exemplary and/or punitive damages, which must be considered when calculating the
13 amount in controversy if potentially available. *See Golden ex rel. Golden v. Golden*, 382 F.3d
14 348, 356 (3d Cir. 2004). In a case materially indistinguishable from this case, a New Jersey
15 federal district court, denied a remand motion. *See Raspa v. Home Depot*, 533 F. Supp. 2d
16 514 (D. N.J. 2007), in which the plaintiff sought substantial compensatory and punitive
17 damages, but failed to request a specific dollar amount. The Court concluded as follows:

20 In the current case, Plaintiffs do not state an exact sum sought in the Complaint. Instead,
21 the Complaint "demands judgment against the defendant Home Depot, jointly and/or
22 severally together with costs of suit and attorney fees." (Compl. ¶ 4 (First Count)).
23 Furthermore, Plaintiffs "demand[] judgment . . . together with punitive damages."
24 (Compl. ¶ 3 (Third Count)). Also, Plaintiffs demand "judgment against the defendants
25 jointly, individually and/or severally for damages, interest, costs of suit and attorney
26 fees." (Compl. ¶ 3 (Fourth Count)). Therefore, it is more likely than not that more than
27 \$75,000 is in controversy in this case. Moreover, Plaintiff also seeks attorneys' fees,
28 which alone can exceed six figures. The Complaint does not contain any mention of the
sum or value of the matter in controversy. Furthermore, in *Morgan*, the plaintiff expressly
limited, in her complaint, the damages sought to less than the jurisdictional threshold. *See*
471 F.3d at 471. Here, by contrast, Plaintiffs do not expressly limit the amount in
controversy to \$75,000 or less. Therefore, the case falls under the framework established
by *Samuel-Bassett*.

Plaintiffs are seeking compensatory damages. In addition, they are seeking punitive damages, which must be considered when calculating the amount in controversy. See *Golden ex rel. Golden v. Golden*, 382 F.3d 348, 356 (3d Cir.2004). Perhaps most importantly in the current case, in Judge Chertoff's opinion in *Golden*, in which he was joined by Judge, now Supreme Court Justice, Samuel Alito, the Third Circuit held that punitive damages can be aggregated with compensatory damages to arrive at the amount in controversy requirement. See 382 F.3d at 355 ("Claims for punitive damages may be aggregated with claims for compensatory damages unless the former are patently frivolous and without foundation. . . . If appropriately made, therefore, a request for punitive damages will generally satisfy the amount in controversy requirement because it cannot be stated to a legal certainty that the value of plaintiff's claim is below the statutory minimum."). This was echoed in the recent opinion in *Profl Cleaning & Innovative Bldg. Servs. v. Kennedy Funding, Inc.*, 245 Fed.Appx. 161, 163 (3d Cir.2007). Under New Jersey law, Plaintiffs can collect punitive damages of up to five times the compensatory damages. See N.J.S.A. § 2A:15-5.14(b). Combined with compensatory damages, the punitive damages will likely bring Plaintiffs' damages in excess of the \$75,000 jurisdictional requirement. This Court must also consider attorney's fees, which can be significant. See *Suber v. Chrysler Corp.*, 104 F.3d 578, 585 (3d Cir.1997). Thus, this Court is satisfied that the *Red Cab* legal certainty test is met. As it does not appear to a legal certainty that Plaintiffs cannot recover the jurisdictional amount, the case need not be remanded.

Id. at 522 (emphasis added). Based on the extensive relief sought by Plaintiff, it is more likely than not that Plaintiff is seeking in excess of \$75,000, exclusive of interest and costs.

B. The Other Prerequisites For Removal Have Been Satisfied.

11. In addition to satisfying the requirements of diversity jurisdiction, Defendant has satisfied all other requirements for removal.

12. The time within which Defendant is permitted to remove this action under 28 U.S.C. § 1446(b) has not expired as of the time of the filing and service of this notice of removal. Defendant has filed this Notice of Removal within 30 days after it received a copy of the Complaint on January 17, 2018.

13. In accordance with 28 U.S.C. § 1446(a), the complete state court file, including copies of all process, pleadings, and orders served upon Defendant, is attached hereto as Exhibit A.

1 14. Removal to this district is proper because this district embraces the Contra Costa County
2 Superior Court, the forum in which the removed action is pending.

