

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

CASE NO. 1:21-cv-22445-MOORE/LOUIS

DONALD J. TRUMP et al.,

Plaintiffs,

vs.

YOUTUBE, LLC and SUNDAR PICHAI,

Defendants.

**DEFENDANTS' MOTION TO TRANSFER
TO THE NORTHERN DISTRICT OF CALIFORNIA
AND SUPPORTING MEMORANDUM OF LAW**

Defendants YouTube, LLC and Sundar Pichai (collectively, "YouTube") move under 28 U.S.C. § 1404(a) to transfer this case to the Northern District of California.

Plaintiffs' Amended Complaint fails as a matter of law. But before the merits of Plaintiffs' claims can be resolved, the Court must address a threshold problem: Plaintiffs filed suit in the wrong place. In creating accounts to use the YouTube service, Plaintiffs agreed to YouTube's Terms of Service ("TOS" or "Terms"), which includes an express forum-selection clause requiring litigation in California. The Supreme Court has made clear that "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 63 (2013) (citation omitted). A long and unbroken line of cases have held that YouTube's forum-selection clause is valid and enforceable, and have applied it to transfer cases just like this one to the parties' designated federal forum—the Northern District of California. *See, e.g., Muhammad v. YouTube, LLC*, 2019 WL 2338503, at *3 (M.D. La. June 3, 2019); *Seaman v. YouTube, LLC*, No. 3:18-cv-833-HEH, Dkt. 20 at 1 (E.D. Va.

Apr. 5, 2019) and No. 4:19-cv-01903-SBA, Dkt. 20 at 1 (N.D. Cal. Apr. 5, 2019); *Song fi, Inc. v. Google Inc.*, 72 F. Supp. 3d 53, 64 (D.D.C. 2014).

This case is no different. Plaintiffs complain about the editorial decisions YouTube made about what videos are allowed to appear on its service. They claim that YouTube inconsistently applied the content guidelines incorporated into the TOS and seek an order requiring YouTube to restore their videos to the platform. The governing agreement could hardly be clearer about where such disputes belong: “All claims arising out of or relating to these terms or the [YouTube] Service . . . will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA.” While meritless, Plaintiffs’ claims fall squarely within this mandatory forum-selection clause. Accordingly, Plaintiffs’ “choice of forum merits no weight,” *Atl. Marine*, 571 U.S. at 63, and this case must be transferred to the Northern District of California. Here, as in “all but the most unusual cases,” “the interest of justice’ is served by holding parties to their bargain.” *Id.* at 66 (quoting 28 U.S.C. § 1404(a)).

I. FACTUAL AND PROCEDURAL BACKGROUND

A. YouTube and Its Terms of Service

YouTube is a limited liability company, and is “one of the largest and most popular video distribution platforms on the Internet.” Am. Compl. ¶¶ 2, 27. “[A]n estimated five hundred (500) hours of video content are uploaded to YouTube every minute.” *Id.* ¶ 2. Plaintiffs allege that in 2020, YouTube had “thirty-seven (37) million channels, and 1.3 billion people used YouTube.” *Id.* ¶ 87. YouTube allows visitors to access and use its service—including by creating channels and uploading videos free of charge—provided they agree and adhere to the TOS. *See id.* ¶ 32; *see also* Decl. ¶¶ 2-3 & Ex. A (<https://www.youtube.com/static?template=terms> (eff. Mar. 17, 2021)).¹

¹ Citations to “Decl.” are to the Declaration of Alexandra N. Veitch, dated September 17, 2021, and citations to “Ex. _” are to the exhibits attached thereto.

The TOS govern the relationship between YouTube and its users. Am. Compl. ¶¶ 159-60, 174, 182, 189, 194, 206, 212, 220, 222. To keep YouTube and its users safe, the TOS also incorporate “a set of ‘Community Guidelines’” governing “content on the platform, including videos[.]” *Id.* ¶ 37. YouTube’s Community Guidelines include specific standards prohibiting, for instance, hate speech and the incitement of violence on the platform. *See id.* ¶¶ 10, 37-41, 45, 139, 163, 170. The TOS prohibit users from “submit[ting] to the Service any Content that does not comply with this Agreement (including the YouTube Community Guidelines)[.]” Ex. A at 4. The TOS also expressly give YouTube the right to remove content and suspend or terminate user accounts that YouTube considers contrary to the Community Guidelines or otherwise potentially harmful: “If [YouTube] reasonably believe[s] that any Content is in breach of this Agreement or may cause harm to YouTube, [its] users, or third parties, [YouTube] may remove or take down that Content in our discretion.” *Id.* at 5; *see also id.* (“YouTube may suspend or terminate your access, your Google account, or your Google account’s access to all or part of the Service if (a) you materially or repeatedly breach this Agreement; . . . or (c) we believe there has been conduct that creates (or could create) liability or harm to any user, other third party, YouTube or our Affiliates.”).

