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8 Attorneys for Non-Party Witness
9 WILLIAM GERTZ

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 vs.
16 CHI MAK, et al.,
17 Defendants.

Case No. SACR05-293-CJC
**RESPONSE OF WILLIAM GERTZ
TO JULY 14, 2008 ORDER**

20
21 The accompanying Declaration of William Gertz is hereby submitted to
22 provide information responsive to the July 14, 2008 Minute Order, in which the
23 Court identified two of the topics it expects will be addressed at the July 24 hearing.
24 The Gertz Declaration is being provided at this time so that the Court may have an
25 opportunity to consider this evidence in advance of the hearing. Mr. Gertz will, of

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1 course, be in attendance at the hearing and available to confirm this information.

2 DATED: July 22, 2008

DRINKER BIDDLE & REATH LLP

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By: */s/ Siobhan Cullen*

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13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 CHI MAK, et al.,

17 Defendants.
18
19
20

Case No. SACR05-293-CJC

**DECLARATION OF
WILLIAM GERTZ**

21 I, William Gertz, do hereby state and declare:

22 1. I am a reporter and columnist who covers all aspects of defense and
23 national security affairs for The Washington Times, a daily newspaper published in
24 Washington, D.C. I submit this declaration in support of my motion to quash the
25 April 30, 2008 subpoena issued by this Court for my testimony and production of
26 documents related to an article I wrote that was published in The Washington Times
27 on May 16, 2006.
28

1 2. I make this declaration based on my personal knowledge except as
2 otherwise stated. The exhibits attached to this declaration are true and accurate
3 copies of the documents referred to in the declaration.

4 3. I have worked as a defense and national security reporter for The
5 Washington Times since 1985. I have worked as a contributor for the Fox News
6 Channel since 2005.

7 4. I have written or co-written hundreds of articles and columns for The
8 Washington Times on defense and national security topics during the 23 years I
9 have worked there. I have written or co-written a weekly column on the Department
10 of Defense and national security issues, "Inside the Ring," for The Washington
11 Times for nine years. I have also written articles for The Weekly Standard, National
12 Review and Air Force Magazine on defense and national security topics.

13 5. I am the author of the following five books: *Betrayal: How the Clinton*
14 *Administration Undermined American Security* (Regnery Publishing, Inc. 1999);
15 *The China Threat: How the People's Republic Targets America* (Regnery
16 Publishing, Inc. 2000); *Breakdown: How America's Intelligence Failures Led to*
17 *September 11* (Regnery Publishing, Inc. 2002); *Treachery: How America's Friends*
18 *and Foes Are Secretly Arming Our Enemies* (Crown Forum 2004); and *Enemies:*
19 *How America's Foes Steal Our Vital Secrets – And How We Let It Happen* (Crown
20 Forum 2007). All of these books concern defense and national security issues.

21 6. I have had numerous speaking engagements, including appearances as
22 a guest lecturer at both government and academic institutions, including the FBI
23 National Academy in Quantico, Virginia; the Central Intelligence Agency; the
24 National Defense University at Fort McNair, Washington, D.C. Other speaking
25 engagements have included speeches at the Fletcher School at Tufts University; the
26 John F. Kennedy School of Government at Harvard University, the Hoover
27 Institution on War, Revolution and Peace at Stanford University, and the Heritage
28 Foundation.

1 7. I received the Western Journalism Center award for investigative
2 journalism in 1999. The United States Business and Industrial Council awarded me
3 the "Defender of the National Interest Award" in 1998.

4 8. Much of my reporting work has focused on U.S. national security and
5 defense issues related to the growing threat from the People's Republic of China. I
6 have written numerous articles and columns about the Chinese military build-up and
7 that country's aggressive overt and covert program to obtain American military and
8 industrial technology and related information. I have authored major newspaper
9 exclusives on, among others topics: how a Chinese submarine secretly sailed
10 undetected within five miles of the U.S. aircraft carrier U.S.S. Kitty Hawk in
11 October 2006; China's deployment of a new class of attack submarines; how China
12 is building and deploying short-range missiles for potential use against Taiwan; and
13 how China exported nuclear weapons and ballistic missile technology to Pakistan.
14 One of my books, *The China Threat: How the People's Republic Targets America*,
15 deals extensively with the Chinese espionage activities targeting the United States.
16 China's intelligence-gathering efforts that have compromised U.S. security are also
17 a prominent topic in several of my other books, including *Enemies: How America's*
18 *Foes Steal Our Vital Secrets – And How We Let It Happen*.