3 15. In accordance with 28 U.S.C. § 1446(d), Defendant will promptly provide written notice of
4 the filing of this Notice of Removal to the Plaintiff and shall file a copy of this Notice with
5 the Clerk of the Contra Costa County Superior Court, where this action is currently pending.

6 16. Defendant submits this Notice of Removal without waiving any defenses to the claims
7 asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be
8 granted. Defendant specifically reserves the right to assert, if applicable, any and all defenses
9 enumerated under Rule 12 of the Federal Rules of Civil Procedure or any other affirmative
10 defenses, including those enumerated in Rule 8(c) of the Federal Rules of Civil Procedure,
11 upon the filing of its responsive pleadings within the time allotted under the Federal Rules of
12 Civil Procedure.

13 17. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil
14 Procedure.

15 18. Defendant has complied with the requirements of the Local Civil Rules of the United States
16 District Court for the Northern District Court of California.

17 19. If any question arises regarding the propriety of the removal of this action, Defendant
18 respectfully requests the opportunity to present a memorandum and oral argument in support
19 of the position that this case is removable and conduct discovery related to the facts that
20 support removal.

21 WHEREFORE, Defendant gives notice that the above-entitled action is removed from the
22 California Superior Court of Contra Costa County to United States District Court for the
23 Northern District of California.

24 NOTICE OF REMOVAL - 5

Respectfully submitted,



Chun-Hui Miao (Bian-wang.com), Pro Se

February 13, 2018

Columbia, South Carolina

Cc: The California Superior Court of Contra Costa County, DONGXIAO YUE

CERTIFICATE OF SERVICE

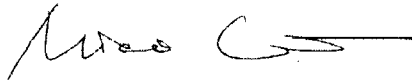
The undersigned Defendant, Chun-Hui Miao, hereby certifies that on this 13th day of February 2018, he served a copy of NOTICE OF REMOVAL by USPS Priority Mail on

Plaintiff

Dongxiao Yue
111 Deerwood Road,
Suite 200
San Ramon, CA 94583

Clerk of The Superior Court, Contra Costa, California

Wakefield Taylor Courthouse
725 Court Street, Martinez CA 94553

A handwritten signature in black ink, appearing to read 'Miao' followed by a stylized flourish.

Chun-Hui Miao (Bian-wang.com), Pro Se

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CHUN-HUI MIAO, BIAN-WANG.COM AND DOES 1-10

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DONGXIAO YUE

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2017 DEC 15 A 10:50

STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: **D. WAGNER**
DEPUTY CLERK

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): California Superior Court, Contra Costa

Wakefield Taylor Courthouse

725 Court Street, Martinez CA 94553

CASE NUMBER:
(Número del Caso):

C17-02449

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DONGXIAO YUE, 111 Deerwood Road, Suite 200, San Ramon, CA 94583, (510) 396-0012

DATE:
(Fecha)

DEC 15 2017

CLERK OF THE
SUPERIOR COURT

Clerk, by
(Secretario)

D. WAGNER

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]

FILED

2017 DEC 15 A 10:50

STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: **D. WAGNER**
DEPUTY CLERK

1 DONGXIAO YUE
111 Deerwood Road
2 Suite 200
San Ramon, CA 94583
3 Telephone: (510) 396-0012
4 Facsimile: (510) 291-2237
E-Mail: ydx@netbula.com

5 *Pro Per*

6
7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF CONTRA COSTA

11 DONGXIAO YUE,

12 Plaintiff,

13 v.

14 CHUN-HUI MIAO, BIAN-WANG.COM
15 AND DOES 1-5

16
17 Defendants.

CASE NO. **C17- 02449**

VERIFIED COMPLAINT FOR BREACH
OF CONTRACT, TORTIOUS BREACH OF
IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING, AND UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

18
19 COMPLAINT

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 12

SUMMONS ISSUED

20
21 Plaintiff Dongxiao Yue ("Plaintiff" or "Dr. Yue") complains and alleges against
22 Chun-Hui Miao ("Miao"), an individual residing in South Carolina, bian-wang.com ("BIAN"), a
23 website business operated by Miao and DOES 1-5 (collectively "Defendants") as follows:

24 1. This is an action for damages, specific performance and injunctive relief based on
25 breach of contract, tortious breach of implied covenant of good faith and fair dealing, and unfair
26 competition by Defendants.
27

28 -1-

COMPLAINT FOR BREACH OF CONTRACT

WITH DEMAND FOR JURY TRIAL

FACTS

2. Plaintiff is an individual residing in the Contra Costa County.

3. Plaintiff holds a Ph.D. from the University of Minnesota in the field of theoretical physics (degree awarded in 1995).

