

Chun-Hui Miao
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Columbia, SC 29208
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Pro Se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONGXIAO YUE,

Plaintiff,

vs.

CHUN-HUI MIAO, BIAN-WANG.COM

Defendants

Case No.: C18-1074-DMR

DEFENDANT'S AMENDED
DECLARATION IN SUPPORT OF HIS
OPPOSITION TO PLAINTIFF'S MOTION TO
REMAND TO STATE COURT¹

Hearing Date: May 10, 2018

Time: 11:00 a.m.

Courtroom: 4 - 3rd Floor, Oakland Courthouse

Judge: The Honorable Donna M. Ryu

I, Chun-Hui Miao, declare:

1. I am the defendant of this lawsuit. I have personal knowledge of the matters stated herein, and if called upon to do so, I could and would competently so testify as to those matters.
2. I submit this declaration in support of my Opposition to Plaintiff's Motion to Remand to State Court.

¹ This amended declaration corrects the way how the exhibits are cited to conform to court rules.

- 1 3. I sent the Notice of Removal by USPS Priority Mail, postmarked on February 13, 2018
2 and delivered into the mailbox of the Clerk of Court at 2:47 pm on February 15, 2018.
3 Attached **Exhibit A** is a true copy of the USPS delivery confirmation (highlights added).
4
- 5 4. The District Court's Pro Se Handbook explicitly lists Filing by Mail as one of the
6 acceptable filing methods. Attached **Exhibit B** is a true copy of the relevant pages of the
7 Pro Se Handbook (highlights added).
- 8 5. Only through my own independent investigation, I learned that Plaintiff sought damages
9 in the amount of \$4,000,000 in a related lawsuit for a similar claim of Unfair Competition.
10 *Yue v. Trigmax Solutions, LLC*, MSC16-01118 (Cal. 2016). Attached **Exhibit C** contains
11 a true copy of the relevant page of Yue's Complaint (highlights added) and a true copy of
12 the Statement of Damages posted online by the defendant in *Yue v. Trigmax Solutions,*
13 *LLC*.
14

15
16
17 I declare under penalty of perjury that the foregoing is true and correct and that this declaration is
18 executed on the 31st day of March 2018 in Columbia, South Carolina.

19 _____/s/_____.
20 Chun-Hui Miao
21
22
23
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EXHIBIT A

Did you know you can request a refund online for unused Click-N-Ship® labels in your Shipping History?

Click [here](#) to learn more.

Create Label

Preferences

Shipping History

Address Book

Account # 138417

Label Details

Label Number:

9405503699300185545340

Terms

Acceptance Cutoff: 02/13/2018 5:00 PM

Acceptance Time: 02/13/2018 8:09 PM

Scheduled Date: 02/15/2018 12:00 AM

Delivery Status: **Delivered, In/At Mailbox**

Label Actions **2018-02-15 14:47:00.0**

[USPS Tracking®](#)

[Ship Again](#)

Need help

[File an insurance claim](#)

[Request A Service Refund](#)

Return Address:

CHUN-HUI MIAO
1014 GREENE ST
COLUMBIA, SC 29208-4011
miao@moore.sc.edu

Delivery Address:

CLERK OF COURT
UNITED STATES DISTRICT COURT
450 GOLDEN GATE AVE
BOX 36060
SAN FRANCISCO, CA 94102-3661

Package:

Ship Date: 02/13/18
From: 29208

Service:

Priority Mail® 2-Day
Flat Rate Envelope
USPS Tracking®

Transaction Number: **427485237**

Transaction Type: Label

Payment Method: MC-5575

Payment Status: Account Charged

Postage Cost
USPS Tracking®

\$6
F

Label Total: **\$6.70**

Order Total: **\$6.70**

Timestamp	Message
02-13-2018 16:33:15	LABEL PRINTED
02-13-2018 16:33:03	Getting Payment

EXHIBIT B

CHAPTER 5

HOW DO I FILE PAPERS WITH THE COURT?

Once you have drafted your complaint, you must officially file it with the Court in order to begin your lawsuit.

General Rules For Manual Filing

For all methods but electronic filing (“e-filing”), the following rules apply:

1. **File documents in the proper Court division for your case.**

You may file your complaint in any courthouse except Eureka. Thereafter, papers must be filed in the courthouse where the assigned judge holds **chambers**. Refer to “**Intradistrict Assignment**” in Chapter 4 for a more complete explanation.

2. **Have the correct number of copies.**

You should bring the signed original document and two copies of the signed original.

