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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 JANE DOE I, JANE DOE II, HELENE PETIT, )  
17 MARTIN LARSSON, LEESHAI LEMISH, and )  
18 ROLAND ODAR )

19 Plaintiffs, )

20 v. )

21 LIU QI, and DOES 1-5, inclusive )

22 Defendants. )

No. **C 02 0672 CW EMC**

**NOTICE OF ANTICIPATED CHANGE  
IN DEFENDANT'S STATUS;  
DECLARATION OF ANDREW J.  
NATHAN**

23 Plaintiffs respectfully submit this Notice of Anticipated Change in Defendant's Status to  
24 bring to the court's attention that they have just learned that Defendant Liu Qi is expected to leave  
25 his position as Mayor of Beijing in mid-January, 2003, when the Beijing People's Congress is  
26 slated to appoint a new mayor. Defendant was appointed to new positions in the Chinese  
27 Communist Party in November 2002. As Defendant soon will no longer be a Chinese government  
28 official, if the Court reaches the analysis of justiciability factors under *Banco Nacional de Cuba v.*

1 *Sabbatino*, 376 U.S. 398 (1964), those factors now weigh further in favor of adjudication.

2 Plaintiffs have learned that Defendant Liu Qi is expected to leave his government post in  
3 mid-January 2003, when a new Mayor is scheduled to be appointed by the Beijing Municipal  
4 People's Congress. See attached Declaration of Andrew J. Nathan ("Nathan Decl.") at ¶ 3. The  
5 new appointment would occur at the latest by March 2003, when a National People's Congress --  
6 which will confirm the appointment -- is scheduled to meet. *Id.* Liu Qi was appointed to new  
7 positions in the Chinese Communist Party ("CPC" or "Party") in November 2002, and is not  
8 expected to assume any new position in the government bureaucracy. *Id.*

9 In his new Party positions, Liu Qi will no longer properly be considered a Chinese  
10 "government" official. Although the Communist Party exercises control over Chinese politics and  
11 government in practice, the Party and government remain constitutionally and organizationally  
12 distinct. The Chinese constitution, though vaguely referring to the Party's "leadership" in its  
13 preamble, provides no specific role for the Party in government. *Id.* ¶ 5. Eight minority parties  
14 other than the CPC exist and operate in China, and all parties, including the CPC, are subject to the  
15 constitution and laws. *Id.* National or local legislative bodies legally must adopt and implement  
16 major policies and decisions, even if recommended by the CPC. *Id.*

17 Importantly, the United States, in its official dealings with China, distinguishes between  
18 party and state officials. The United States does not recognize CPC positions as government posts,  
19 and establishes counterpart relationships with Chinese officials based on their positions in  
20 government, rather than their roles in the Party. *Id.* ¶ 6.

21 The U.S. State Department has suggested that a human rights claim against a sitting foreign  
22 government official raises heightened foreign policy concerns. However, the foreign policy  
23 implications of adjudication necessarily are substantially diminished in cases against former (or  
24 departing) government officials. This is now such a case. In light of the changes in Defendant's  
25 imminent departure from government service, the balance of factors under *Sabbatino* militates  
26 even more strongly in favor of finding this case justiciable. See *Sabbatino*, 376 U.S. at 428 ("the  
27 less important the implications of an issue are for our foreign relations, the weaker the justification  
28 for exclusivity in the political branches").

1 As set out in earlier briefs, Plaintiffs maintain that the threshold for conducting the act of  
2 state analysis is not met in this case, as the conduct at issue cannot be considered “acts of state,”  
3 and that even if the Court considers this threshold met, the balance of factors under *Sabbatino* does  
4 not support a finding of nonjusticiability. The balance is now tipped even further against  
5 abstention.

6 Plaintiffs have recognized that if the Court believes Plaintiffs’ claims for damages tip the  
7 scale against adjudication, a basis may exist for limiting abstention only to this aspect of their  
8 prayer for relief. However, Plaintiffs continue to maintain that consideration of such an alternative  
9 is unnecessary, especially now that Defendant’s impending departure from government limits the  
10 foreign policy implications of Plaintiffs’ claims.

11 Plaintiffs respectfully request that the Court consider Defendant’s anticipated change in  
12 status from a government to a Party official in evaluating the foreign policy implications of  
13 adjudication under *Sabbatino*. If confirmation of this anticipated change would be an important  
14 factor in the Court’s decision on these issues, Plaintiffs respectfully request that the Court delay  
15 any final ruling on this issue until such confirmation can be provided.

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18 Dated: December 30, 2002

Respectfully submitted,

19  
20 s/Joshua Sondheimer  
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