Users are able to post content to their own “channels.” Decl. ¶ 10. In order to create a channel and upload content to YouTube, every user, without exception, is required to accept the TOS. *Id.* ¶¶ 10-11. For example, in the current version of the sign-up process, when users create a channel, they are presented with the text: “By tapping Create Channel you agree to YouTube’s Terms of Service.” *Id.* ¶ 10. The phrase “YouTube’s Terms of Service” appears in blue font, and links to the complete text of the TOS. *Id.* By clicking “Create Channel,” users agree to abide by the TOS. *Id.* Without accepting the TOS, the user cannot activate the channel. *Id.*

At all times relevant here, the TOS have included an express forum-selection clause designating the courts in Santa Clara County, California as the required venue for litigation arising out of the YouTube Service. Decl. ¶¶ 5-6. This is the version of the provision applicable to all current users (*id.* ¶¶ 3, 8-9):

All claims arising out of or relating to these terms or the Service will be governed by California law, except California’s conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts.

Ex. A at 7. “Service” is a defined term in the TOS that encompasses “the YouTube platform and the products, services and features we make available to you as part of the platform[.]” *Id.* at 1. Santa Clara County, California lies within the Northern District of California. *See* 28 U.S.C. § 84(a). Because many millions of users create channels and upload videos on YouTube’s website free of charge, the forum-selection clause is necessary to manage the costs of litigation and reduce the inconvenience to YouTube that would arise if the company were forced to litigate claims all over the world. Decl. ¶ 7; *accord Song fi*, 72 F. Supp. 3d at 64.

B. Plaintiffs’ Lawsuit Against YouTube

The Plaintiffs in this case are Former President Donald J. Trump and seven other YouTube account holders. Former President Trump and four of the other plaintiffs allegedly reside in Florida (Am. Compl. ¶¶ 16-18, 20, 22, 24-25), one resides in New York (*id.* ¶ 19), one is domiciled in Colorado (*id.* ¶ 21), and one is an organization established in the District of Columbia (*id.* ¶ 23). Plaintiffs also purport to represent a class of YouTube users who were allegedly harmed by YouTube’s content moderation decisions between June 1, 2018 and the present. *Id.* ¶¶ 1, 302. The putative nationwide class purportedly includes “well over one (1) million Members[.]” *Id.* ¶ 14.

Former President Trump’s claims revolve around “his official YouTube channel,” which he “used . . . to engage with the general public” and for national political purposes. *Id.* ¶ 48. He

alleges that on January 6, 2021, YouTube removed a video he posted about the mob attack on the United States Capitol, because it included false information about the outcome of the 2020 election in violation of YouTube’s Community Guidelines. *Id.* ¶¶ 163-64; *see also id.* ¶ 96. On January 12, 2021, YouTube removed an additional video from the account and barred users from posting comments on videos on Former President Trump’s channel. *Id.* ¶¶ 165-66. The next day, YouTube allegedly suspended Former President Trump’s ability to upload new videos for seven days and, on January 26, 2021, extended that suspension indefinitely. *Id.* ¶¶ 167-69; *see also id.* ¶ 6. Plaintiffs allege that YouTube took these moderation actions “at the behest of, in cooperation with, and the approval of, Democrat lawmakers” in Congress. *Id.* ¶ 9. The seven other Plaintiffs assert claims analogous to Former President Trump’s: each posted content that YouTube allegedly took down or otherwise moderated, mostly under the policies incorporated into YouTube’s Community Guidelines against medical or COVID-related misinformation and incitement or glorification of violence. *Id.* ¶¶ 173-234.

Plaintiffs filed this lawsuit against YouTube on July 7, 2021 (Dkt. 1). The original Complaint, on behalf of Former President Trump and two other co-plaintiffs (Dr. Colleen Victory and Austen Fletcher), asserted that YouTube, a private company, violated Plaintiffs’ First Amendment rights by enforcing its content rules to remove or limit the material they were permitted to post on the service. Compl. (Dkt. 1) ¶¶ 126-40. Plaintiffs also sought a declaratory judgment that 47 U.S.C. § 230 (“Section 230”)—a federal statute that protects online services from claims arising from their content moderation choices—is unconstitutional. *Id.* ¶¶ 141-51.

On July 27, 2021, Plaintiffs filed the operative Amended Complaint (Dkt. 21), which carries forward the same First Amendment and declaratory judgment claims, Am. Compl. ¶¶ 235-66, while adding five new plaintiffs and two new causes of action under Florida law. The first new

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