

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 21-22440-CIV-WILLIAMS/MCALILEY

DONALD J. TRUMP, *et al.*,

Plaintiffs,

v.

FACEBOOK, INC. and  
MARK ZUCKERBERG,

Defendants.

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**DEFENDANTS' MOTION TO TRANSFER  
TO THE NORTHERN DISTRICT OF CALIFORNIA  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

## INTRODUCTION

This case is meritless and should be dismissed as a matter of law, as Defendants will explain in due course in their forthcoming motion to dismiss. But even aside from its substantive deficiencies, Plaintiffs' lawsuit suffers from a threshold defect: It was filed in the wrong forum. Like all Facebook users, Plaintiffs accepted Facebook's Terms of Service as a condition of using the Facebook service. Those Terms unambiguously require users to litigate in California if they assert claims like these that arise out of or relate to Facebook's products or policies. As the Supreme Court has explained, a "valid forum-selection clause" like the one in Facebook's Terms "should be given controlling weight in all but the most exceptional cases." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 62–64 (2013). Applying that rule, courts in this District and elsewhere routinely enforce Facebook's forum-selection clause and transfer cases to the Northern District of California pursuant to 28 U.S.C. § 1404(a). *E.g., Loomer v. Facebook, Inc.*, 2020 WL 2926357, at \*1 (S.D. Fla. Apr. 13, 2020); *Soffin v. Echannel Network, Inc.*, 2014 WL 2938347, at \*2 (S.D. Fla. June 30, 2014); *see also, e.g., Loveland v. Facebook, Inc.*, 2021 WL 1734800, at \*1 (E.D. Pa. May 3, 2021); *Kidstar v. Facebook, Inc.*, 2020 WL 4382279, at \*5 (D.N.J. July 31, 2020); *Hayes v. Facebook, Inc.*, 2019 WL 8275335, at \*2 (D. Colo. Mar. 6, 2019). This Court should do the same and transfer this case to the Northern District of California under the forum-selection clause to which Plaintiffs agreed when they registered for and used Facebook.

## BACKGROUND

Facebook, Inc. is a public company headquartered in California. Pls.' First Am. Compl. ("Am. Compl.") (D.E. 16 at ¶ 26). It operates a social-media service that almost three billion people worldwide use to create personal profiles, build communities, and share content. *Id.* ¶¶ 2, 20. Mark Zuckerberg is the CEO of Facebook and a resident of California. *Id.* ¶ 27.

Plaintiffs in this case—Donald J. Trump, Elizabeth Albert, Kiyan and Bobby Michael, Jennifer Horton, Andres Cabos, Magalys Rios, and Maria Rodriguez-Fresneda (collectively, “Plaintiffs”)—are current and former Facebook users. *Id.* ¶ 243. They each established their Facebook accounts between 2007 and 2019. *Id.* ¶¶ 59, 143, 148, 153, 165, 174, 182.

From at least 2007 to the present, Facebook has required all users registering a new account to agree to Facebook’s Terms of Service (the “Terms”). *See* Decl. of Michael Duffey (“Duffey Decl.”) at ¶ 2 (attached). To complete the registration process, users must confirm that they have read and agree to the Terms. *See id.* ¶ 3.<sup>1</sup>

At all relevant times, Facebook’s Terms included a forum-selection clause identifying California as the required venue for all claims arising out of or relating to Facebook’s Terms or Facebook’s products. *See, e.g., id.* ¶ 5; *id.*, Ex. A at § 4(4) (current Terms); *id.*, Ex. B at § 4(4) (Terms effective Oct. 1, 2020); *id.*, Ex. C at § 4(4) (Terms effective July 31, 2019); *id.*, Ex. D at § 4(4) (Terms effective Apr. 19, 2018). Facebook’s current forum-selection clause states:

*For any claim, cause of action, or dispute you have against us that arises out of or relates to these Terms or the Facebook Products (“claim”), you agree that it will be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, without regard to conflict of law provisions.*

*Id.*, Ex. A at § 4(4) (emphasis added). The “Facebook Products” include “Facebook, Messenger, and the other products, features, apps, services, technologies, and software” that Facebook offers.