19 9. I have also authored other exclusive major newspaper reports on
20 national security and defense issues, including: how the Pentagon activated its
21 missile defense system in June 2006 in preparation for shooting down a North
22 Korean missile launch; details of Russia's covert involvement in removing weapons
23 from Saddam Hussein's Iraq before the U.S. invasion; details of North Korean
24 government involvement in counterfeiting U.S. currency; the North Korean test
25 firing of a new 100-mile range cruise missile, and how French and American
26 companies violated U.S. export rules by selling oil-related equipment to Iran.

27 10. During the approximately 23 years that I have worked as a national
28 security reporter and journalist, I have frequently relied upon confidential sources

1 who provided information that I have included in published news articles and books
2 on U.S. government activities and other public affairs topics. Confidential sources
3 provide information necessary to the reporter's function of keeping the public
4 informed of events of national interest. Without the information provided by
5 confidential sources, these events – or important aspects of these events – would
6 remain shielded from public and congressional scrutiny and oversight.

7 11. Many of the confidential sources on whose information I have relied
8 were U.S. government officials. Some of these sources are or were employed at the
9 highest levels of U.S. government agencies, in positions which gave them access to
10 sensitive, closely-held information about the inner workings of government and
11 deliberations of senior decision-makers.

12 12. In many instances, the confidential sources that I worked with provided
13 information to me regarding the *failure* of the U.S. government to work effectively
14 and efficiently and/or the *breakdown* in the decision-making and policymaking
15 process. Failures in U.S. government operations and decision-making are subjects
16 of great public interest. But these are matters about which government employees
17 are unlikely to receive official approval to speak candidly to the press. Rather, any
18 official government statements are limited to official "spokespersons" who provide
19 only carefully scripted information to the public.

20 13. Confidential sources, in particular those employed as U.S. government
21 officials, will not provide sensitive, closely-held information to investigative
22 reporters and other journalists without the assurance of absolute confidentiality.
23 The U.S. government employees whom I developed as confidential sources fear
24 that, if their identities as sources are divulged, they would be ostracized by their co-
25 workers, penalized by their superiors, and possibly even suffer the loss of their jobs.

26 14. Because of these potential adverse consequences, in my experience
27 U.S. government employees are willing to provide sensitive government
28 information only to those reporters and journalists whom they trust. A reporter who

1 is forced to disclose the identity of a U.S. government employee who had
2 confidentially provided information for a news story would irreparably damage his
3 and other's ability to cover similar stories in the future. Other potential government
4 sources of information who learned of the disclosure would thereafter consider that
5 reporter to be untrustworthy and would refuse to communicate with him regarding
6 any sensitive matter. Thus, protecting the identities of my confidential sources is
7 absolutely essential to my ability to do my job.

8 15. From a broader perspective, if compelled disclosures of the identities of
9 confidential sources becomes commonplace, it would have a very damaging chilling
10 effect on potential sources throughout government at all levels, in the business
11 community, and across a wide spectrum of public and private organizations whose
12 operations and activities affect the American public. The quantity and quality of
13 investigative reporting and critical analysis would decline. In the government arena,
14 for example, one can predict with a high degree of confidence that few government
15 employees would be willing to come forward with information about shortcomings
16 or wrongdoing within the U.S. government and other matters of significant public
17 interest.

18 16. The May 16, 2006 article contains information from both public and
19 confidential sources. The confidential source(s) who provided information did so on
20 the understanding that his, her or their identity would never be revealed. The
21 provision of any additional information about the source(s), the circumstances under
22 which the information was provided, or the development of the May 16, 2006
23 article, would surrender the very protection that the First Amendment and the
24 Reporter's Privilege are intended to guarantee.

25 17. The collection and conversion of U.S. technology and government
26 secrets, for both military and industrial use, by operatives of the Chinese
27 government is one such matter of significant public interest. As discussed above,
28 for many years I have written about the rapidly increasing build-up of China's

1 military forces, and the compromise of U.S. military information and other national
2 secrets to support that build-up. *See, e.g.* Bill Gertz, *Chinese Dragon Awakens*, The
3 Washington Times, June 27, 2005, at A1. Other national news reporters have also
4 reported on these events. *See, e.g.*, John Diamond, *China Broadens Espionage*
5 *Operations*, USA Today, May 17, 2006, at 9A (reporting that “[t]he FBI has
6 arrested 25 Chinese nationals or Chinese Americans in cases involving the targeting
7 of U.S. technology in the past two years, an unprecedented level of espionage
8 compared to prior years”); Neil A. Lewis, *Spy Cases Raise Concern On China’s*
9 *Intentions*, New York Times, July 10, 2008, at A1; Siobhan Gorman, *U.S. Fears*
10 *Threat Of Cyberspying At Olympics*, Wall Street Journal, July 17, 2008, at A6.

