

1 JOSHUA SONDHEIMER (SBN 152000)
MATTHEW J. EISENBRANDT (SBN 217335)
2 The Center for Justice & Accountability
870 Market Street, Suite 684
3 San Francisco, CA 94102
Tel: (415) 544-0444
4 Fax: (415) 544-0456

5 PAUL HOFFMAN (SBN 71244)
Schonbrun DeSimone Seplow Harris
6 & Hoffman LLP
723 Ocean Front Walk
7 Venice, CA 90291
Tel: (310) 396-0731
8 Fax: (310) 396-7040

9 Counsel for All Plaintiffs

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13
14 JANE DOE I, JANE DOE II, HELENE PETIT,)
MARTIN LARSSON, LEESHAI LEMISH, and)
15 ROLAND ODAR)
16)
17 Plaintiffs,)
18 v.)
19 LIU QI, and DOES 1-5, inclusive)
20 Defendants.)

No. **C 02 0672 CW EMC**
**PLAINTIFFS' MOTION FOR LEAVE
TO FILE DECLARATION OF
CHARLES LI; AND SUPPLEMENTAL
RESPONSE TO REPLY OF AMICUS
CURIAE SAN FRANCISCO CHINESE
CHAMBER OF COMMERCE**

Date: October 30, 2002
Time: 10:30 a.m.
Place: Courtroom C, 15th Floor

21
22
23 **MOTION FOR LEAVE TO FILE DECLARATION OF CHARLES LI**

24 Plaintiffs respectfully request leave to file the declaration of Charles Li, submitted herewith
25 at Plaintiffs' earliest opportunity. Mr. Li participated in the service of process on defendant Liu Qi
26 ("Mayor Liu"), but was out of the country from October 4-22. Mr. Li accordingly was unavailable
27 to prepare a declaration in the six days between October 10, 2002, when the court granted Amicus

1 Curiae the San Francisco Chinese Chamber of Commerce (“Chamber of Commerce”) leave to file
2 its brief and declarations challenging service of process, and October 16, 2002, when the court
3 requested a response from Plaintiffs to the Chamber of Commerce’s brief. Plaintiffs are submitting
4 Mr. Li’s declaration and this supplemental response at their earliest opportunity after Mr. Li’s
5 return.

6
7 **SUPPLEMENTAL RESPONSE TO BRIEF AND REPLY OF AMICUS CURIAE SAN**
8 **FRANCISCO CHINESE CHAMBER OF COMMERCE**

9 Plaintiffs respectfully request that the Court accept this short response to the Chamber of
10 Commerce’s reply brief, if accepted by the Court.

11 In his declaration, Charles Li makes clear that after Mr. Leining already had tendered a
12 summons, complaint and other papers to Mayor Liu, Mr. Li approached Mayor Liu, told Mayor
13 Liu that he had been sued in a federal lawsuit, touched him with the court documents, and left the
14 documents on the ground by Mayor Liu. Declaration of Charles Li, ¶¶ 4-5. Consistent with
15 Mr. Li’s declaration, the government of the People’s Republic of China, in its Statement submitted
16 in the matter, acknowledges that a set of papers “fell off on the ground” by Mayor Liu (though
17 asserting that the papers initially were “thrown”). *See* Statement by the Chinese Government on
18 Anonymous Persons v. Liu Qi Case, at 2.

19 The Chamber of Commerce has asserted in its unsolicited reply brief that the summons and
20 complaint were not left on the ground near Mayor Liu. As indicated above, the Chamber’s
21 assertion is contrary to the government’s own admission, as well as Mr. Li’s now-available
22 declaration.