4. In June 2012, Plaintiff established a Chinese language online community website called Zhen Zhu Bay (meaning: Pearl Bay) ("ZZB") at the web address zhenzhubay.com. The ZZB servers are co-located in California. Many ZZB's users are local California residents and many of them know Plaintiff personally.

5. Defendant Miao is an associate professor in the Department of Economics of the University of South Carolina. According to his online profile, Miao attained a Bachelor's degree in 1994, a Master's degree in 1997, another Master's degree in 1999, and eventually a Ph.D. from Princeton University in 2006. In January 2017, Miao created the website BIAN-WANG.COM (here after "BIAN"). In May 2013, Miao registered as a user on ZZB using the ID of BIAN-WANG (Chinese: 彼岸网). Miao knew that Plaintiff resides in California.

6. The true names of defendants DOES 1 through 5, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. On information and belief, each of the defendants designated herein as a DOE acted in concert and/or conspired with the named Defendants and is legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to plaintiff, as herein alleged. Plaintiff will amend this Complaint to show their names, capacities and their unlawful actions when the same have been ascertained.

7. On October 2, 2013, Miao published the "website rules" for the BIAN website. Rule No.2 states: "Blog articles shall not be censored, filtered or blocked, but any blog article that contains a Netizen's user ID in its subject shall be immediately deleted once being reported (same applies to comments)." Rule No.3 states that the site will "deprive a user who posts filthy

1 language the right to post microblogs for 1 day for the first offense, 7 days for the second offense,
2 and permanently for repeated violations.”

3 8. In March 2014, Plaintiff registered as user on BIAN-WANG.COM using Plaintiff's
4 true name and participated in the discussions on it.

5 9. Sometime in 2015, Plaintiff reported certain insulting posts and comments under
6 Rule No.2 to Miao and requested Miao to delete those postings from BIAN. Miao deleted the
7 offending posts and thanked Plaintiff for making the report.

8 10. On May 23, 2014, Miao sent Plaintiff an email, providing a link to an article that he
9 wrote, in which he discussed certain disputes he had with Muye Liu, the owner of a competing
10 website YEYECLUB.COM. Plaintiff responded by stating that Plaintiff declines to be entangled
11 in such disputes.

12 11. In June 2015, Plaintiff filed a defamation lawsuit against Wenbin Yang and several
13 DOE defendants in the Superior Court of California for the County of Alameda. Yang and the
14 DOEs conduct their defamation campaign against Plaintiff on many websites, including BIAN-
15 WANG.COM, with filthy and indecent language.

16 12. Instead of upholding the rules of his own website, and stop the attacks against
17 Plaintiff, Miao and his associate under the ID “lawandorder”, allegedly a lawyer from New York,
18 actively participated in the attacks and encouraged the attacks against Plaintiff. The verbal attacks
19 against Plaintiff were prominently displayed on the front page of BIAN.

20 13. Plaintiff was greatly disturbed by these attacks, and attempted to dissuade Miao
21 from participating in the attacks, stating Miao's indecent language was unbecoming for a person at
22 his education level. Miao and the DOES reacted with more attacks on Plaintiff.

23 14. Still, Plaintiff tried to avoid a conflict with Miao and sought Miao's cooperation.
24 Plaintiff announced that he would not pursue Miao for his actions prior to September 19, 2015. On
25 September 20, 2015, Plaintiff sent an email to Miao, stating in part:

26 Dear Chun-hui,
27

1 The Superior Court of California has issued a subpoena for the records (email and
2 IP addresses) of several users who posted libelous statements against me on bian-
wang.com .

3 I am writing to see if you are willing to accept service of the subpoena by email. In
4 the meantime, I request that you make a backup of all user and user posting
5 records.

6 In addition, as you have seen, many of the posts are clearly defamatory and
7 indecent. You have previously deleted messages posted by Tianxiang Gongzhu,
8 and possibly others. This shows that you have editorial control of the site's content.
9 Your responses to those messages demonstrated a clear intent to encourage and
10 abet such libelous postings. Although I have waived the claims against you for your
11 conduct prior to September 19, the waiver does not include claims after that date.
12 Your past postings can also be used as evidence of your intent.

13 15. In the same email, Plaintiff requested Miao to delete certain defamatory and
14 insulting messages against another person under aforementioned Rule No. 2.

