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THE BOARD OF TRUSTEES OF THE
7 LELAND STANFORD JUNIOR UNIVERSITY

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 _____)
THE BOARD OF TRUSTEES OF THE)
12 LELAND STANFORD JUNIOR)
UNIVERSITY,)

13 Plaintiff,)

14 vs.)

15 Chiang Fang Chi-yi, and Individual; Chiang)
16 Yo-mei, an Individual; Chiang Hsiao-chang,)
an Individual; Chiang Tsai Hui-mei, an)
17 Individual; Chiang Yu-sung, an Individual;)
Chiang Yo-lan, an Individual; Chiang Yo-bo)
18 an Individual; Chiang Yo-chang, an)
Individual; Chiang Yo-ching an Individual;)
19 and Chungyan Chan, an Individual,)

20 Defendants.)
21 _____)

Case No. CV 13-04383-EJD-HRL

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION TO RETAIN
DEPOSIT OF RES

Judge: Edward J. Davila

Time: TBD

Date: TBD

22 I. INTRODUCTION

23 Plaintiff has in its possession, a deposit of over 50 boxes of historically unique
24 documents deposited with it including the original diaries of the first two Presidents of the
25 Republic of China – Chiang Kai-shek and Chiang Ching-kuo. These materials (“the
26 Deposit) are the very materials at issue in this Interpleader Action. Plaintiff is well familiar
27 with the normal practice of depositing the property at issue in an interpleader action with
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1 the Clerk of this Court, and, if requested by this Court, Plaintiff is fully prepared to deposit
2 these materials with the Clerk. However, given the nature of the Deposit, the historical
3 value of it, the fragility of many of the items in the Deposit, and the sheer volume of
4 materials in the Deposit,¹ Plaintiff believes it is in the best interest of all Parties to this
5 action, and for the preservation of the Deposit that the Deposit remain in the archivally
6 protected care of Plaintiff pending further Order of this Court. As explained herein,
7 Plaintiff's ability to provide the appropriate conditions for the maintenance of the Deposit,
8 including providing an environment with controlled temperature, light and humidity, makes
9 it appropriate that Plaintiff requests this *ex parte* relief and accordingly makes this motion.²

10 II. BACKGROUND

11 A. Stanford University and the Hoover Institution

12 The Board of Trustees of the Leland Stanford Junior University ("Stanford") is
13 recognized as one of the world's leading research and teaching institutions. *See* Declaration
14 of Eric Wakin ("Wakin") ¶ 6. Stanford was founded to promote the public welfare by
15 exercising an influence on behalf of humanity and civilization. Wakin ¶ 7. Over a century
16 since its founding in 1891, Stanford remains dedicated to finding solutions to the great
17 challenges of the day and to preparing its students for leadership in today's complex world.
18 Wakin ¶ 8. The Hoover Institution ("Hoover"), part of Stanford University, is a public
19 policy research center devoted to advanced study of politics, economics, and history—both
20 domestic and foreign—as well as international affairs. With its world-renowned group of
21 scholars and ongoing programs of policy-oriented research, Hoover puts its accumulated
22 knowledge to work as a prominent contributor to the world marketplace of ideas defining a

23
24 ¹ Presently the Deposit is housed in 59 boxes. *See* Wakin ¶ 5.

25 ² Plaintiff files this motion *ex parte* because none of the Defendants has yet to file his or her
26 appearance. Such notices of appearance for the various Defendants are likely to be
27 delayed as nine out of the ten Defendants reside outside the United States. Counsel for
28 Hoover, who has had discussions or communication with each of the Defendants or their
representatives does not have any basis to believe that any of the Defendants would object
to this requested relief. *See* Declaration of Mark D. Litvack, Esq. filed concurrently
herewith.