23 Regardless, whether the court documents were left on the ground is immaterial to the
24 adequacy of service. The cases cited by the Chamber of Commerce in its reply stand only for the
25 proposition that a process server may leave a summons and complaint near a defendant if personal
26 tender or delivery *cannot be achieved* because the defendant has refused or attempted to evade
27 service. Thus, the cases identify constitutionally adequate methods of service *in addition* to actual
28 tender or delivery of the papers into the hands defendant. *See, e.g., Heritage House Frame &*

1 *Moulding Co., Inc. v. Boyce Highlands Furniture Co., Inc.*, 88 F.R.D. 172, 174 (E.D.N.Y. 1980)
2 (“Tendering the summons includes, *not only hand delivery* directly to the defendant, *but also* hand
3 delivery of the summons near the defendant . . .”) (emphasis added). Here, Mr. Leining personally
4 tendered the court papers directly to the hands of Mayor Liu. Mayor Liu chose not to receive them.
5 Plaintiffs were not additionally required to leave the documents on the ground, in a public place,
6 where defendant would have no reason to retrieve them. As the Chinese government’s own
7 statement indicates, however, the court papers were in fact left on the ground for Mayor Liu.

8 That Mayor Liu may never have taken the papers also is immaterial. The Chinese
9 government’s response, and earlier statements it made to the press, make clear that Mayor Liu
10 received actual notice of the pending lawsuit against him. However, actual notice of the
11 proceeding is not a prerequisite to adequate service. As one district court recently noted in
12 upholding service of process in a human rights lawsuit against Chinese Premier Li Peng, “actual
13 notice is not necessary, only a method reasonably calculated to achieve actual notice.” *Zhou v. Li*
14 *Peng*, 2002 WL 1835608, *12 (S.D.N.Y. 2002).

15 Nothing in the federal rules or decisional law requires service to be made by a professional
16 process server. Service must be effected in a manner “reasonably calculated, under all the
17 circumstances, to apprise [the] interested part[y] of the pendency of the action.” *Mullane v.*
18 *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Service in this case, considering all the
19 circumstances, meets this standard.

20 ///

21 ///

22 ///

23 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court recognize personal jurisdiction over defendant in this matter.

Dated: October 16, 2002

Respectfully submitted,

s/Joshua Sondheimer

JOSHUA SONDEHEIMER (SBN 152000)
MATTHEW EISENBRANDT (SBN 217335)
The Center for Justice & Accountability
870 Market Street, Suite 684
San Francisco, CA 94102
Tel: (415) 544-0444
Fax: (415) 544-0456
Email: jsond@cja.org

PAUL HOFFMAN (SBN 71244)
Schonbrun DeSimone Seplow Harris
& Hoffman LLP
723 Ocean Front Walk
Venice, CA 90291
Tel: (310) 396-0731
Fax: (310) 396-7040

TERRI MARSH, Esq. (Admitted *Pro Hac Vice*)
3133 Connecticut Ave., N.W., Suite 608
Washington, D.C. 20008
Tel: (202) 369-4977

MICHAEL S. SORGEN, Esq. (SBN 43107)
TANIA ROSE, Esq. (SBN 151514)
Law Offices of Michael Sorgen
240 Stockton Street, 9th Floor
San Francisco, CA 94108
Tel: (415) 956-1360
Fax: (415) 956-6342
Email: msorgen@sorgen.net

Attorneys for All Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 On October 16, 2002, I served a true copy of the following documents:

4 **PLAINTIFFS’ MOTION FOR LEAVE TO FILE DECLARATION OF CHARLES**
5 **LI; AND SUPPLEMENTAL RESPONSE TO REPLY OF AMICUS CURIAE SAN**
6 **FRANCISCO CHINESE CHAMBER OF COMMERCE**

7 **DECLARATION OF CHARLES LI**

8 on the following persons:

9 Joseph Remcho
10 Thomas A. Willis
11 Remcho, Johansen & Purcell
12 201 Dolores Avenue
13 San Leandro, CA 94577

14 By placing a true copy of said documents, enclosed in a sealed envelope, and by serving said
15 envelope, with postage thereon fully prepaid, in the United States mail in San Francisco,
16 California, addressed to said persons.

17 Executed in San Francisco, California, on October 16, 2002.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 s/Joshua Sondheimer
20 JOSHUA SONDEIMER (SBN 152000)