15 16. Miao responded to Plaintiff's email on the same day, stating that he deleted the
16 reported posts, and thanked Plaintiff for making the report. Regarding the subpoena, Miao wrote
17 that "Bi'An will accept service of the subpoena by email without prejudice."

18 17. The next day, September 21, 2015, Plaintiff emailed the California subpoena to
19 Miao.

20 18. Unbeknownst to Plaintiff at the time, defendant Miao posted the subpoena on his
21 website on November 3, 2015, but failed to respond to Plaintiff.

22 19. After several email exchanges, Miao responded on November 16, 2015, stating that
23 "The subpoena you sent is invalid because it is issued by a California Court, but I am not a
24 resident of CA." On information and belief, the user "lawandorder" advised Miao not to obey the
25 California subpoena.

1 20. The defamatory blog postings against Plaintiff continued on BIAN-WANG.COM
2 in 2016, and Miao actively participated in and encouraged such activities by posting comments
3 echoing the indecent language under those blogs.

4 21. On June 13, 2016, Plaintiff commenced the action against Trigmax Solutions, LLC,
5 et al. in the Superior Court of California for the County of Contra Costa (the "Court"), alleging
6 unfair competition and defamation. The case number is C16-01118.

7 22. On October 14, 2016, the Court issued a subpoena to CHUN-HUI MIAO for the
8 information of several users who posted libel against Plaintiff on Miao's website.

9 23. On October 25, 2016, Plaintiff's process server served the subpoena reissued by the
10 court of Common Pleas of Richland County, South Carolina, on Miao at his office. Still, Miao
11 refused to comply with the subpoena and ignored Plaintiff's subsequent request for a telephone
12 conference about the subpoena.

13 24. On December 15, 2016, Plaintiff posted a notice to Miao on bian-wang.com,
14 requesting Miao to delete all posts that contain Plaintiff's name in the subject or comments, in
15 accordance of the aforementioned Rule No. 2.

16 25. Miao refused to delete the posts. Instead, Miao launched a round of verbal insults
17 on Plaintiff. Plaintiff informed Miao that the BIAN's rule is a contract between the Miao and
18 Plaintiff, and that Miao should perform under that contract as an honorable man. Plaintiff
19 repeatedly requested Miao perform his duty under the contract and delete the offending posts.

20 26. Miao did not deny the contract. After Plaintiff pointed out that he must perform the
21 contract, Miao changed the rule, by adding a clause titled "Statute of limitations", stating one must
22 report under Rule No.2 within a year.

27. As of the time of this Complaint, the posts attacking Plaintiff are still on bian-wang.com, and many of them are still prominently displayed on the front page of that website.

JURISDICTION

28. This Court has personal jurisdiction over Defendants in this action and venue is proper because, as alleged above (a) Defendants intentionally engaged in substantial communications with the forum, amounting to sufficient minimum contacts - including, but not limited to, entering a contract with Plaintiff and breaching the contract, publishing alleged libelous messages, into this county, via the Internet and otherwise; and (b) Defendants knew that Plaintiff was located in this judicial district, directed their actions at Plaintiff in this judicial district, intended to cause harm in this judicial district and caused harm in this County by their unlawful acts, and a substantial part of the acts giving rise to the asserted claims had effects in this county.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

29. Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 28, inclusive, of this Complaint.

30. The Rules Miao established for his BIAN website constituted a written contract between Miao, BIAN-WANG.com and the users of the website.

31. By registering on Miao's BIAN website, Plaintiff agreed to participate on the website and make contributions to Miao's website under the Rules, with the understanding that Miao would abide by his promises made in the Rules and protect the dignity and reputation of the users of the website in accordance of the Rules.

1 32. Plaintiff and Miao both assented to the agreement, evidenced by Plaintiff's request
2 for deletion made in 2015 under Rule No.2, and Miao's prompt performance under the rule.

3 33. However, when Plaintiff requested Miao to delete the posts which attacked Plaintiff
4 under Rule No.2, Miao refused to comply. Instead, Miao purportedly modified the rule to add a so
5 called "statute of limitations" provision after Plaintiff made repeated request for deletion.
6

7 34. Miao's refusal to perform under the agreement constitutes a breach of contract.