1 free society. Wakin ¶ 9. Consistent with this, the mission statement of Hoover states in
2 part “The overall mission of this Institution is, from its records, to recall the voice of
3 experience against the making of war, and by the study of these records and their
4 publication, to recall man's endeavors to make and preserve peace.” Wakin ¶ 10. The
5 Hoover Institution Library and Archives, with their vast original documentation on modern
6 history, are a core component of Hoover. There are more than 6000 collections and over
7 700,000 volumes in the Library and Archives, totaling more than 25 miles of materials.
8 Wakin ¶ 11 Part of the Hoover Institution Archives is the East Asia Collection, which
9 includes private papers donated or deposited by former national leaders, public servants,
10 military personnel, and others from Japan, China, Taiwan, Hong Kong, Korea, and other
11 parts of East Asia. Wakin ¶ 12. Part of the East Asia Collection is the China Collection.
12 Hoover holds one of the world’s largest collections relating to the Chinese Nationalist Party
13 (KMT) and its leaders, outside Taiwan. In addition, Hoover holds one of the world’s
14 largest collections relating to the Chinese Communist Party political movement, outside
15 China. Hoover is home to hundreds of rare pre-1949 Chinese publications that barely exist
16 in present-day China; and the personal papers of numerous crucial modern Chinese figures
17 such as T. V. Soong, H. H. Kung, Kia-ngau Chang, W. W. Yen, and Victor Hoo. It is also
18 home to numerous personal papers of U.S. military and political leaders deeply involved in
19 modern China, such as Joseph Stilwell, Albert Wedemeyer, Lauchlin Currie, and Claire
20 Chennault. Wakin ¶ 13. Given the China Collection’s variety, its breadth (having both
21 Kuomintang and Chinese Communist records), and its significance (holding the papers of
22 the great families in modern China), the Hoover Library & Archives has become one of the
23 world's most influential hubs for modern and contemporary Chinese studies. Wakin ¶14.

24 B. The Deposit and Archival Standards

25 Throughout the entire period that the Deposit has been at Hoover, Hoover has
26 respected the value of the Deposit and complied with instructions received from Defendant
27 Chiang Fang Chi-yi (“Ms. Chiang”), the Depositor, regarding making the various materials
28 in the Deposit available for scholarly study and review. Wakin ¶ 15. Determining the

1 value of the Deposit is extraordinarily difficult.³ The Deposit is essentially *sui generis* and
2 there is no ready marketplace to determine its value. In addition, a collection such as the
3 Deposit has not been placed into auction. Wakin ¶¶ 16 -17.

4 Consistent with the agreement between Hoover and Ms. Chiang, Hoover has
5 facilitated the scholarly study of redacted copies of the diaries of Chiang Kai-shek (part of
6 the Deposit) for hundreds of persons. During any given month scores of persons come to
7 Hoover for the specific purpose of studying these diaries. Hoover has been very proud, and
8 humbled, in its role of disseminating this knowledge to the world. Wakin ¶ 18. The oldest
9 materials in the Deposit are believed to be at least 97 years old; they are delicate and some
10 have a musty smell. Wakin ¶ 19. When received at Hoover, some of the materials in the
11 Deposit had suffered water damage, pest damage, mold growth and displayed other signs of
12 aging and deterioration. Wakin ¶ 20. Hoover's preservation staff stabilized many of the
13 original materials to prevent further loss. The Deposit is presently housed in archivally safe
14 enclosures. Wakin ¶ 21. The Deposit is currently being stored in an underground vault in
15 the Herbert Hoover Memorial Building at Stanford. Only limited staff has access to the
16 vault. Wakin ¶ 22.

17 In accordance with archival practice, Hoover has maintained the Deposit under
18 specific environmental controls, including: temperature, humidity, lighting, and pest
19 controls. Wakin ¶ 23. Regulating the temperature and humidity of the storage environment
20 of documents is an important part of preventing the deterioration of the Deposit as elevated
21 temperatures and humidity levels enable acidic reactions that contribute to the deterioration
22 of paper. Wakin ¶¶ 24-25. A general guideline for preserving documents is that they
23 should be stored in an environment no higher than 70°F. In addition, the temperature
24 should be stable; fluctuating temperature levels, even if low, may also contribute to the
25 deterioration of paper. Wakin ¶ 26. The temperature in Hoover's vault is maintained at a
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27 ³ However, there is no legitimate dispute that it is in excess of the statutory minimum of
28 \$500.

1 set level, plus or minus a few degrees of variance, 24 hours a day, every day of the year.

2 The latest temperature reading, on September 13, 2013, was 68.9°F, which is within the

3 variance of the established temperature setting for the vault. Wakin ¶ 27. A general

4 guideline for preserving documents is that they should be stored in an environment with a

5 humidity level between 30% and 50%. In addition, the humidity level should be stable; it is

6 as important to avoid variation in humidity levels as it is to avoid extremes. Wakin ¶ 28.

