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18 **Pro hac vice application forthcoming*
19 ***C.D. California admission forthcoming*

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

22 TIKTOK INC. and BYTEDANCE LTD.,

23 Plaintiffs,

24 v.

25 DONALD J. TRUMP, in his official
26 capacity as President of the United States;
WILBUR L. ROSS, JR., in his official
27 capacity as Secretary of Commerce; and
U.S. DEPARTMENT OF COMMERCE,

28 Defendants.

Case No. 2:20-cv-7672

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

1 Plaintiffs TikTok Inc. and ByteDance Ltd., for their Complaint against
2 Defendants DONALD J. TRUMP, in his official capacity as President of the United
3 States; WILBUR L. ROSS, JR., in his official capacity as Secretary of Commerce;
4 and the U.S. DEPARTMENT OF COMMERCE; allege as follows:

5 INTRODUCTION

6 1. This action seeks to prevent the government from impermissibly
7 banning TikTok, a mobile software application that 100 million Americans use to
8 create and share short videos composed of expressive content. On August 6, 2020,
9 President Trump issued an executive order banning this communication and
10 information-sharing platform, without affording its owners—Plaintiffs TikTok Inc.
11 and ByteDance Ltd.—due process of law and for political reasons rather than
12 because of an “unusual and extraordinary threat” to the United States, which is a
13 condition for the President to exercise his authority under the International
14 Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701–1706. The
15 President’s executive order is unconstitutional and *ultra vires*, and must be enjoined.

16 2. IEEPA vests the President with significant power to prohibit certain
17 transactions to protect U.S. national security. Past presidents have used this power
18 responsibly to protect the country from genuine threats from abroad, including
19 terrorism and the proliferation of weapons of mass destruction. Through this
20 executive order, however, President Trump seeks to use IEEPA against TikTok Inc.,
21 a *U.S. company*—headquartered in Los Angeles with hundreds of employees across
22 the United States—to destroy an online community where millions of Americans
23 have come together to express themselves, share video content, and make
24 connections with each other. The order imposes these restrictions despite express
25 limitations in IEEPA barring executive actions from restricting personal
26 communications or the transmission of informational materials. The order also
27 sweeps broadly to ban any transactions with TikTok Inc.’s parent company,
28 ByteDance, even though the purported justification for the order is limited to the

1 TikTok mobile application (“TikTok”), which is just one of ByteDance’s several
2 businesses. The order is thus a gross misappropriation of IEEPA authority and a
3 pretext for furthering the President’s broader campaign of anti-China rhetoric in the
4 run-up to the U.S. election.

5 3. The executive order seeks to ban TikTok purportedly because of the
6 speculative possibility that the application could be manipulated by the Chinese
7 government. But, as the U.S. government is well aware, Plaintiffs have taken
8 extraordinary measures to protect the privacy and security of TikTok’s U.S. user
9 data, including by having TikTok store such data outside of China (in the United
10 States and Singapore) and by erecting software barriers that help ensure that TikTok
11 stores its U.S. user data separately from the user data of other ByteDance products.
12 These actions were made known to the U.S. government during a recent U.S.
13 national security review of ByteDance’s 2017 acquisition of a China-based
14 company, Musical.ly. As part of that review, Plaintiffs provided voluminous
15 documentation to the U.S. government documenting TikTok’s security practices and
16 made commitments that were more than sufficient to address any conceivable U.S.
17 government privacy or national security concerns—even going so far as to be
18 prepared to spin-out the U.S. TikTok business to trusted American investors.

19 4. Ignoring these demonstrable facts and commitments, President
20 Trump’s executive order authorizes the Secretary of Commerce to prohibit “any
21 transaction” with ByteDance and its subsidiaries, including banning TikTok from
22 operating in the United States. It is revealing that the President’s order took no
23 account of the national security review process involving the Committee on Foreign
24 Investment in the United States (“CFIUS” or “the Committee”) that was still pending
25 at the time of the executive order. Instead, the order was issued abruptly after the
26 President had proclaimed in a campaign-style news conference that TikTok Inc. had
27 “no rights” and that he would ban TikTok if Plaintiffs did not pay money to the U.S.
28 Treasury to secure the U.S. government’s approval for any sale. The President stated

1 that he would use his IEEPA authority to force TikTok to “close down” unless it is
2 acquired through “an appropriate deal” in which “the Treasury . . . of the United
3 States gets a lot of money.”¹

4 5. The executive order and, necessarily, any implementing regulations are
5 unlawful and unconstitutional for a number of independent reasons:

- 6 • By banning TikTok with no notice or opportunity to be heard (whether
7 before or after the fact), the executive order violates the due process
8 protections of the Fifth Amendment.
- 9 • The order is *ultra vires* because it is not based on a bona fide national
10 emergency and authorizes the prohibition of activities that have not
11 been found to pose “an unusual and extraordinary threat.”
- 12 • The order is *ultra vires* because its prohibitions sweep broadly to
13 prohibit any transactions with ByteDance, although the purported threat
14 justifying the order is limited to TikTok, just one of ByteDance’s
15 businesses.
- 16 • The order is *ultra vires* because it restricts personal communications
17 and the transmission of informational materials, in direct violation of
18 IEEPA.
- 19 • IEEPA lacks any intelligible principle to guide or constrain the
20 President’s action and thereby violates the non-delegation doctrine, as
21 the President’s overbroad and unjustified claim of authority in this
22 matter confirms.
- 23 • By demanding that Plaintiffs make a payment to the U.S. Treasury as a
24 condition for the sale of TikTok, the President has taken Plaintiffs’
25 property without compensation in violation of the Fifth Amendment.
- 26 • By preventing TikTok Inc. from operating in the United States the

27 ¹ Fadel Allasan, *Trump says TikTok will be banned if not sold by Sept. 15, demands*
28 *cut of sale fee*, Axios (Aug. 3, 2020), [https://www.axios.com/trump-tiktok-banned-](https://www.axios.com/trump-tiktok-banned-8-f1457481-1-8-2020-09-76168-211)

1 executive order violates TikTok Inc.’s First Amendment rights in its
2 code, an expressive means of communication.

3 6. Accordingly, ByteDance and TikTok Inc. seek a declaratory judgment
4 and order invalidating and enjoining the executive order and any implementing
5 regulations issued by the Department of Commerce.²

6 **JURISDICTION AND VENUE**

7 7. The Court has subject matter jurisdiction under 28 U.S.C. § 1331
8 because this action arises under the United States Constitution and the International
9 Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701–1706.

10 8. The Court has authority to grant declaratory and injunctive relief
11 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; 5 U.S.C. § 702;
12 and the Court’s inherent equitable powers.

13 9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1),
14 because officers or employees of agencies of the United States acting in their official
15 capacities and an agency of the United States are defendants, because Plaintiff
16 TikTok Inc. has its principal place of business in this district, and because a
17 substantial part of the events or omissions giving rise to this action occurred in this
18 district.

19 **PARTIES**

20 **A. Plaintiffs**

21 10. Plaintiff TikTok Inc. is a company incorporated in California, with its
22 principal place of business in Culver City, California.

23 11. Plaintiff ByteDance Ltd. (“ByteDance”) is a global company
24 incorporated in the Cayman Islands, with offices in the United States, China,
25 Singapore, the United Kingdom, and India, among others. ByteDance owns and

26 ² The order tasks the Department of Commerce with identifying the specific
27 transactions to be banned by September 20, 2020, and with adopting rules and
28 regulations as may be necessary to implement the order. Plaintiffs intend to amend
this complaint pursuant to Fed. R. Civ. P. 15(a)(1)(A) and move for a preliminary

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