8 35. By Miao's breach of the contract, Miao has continuously published the defamatory
9 and insulting posts against Plaintiff and his family on the BIAN website, many featured
10 prominently on its front page, for many months, causing substantial harm to Plaintiff's reputation
11 and inflicting emotional stress on the Plaintiff.
12

13 36. Miao breached the contract and kept the offending postings with the full
14 understanding that Plaintiff will suffer harm from the defamatory and insulting posts.

15 37. As a result Miao's breach, Plaintiff has to spend substantial resources to protect his
16 rights, including the initiation of this lawsuit.

17 38. Plaintiff thus seeks contract damages from Miao.

18 39. Furthermore, Plaintiff has no adequate remedy at law and therefore seeks specific
19 performance, in the form of a court order that compels Miao to delete the offending posts.
20

21
22 **SECOND CAUSE OF ACTION**

23 ***TORTIOUS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND***
24 ***FAIR DEALING***

25 40. Plaintiff re-alleges and incorporates herein by reference the allegations of
26 paragraphs 1 through 39, inclusive, of this Complaint.
27

1 41. Plaintiff and Miao entered a valid contract under which Plaintiff would participate
2 on Miao's website and Miao would delete posts that contain Plaintiff's name in the subject or
3 comments upon Plaintiff's request.

4 42. Plaintiff trusted Miao and performed under the contract, and requested Miao to
5 delete the offending posts.

6 43. Instead of performing his duty under the contract, Miao unfairly and unilaterally
7 altered the terms of the agreement by adding a so called 1 year of "statute of limitations" for
8 making the deletion request, after Plaintiff had already made repeated requests of performance
9 under the contract.

10 44. With the full knowledge that the defamatory and insulting posting on BIAN
11 website cause substantial injury to Plaintiff, Miao acted unfairly and in bad faith, by unilaterally
12 and silently adding the so-called "statute of limitations" to Rule No.2. Miao's action in bad faith is
13 tantamount to fraud.

14 45. By Miao's actions in bad faith, he intentionally perpetuated the libel and insults
15 against Plaintiff on the BIAN website, including Miao's own verbal attacks on Plaintiff.

16 46. As a result of Defendants' bad faith acts, Plaintiff suffered and is suffering from
17 harm to his reputation, was subjected to ridicule by many people as a result, and suffered from
18 emotional distress caused by the vicious attacks published on Miao's website. Moreover, Plaintiff
19 is forced to spend considerable time, effort and monies to in an effort to repair the damages caused
20 by Defendants' unlawful acts.

21 47. Defendants acted with malice and oppression and intentionally caused harm to
22 Plaintiff. Plaintiff is therefore also entitled to exemplary damages in an amount appropriate to
23 punish and make an example of Defendants to the community.
24
25
26

27 **THIRD CAUSE OF ACTION**

STATUTORY UNFAIR COMPETITION
(Cal. Bus. & Prof. Code § 17200 et seq.)

48. Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 47, inclusive, of this Complaint.

49. By the vicious and immoral attacks by Miao against Plaintiff on BIAN, Defendants unfairly diminished ZZB's reputation and credibility in comparison with Defendant's websites and created disincentive for others to join or stay in ZZB. By his tortious breach of covenant of good faith and fair dealing, Defendants intentionally injured and is continuing to injure Plaintiff by publishing the libelous and insulting posts, which Defendants had a duty to delete.

50. Defendants' conduct as alleged in this Complaint involving publishing defamation, fanning scandalous verbal attacks, aiding and abetting defamation of Plaintiff, bad faith breach of a contract, to the benefit of Defendants and Defendants' business, and to the great detriment of Plaintiff, constitutes unlawful, unfair, unscrupulous, immoral, deceptive, and/or fraudulent business acts or practices in violation of California Business & Professions Code § 17200 et seq. that has a substantial effect on commerce, resulting in Defendants' unjust enrichment. Defendants willfully intended to cause injury to Plaintiff through their unlawful, unfair, and/or fraudulent business practices as described herein.

51. The actions of Defendants as described in this Complaint had the effect of gaining for Defendants substantial benefits and advantages from Plaintiff through unlawful, unfair, unscrupulous, immoral, deceptive, and/or fraudulent business acts or practices in violation of California Business & Professions Code § 17200 et seq.

52. Defendants are continuing to engage in one or more acts of unlawful, unfair, and/or fraudulent business acts or practices involving the conduct alleged in this Complaint (and related

conduct) to Plaintiff's substantial economic detriment, for Defendants' own business advantage, all with the knowledge, aid, encouragement, and support of each other.

53. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent business acts or practices as described herein, Plaintiff has suffered and will continue to suffer financial losses for which it is entitled to restitution pursuant to California Business & Professions Code § 17203.

54. Furthermore, Plaintiff has no adequate remedy at law to compel Defendants to cease their wrongful acts, and therefore seeks injunctive relief. Plaintiff is entitled, pursuant to California Business & Professions Code §§ 17203 and 17535, to injunctive relief in the form of a temporary restraining order, a preliminary injunction, and/or a permanent injunction restraining Defendants, their officers, agents and employees, and all persons acting in concert with them, from engaging in any further such acts of unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment to be entered against Defendants as follows:

1. That Defendants, and each of them, be held liable for breach of contract, as alleged herein;
2. That Defendants, and each of them, be held liable for tortious breach of implied covenant of good faith and fair dealing, as alleged herein;
3. That Defendants acted with malice, oppression and/or fraud;
4. That Defendants be ordered to delete the offending posts that contain Plaintiff's name;
5. That Plaintiff be awarded damages according to proof;
6. That Plaintiff be awarded exemplary and/or punitive damages;

1 7. That Defendants, and each of them, be held liable for unfair competition in
2 violation of California Business & Professions Code § 17200 *et seq.*, as alleged herein;

3 8. That Plaintiff be awarded restitution in connection with Defendants' acts of unfair
4 competition;

5 9. That Defendants enjoined from engaging from further unfair competition;

6 10. That Defendants and their agents, attorneys, and representatives, and all other
7 persons in active concert or in participation with them, be preliminarily, and thereafter
8 permanently, enjoined and restrained from publishing the libelous statements alleged herein;

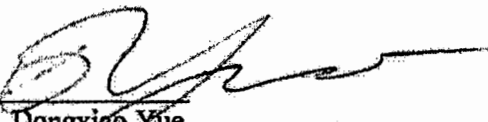
9 11. That Plaintiff recover his costs of this suit;

10 12. That Plaintiff recover reasonable attorneys' fees pursuant to any applicable laws
11 and/or rules;

12 13. That Plaintiff be granted such further relief as this Court deems just and proper.
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15 Dated: December 15, 2017

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18 By:

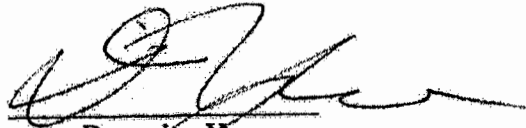

Dongxiao Yue
PRO PER

DEMAND FOR JURY TRIAL

Plaintiff Dongxiao Yue demands a jury trial in this action.

Dated: December 15, 2017

By:



Dongxiao Yue
PROPER

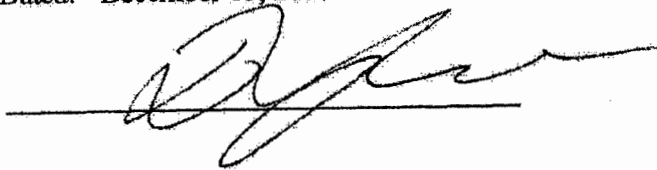
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VERIFICATION

I, Dongxiao Yue, am the Plaintiff in the above-entitled action. I have read the foregoing first amended complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Ramon, California.

Dated: December 15, 2017



SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA, 94553

YUE VS MAIO

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC17-02449

1. NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 05/02/18

DEPT: 12

TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

2. You may stipulate to an earlier Case Management Conference. If all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)608-1000 for Unlimited Civil and Limited Civil cases for assignment of an earlier date.

3. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.

4. At any Case Management Conference the court may make pretrial orders including the following:

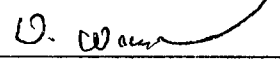
- a. an order establishing a discovery schedule
- b. an order referring the case to arbitration
- c. an order transferring the case to limited jurisdiction
- d. an order dismissing fictitious defendants
- e. an order scheduling exchange of expert witness information
- f. an order setting subsequent conference and the trial date
- g. an order consolidating cases
- h. an order severing trial of cross-complaints or bifurcating issues
- i. an order determining when demurrers and motions will be filed

SANCTIONS

If you do not file the Case Management Conference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

Clerk of the Superior Court of Contra Costa County
I declare under penalty of perjury that I am not a party to this action, and that I delivered or mailed a copy of this notice to the person representing the plaintiff/cross-complainant.

Dated: 12/15/17


D. WAGNER

Deputy Clerk of the Court