*Id.*, Ex. A at 1.

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<sup>1</sup> When deciding a motion to transfer under 28 U.S.C. § 1404, the Court may consider undisputed facts outside of the pleadings. *See, e.g., Loomer*, 2020 WL 2926357, at \*2.

Facebook's Terms notify users that Facebook may modify the Terms and that continued use of Facebook constitutes acceptance of those updated procedures:

We work constantly to improve our services and develop new features to make our Products better for you and our community. As a result, we may need to update these Terms from time to time to accurately reflect our services and practices. Unless otherwise required by law, we will notify you before we make changes to these Terms and give you an opportunity to review them before they go into effect. *Once any updated Terms are in effect, you will be bound by them if you continue to use our Products.* We hope that you will continue using our Products, but if you do not agree to our updated Terms and no longer want to be a part of the Facebook community, you can delete your account at any time.

*Id.* at § 4(1) (emphasis added).

Facebook's Terms also explain that users cannot "do or share anything" that violates Facebook's Terms or Community Standards, and that Facebook can "remove or restrict access to content that is in violation of these provisions." *Id.* at § 3(2). The Community Standards outline what content is and is not allowed on Facebook. *Id.* at § 5. Plaintiffs acknowledge that Facebook's Terms and Community Standards apply to them. *See, e.g.,* Am. Compl. ¶¶ 160, 231, 232, 245. For instance, plaintiff Jennifer Horton alleges she needed to understand "how to operate within the boundaries of the Defendants' Terms of Service because she did not want to lose her ability to communicate again." *Id.* ¶ 160.

On July 7, 2021, Plaintiffs commenced this litigation against Facebook and Mr. Zuckerberg in the Southern District of Florida. *See* Pls.' Compl. ("Compl.") (D.E. 1). Plaintiffs did not serve their initial complaint on either defendant. Then, on July 27, 2021, Plaintiffs filed an amended complaint, adding three named plaintiffs as well as two state-law claims. The amended complaint alleges that: (1) Facebook and Mr. Zuckerberg violated the First Amendment by censoring constitutionally protected speech; (2) Section 230 of the Communications Decency Act incentivized Facebook and Mr. Zuckerberg to "deplatform" and "censor" Plaintiffs, and so is

unconstitutional; (3) Facebook and Mr. Zuckerberg violated the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) by failing to adhere to their “ostensibly objective standards” regarding content moderation; and (4) Facebook and Mr. Zuckerberg violated Florida law by “act[ing] in ways contrary to their published standards regarding censorship” and applying their standards inconsistently. Am. Compl. ¶¶ 187–245.

Almost three weeks later—and still without having served either defendant—Plaintiffs sought leave to file an overlength motion for preliminary injunction. (D.E. 30). To date, Plaintiffs have not filed a motion for preliminary injunction, and they did not effect service of process on either defendant. Instead, Facebook and Mr. Zuckerberg contacted Plaintiffs’ counsel and agreed to waive service at their own initiative. (See D.E. 73, 74). Facebook and Mr. Zuckerberg now move to transfer this case to the Northern District of California in accordance with the forum-selection clause to which Plaintiffs agreed.

### LEGAL STANDARD

A forum-selection clause is presumptively enforceable under 28 U.S.C. § 1404(a). *See Atl. Marine*, 571 U.S. at 62–63. “When the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause. Only under extraordinary circumstances unrelated to the convenience of the parties should a § 1404(a) motion be denied.” *Id.*; *see also Rucker v. Oasis Legal Fin., L.L.C.*, 632 F.3d 1231, 1236 (11th Cir. 2011) (forum-selection clauses are “presumptively valid and enforceable”); *Loomer*, 2020 WL 2926357, at \*2 (same); *Soffin*, 2014 WL 2938347, at \*1 (“If there is a valid forum-selection clause, ... the contractual venue selection controls.”).

A plaintiff’s contrary choice of forum “merits no weight,” and a district court is prohibited from “consider[ing] arguments about the parties’ private interests.” *Atl. Marine*, 571 U.S. at 64.

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