3. **Give the clerk the original document (the one you actually signed) and 2 copies.**

One copy should be marked “CHAMBERS” on the caption page. This chambers copy goes to the judge. The Clerk will stamp and return the third copy to you for your file.

How Do I File Documents?

You can file documents in four different ways:

1. **In-Person Filing:** Bring the signed original document (with two copies) to the Clerk’s Office to file it in person.

a. ***Filing documents in person during normal business hours***

The Clerk’s Office in each division of the court is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for federal and other Court holidays.

SAN FRANCISCO: 450 Golden Gate Ave., 16th floor; phone: (415) 522-2000

OAKLAND: 1301 Clay St., Suite 400 South; phone: (510) 637-3530

SAN JOSE: 280 South First St.; phone: (408) 535-5363

The Eureka courthouse does not accept documents for filing. Documents for filing in cases assigned to the Eureka division should be filed at the San Francisco Clerk’s Office.

When you file a document, the Clerk’s Office will stamp it with the filing date. Your copy marked “CHAMBERS” will go to the judge. The other will be handed back to you.

b. ***Filing documents in person after hours using the drop box***

You can file your documents in person even if you cannot go to the Clerk’s Office between 9:00 a.m. and 4:00 p.m. The Clerk’s Office maintains a **drop box** that can be used to file most documents before and after regular business hours. See Civil Local Rule 5-3. The drop boxes are open Monday through Friday at the hours below, except on federal holidays:

SAN FRANCISCO: 6:00–9:00 a.m. & 4:00–6:00 p.m. next to the Clerk’s Office, 16th floor

OAKLAND: 7:00–9:00 a.m. & 4:00–5:00 p.m. first floor lobby

San Jose: 7:30–9:00 a.m. & 4:00–5:00 p.m. next to the Clerk’s Office, 2nd floor

Important Rules for Using the Drop Box

- i. Before putting a document in the drop box, ***follow the instructions that are posted next to the drop box*** explaining how to date-stamp, label and identify your documents.
- ii. To receive a file-stamped copy back from the Court, provide an extra copy of the document with a self-addressed, stamped envelope, or an envelope marked “FOR MESSENGER PICKUP BY: [name the person who will be picking up the copy].”

- iii. The drop box may not be used to file any papers regarding a matter that is scheduled for hearing within 7 calendar days.
 - iv. If you use the drop box to file a complaint, you must include a check or money order for the current **filing fee**, made payable to “Clerk, United States District Court.” Do not enclose cash. You do not need to include payment if you are filing a fee waiver with your complaint.
2. **Fax Filing:** Although this Court will accept fax copies for filing, you cannot fax the documents directly to the Court. Instead, you fax the documents to a “fax filing service” that, for a fee, files your documents in person at the Clerk’s Office. Civil Local Rule 5-2 provides detailed rules. To find a fax filing service, consult resources such as www.rapidlegal.com.
- a. You should direct the fax filing service to give the Court a marked “CHAMBERS” copy of the faxed document for the judge.
 - b. When you file a document by fax, keep the original document and a record of the fax transmission in your file until the end of the case.
3. **Filing by Mail:** Mail the signed original document and a chambers copy to the Court for filing. To obtain a file-stamped copy by return mail, you must provide an extra copy with a self-addressed, stamped envelope.

SAN FRANCISCO:

Clerk’s Office
 United States District Court
 450 Golden Gate Ave., 16th Fl.
 San Francisco, CA 94102

OAKLAND:

Clerk’s Office
 United States District Court
 1301 Clay St., Ste 400 South
 Oakland, CA 94612

SAN JOSE:

Clerk’s Office
 United States District Court
 280 South 1st Street
 San Jose, CA 95113

The **Eureka** courthouse does not accept documents for filing. Paper filings for cases assigned to the Eureka division should be mailed to the San Francisco Clerk’s Office.

4. **E-Filing:** E-filing is the process of using the internet to file documents with the Court and serve them on other parties from your computer. It offers many advantages, including convenient access to Court records, saving time, postage expenses and administrative work.

Pro se litigants must get prior permission from the Court in order to join the e-filing system. If you receive permission, you can file documents in your case online at the Court’s Electronic Case Filing (ECF) website and view case dockets and documents through the Public Access to Court Electronic Records (PACER) website, pacer.gov. More details about e-filing can be found in Chapter 9.

How Is Filing A Complaint Different From Other Papers?