11 18. This “unprecedented” level of espionage and technology transfer by
12 Chinese operatives which existed at the very time of my May 16, 2006 news article
13 has continued unabated. During and after the prosecution of the Mak defendants,
14 numerous other individuals and companies were charged with criminal violations
15 arising out of the disclosure of U.S. technology and other secrets to Chinese military
16 and industrial interests. A sampling of those cases is listed below:

- 17
- 18 a. October 26, 2005: Noshir Gowadia was charged in the District of
Hawaii with transmitting cruise missile technology to China;
 - 19 b. May 2006: Ko-Suen Moo pleaded guilty in the Southern District
20 of Florida to arms export control violations in connection with a
conspiracy to sell China AGM-129 advanced cruise missiles and
21 other military technology;
 - 22 c. May 1, 2006: Andrew Huang was indicted in the District of
Connecticut for conspiring with Chinese officials to obtain
23 telecommunications equipment for sale to Iraq;
 - 24 d. March 27, 2007: ITT pleaded guilty in the Western District of
Virginia to exporting night vision data to China;
 - 25 e. August 1, 2007: Yang Fung pleaded guilty in the Northern
26 District of California to providing microwave integrated circuits
to China;
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- f. August 1, 2007: Xiaodong Sheldon Meng pleaded guilty in the Northern District of California to violations of the Economic Espionage Act arising out of the export of source code to for fighter pilot training software to China's Navy Research Center;
- g. September 26, 2007: Lan Lee and Yuefei Ge were charged in the Northern District of California with economic espionage on behalf of a Chinese military program;
- h. October 18, 2007: Qing Li was charged in the Southern District of California with conspiracy to export military-grade accelerometers, which have application in smart bombs;
- i. October 31, 2007: Bing Xu was charged in the District of New Jersey with attempting to export military goggles to China;
- j. December 3, 2007: Philip Cheng was sentenced in the Northern District of California for brokering the export of infrared cameras to China;
- k. January 28, 2008: Ding Zhengxing and Su Yang were arrested on an indictment returned in Western District of Texas for attempting to buy and export amplifiers used in digital radios;
- l. February 6, 2008: Dongfan Chung was charged in the Central District of California with conveying information about the Delta IV rocket and Air Force C-17 to China;
- m. February 6, 2008: Tai Shen Kuo and Yu Xin Kang were charged in the Eastern District of Virginia with conspiracy to deliver military information to China;
- n. March 7, 2008: WaveLab pleaded guilty in the Eastern District of Virginia to exporting to China controlled power amplifiers which had military applications.

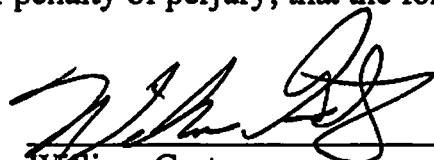
19. National, state and local media closely followed these criminal cases, as well as the prosecution of the Mak defendants. A NEXIS or Google search reveals literally hundreds of news articles about the arrests, indictments, guilty pleas, trials and sentencings in these cases. A NEXIS search for news articles about the arrest and prosecution of Chi Mak produced a listing of hundreds of articles. See Exhibit A hereto. Furthermore, investigative journalists and other media representatives analyzed and reported on the efforts of U.S. government intelligence and law enforcement officials to interdict the diversion of U.S. technology and other secrets to Chinese military and industrial interests. *See, e.g.* Neil A. Lewis, *Spy*

1 *Cases Raise Concern On China's Intentions*, New York Times, July 10, 2008, at
2 A1.

3 20. The American public has a significant stake in the vigorous
4 investigation and prosecution of foreign nationals and others whose activities
5 threaten U.S. national security and economic interests. It is difficult to identify
6 another topic of more pressing interest to the American public, and possessing
7 greater "newsworthiness," than the matter of our collective personal safety and
8 economic security.

9
10 I HEREBY DECLARE, under penalty of perjury, that the foregoing is true
11 and correct.

12 Executed on: July 22, 2008



William Gertz

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