7 The humidity in Hoover's vault is maintained at a set level, plus or minus a few percentage

8 points of variance, 24 hours a day, every day of the year. The latest humidity reading, on

9 September 13, 2013, was 49%, which is within the variance of Hoover's established

10 humidity setting for the vault. Wakin ¶ 29. Light accelerates the deterioration of library

11 and archival materials. Exposure to light, even for a brief time, leads to cumulative and

12 irreversible damage to library and archival materials. Light, and especially ultraviolet light

13 from the sun and/or fluorescent lighting, leads to weakening and embrittlement of cellulose

14 fibers and can cause paper to bleach, yellow, or darken. It also causes media and dyes to

15 fade or change color, altering the legibility and/or appearance of documents, photographs,

16 art works, and bindings. Wakin ¶ 30. The lights in Hoover's vault are off unless there is a

17 person in the vault. Wakin ¶ 31.

18 Handling of archival documents contributes to the deterioration of the documents.

19 Handling documents physically stresses documents and can lead to the transfer of

20 chemicals that may deteriorate the documents. Wakin ¶ 32. Physical interaction with

21 documents, including improper transport of documents, can stress and damage documents.

22 Wakin ¶ 33. Deteriorating chemicals, including oil, sweat, and dirt, may be transferred

23 onto documents when handling them. The oil found in a person's hands contributes to the

24 deterioration of archival documents. Wakin ¶ 34. As to those documents available to the

25 public, Hoover only provides access to reproductions of the documents in the Deposit, and

26 not the original documents of the Deposit themselves, to prevent the deterioration of the

27 original documents that may result from exposure to improper temperatures, humidity

28 levels, lighting, pests, physical stresses, and deteriorating chemicals. Handling of the

1 original documents is avoided, and public access to the original documents is strictly
2 prohibited as Hoover has taken care to provide a controlled environment for the Deposit.
3 Wakin ¶¶ 35-36.

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5 III. ARGUMENT

6 There is a threefold requirement for Interpleader under 28 U.S.C. § 1335: (1) the
7 value of the property be greater than \$500; (2) two or more adverse claimants of diverse
8 citizenship are claiming entitlement to the property and (3) the plaintiff has deposited such
9 property into the registry of the Court or has given bond payable to the clerk of the court in
10 such amount and with such surety as the court or judge may deem proper conditioned upon
11 the compliance by the plaintiff with the future order or judgment of the court with respect to
12 the subject matter of the controversy.

13 Pursuant to the equitable powers granted to this Court, Plaintiff moves that this
14 Court order Plaintiff to retain the Deposit subject to further order of this Court. As
15 explained above, the delicate and historical nature of the Deposit makes it inappropriate for
16 it to be warehoused in any location where the environmental conditions are not strictly
17 controlled to preserve the Deposit. In addition, the sheer volume of the Deposit makes it
18 impractical and illogical for it to be transferred to any location that cannot set aside a
19 significant amount of space for the prolonged storage of the Deposit. Finally, Plaintiff's
20 statement that it will retain the Deposit in the same manner as it is presently maintaining the
21 Deposit, and will comply with any Order of this Court to forward the Deposit, or parts
22 thereof, to any place or places this Court deems appropriate, gives this Court ample control
23 over the property to be litigated.⁴ Wakin ¶ 39.

24 Such an Order is consistent with this Bench's opinion in *Sun Life Assurance*
25 *Company of Canada v Chirolo*, 2009 WL 113009, in which Judge Alsup recognized that an

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27 ⁴ Plaintiff submits that given its standing in this community and its position in this
28 Interpleader that it is simply not necessary for Plaintiff to post a surety bond.

1 Interpleader action may be maintained even where the property is not immediately
2 deposited with the registry of this Court. Courts have long recognized that “Interpleader is
3 an equitable device, and its objectives go beyond protection of a stakeholder.” *Irving Trust*
4 *Co v Nationwide Leisure Corp.* 95 F.R.D. 51 (S.D.N.Y. 1982). Here, part of the objective
5 should be the protection of the Deposit, and the history it represents: Protection that is best
6 served by the Deposit being maintained at Hoover at this time.

7 IV. CONCLUSION

8 To best preserve the delicate property at stake in this action, this Court should enter
9 an order that Plaintiff Board Of Trustees Of The Leland Stanford Junior University
10 maintain possession of the *res* at issue in this litigation, in conditions substantially similar
11 to those that it currently maintains the *res*, for the pendency of this litigation, or until further
12 order of this Court.

13 Dated: October 4, 2013.

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By _____

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