When filing a complaint, you must:

1. **Fill out a Civil Cover Sheet.** Obtain a copy of the form at the Clerk’s Office or at the Court’s website (cand.uscourts.gov/civilforms). Instructions for filling out the Civil Cover Sheet are on the form. You can also visit the federal courthouse Legal Help Center for assistance (Chapter 2).
2. **File the original complaint plus two copies.** (If your complaint contains claims relating to patents, copyrights, or trademarks, you must file the original complaint plus three copies.)
3. **Arrive at the Clerk’s Office before 3:30 p.m.** because it takes more time for the Clerk to file complaints than other documents.
4. **Pay \$400.00 to file your complaint (or, if you cannot afford the filing fee, see the next section).** After the initial complaint is filed, you do not have to pay any additional fees to file most documents with the Court (unlike state court). The Clerk’s Office accepts payment in cash (exact change required), check or money order made payable to “Clerk, U.S. District Court,” or credit card (Visa, MasterCard, American Express or Discover Card; credit card payments must be made in person).

What If I Can’t Afford The \$400.00 Fee For Filing A New Complaint?

If you cannot afford the filing fee, you may file an **Application to Proceed In Forma Pauperis** (“IFP”). You can get this form at either the Clerk’s Office or at the Court’s website (cand.uscourts.gov/civilforms). Note that there is a special form for prisoners. In both cases, you will have to tell the Court information about your

EXHIBIT C

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

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

10 23. On October 25, 2016, Plaintiff's process server served the subpoena reissued by the
11 court of Common Pleas of Richland County, South Carolina, on Miao at his office. Still, Miao
12 refused to comply with the subpoena and ignored Plaintiff's subsequent request for a telephone
13 conference about the subpoena.
14

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

18 25. Miao refused to delete the posts. Instead, Miao launched a round of verbal insults
19 on Plaintiff. Plaintiff informed Miao that the BIAN's rule is a contract between the Miao and
20 Plaintiff, and that Miao should perform under that contract as an honorable man. Plaintiff
21 repeatedly requested Miao perform his duty under the contract and delete the offending posts.
22

23 26. Miao did not deny the contract. After Plaintiff pointed out that he must perform the
24 contract, Miao changed the rule, by adding a clause titled "Statute of limitations", stating one must
25 report under Rule No.2 within a year.
26
27
28

CIV-050

- DO NOT FILE WITH THE COURT -**-UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): DONGXIAO YUE 111 DEERWOOD RD, STE 200 SAN RAMON, CA 94583		TELEPHONE NO.: 510 3960012	FOR COURT USE ONLY CASE NUMBER: C16-01118
ATTORNEY FOR (name): PRO PER			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 725 COURT STREET MAILING ADDRESS: WAKEFIELD TAYLOR COURTHOUSE CITY AND ZIP CODE: MARTINEZ, CA 94553 BRANCH NAME:			
PLAINTIFF: DONGXIAO YUE DEFENDANT: [REDACTED] et al.			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			

To (name of one defendant only): [REDACTED]
 Plaintiff (name of one plaintiff only): **DONGXIAO YUE**
 seeks damages in the above-entitled action, as follows:

	AMOUNT
1. General damages	
a. ☒ Pain, suffering, and inconvenience	\$250,000.00
b. ☒ Emotional distress	\$250,000.00
c. ☐ Loss of consortium	\$
d. ☐ Loss of society and companionship (wrongful death actions only)	\$
e. ☒ Other (specify) <u>Defamation Damages-reputation, mortification, hurt feelings, etc</u>	\$500,000.00
f. ☒ Other (specify) <u>Damages to business, trade, profession, occupation</u>	\$500,000.00
g. ☐ Continued on Attachment 1.g.	
2. Special damages	
a. ☐ Medical expenses (to date)	\$
b. ☐ Future medical expenses (present value)	\$
c. ☐ Loss of earnings (to date)	\$
d. ☐ Loss of future earning capacity (present value)	\$
e. ☐ Property damage	\$
f. ☐ Funeral expenses (wrongful death actions only)	\$
g. ☐ Future contributions (present value) (wrongful death actions only)	\$
h. ☐ Value of personal service, advice, or training (wrongful death actions only)	\$
i. ☐ Other (specify)	\$
j. ☐ Other (specify)	\$
k. ☐ Continued on Attachment 2.k.	
3. ☒ Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) .. \$ \$2,500,000.00 when pursuing a judgment in the suit filed against you.	
Date: October 20, 2016	
DONGXIAO YUE	

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Page 1 of 2