

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: TIKTOK, INC.,)	
CONSUMER PRIVACY)	MDL No. 2948
LITIGATION)	
)	Master Docket No. 20 C 4699
)	
)	Judge John Z. Lee
)	
)	Magistrate Judge Sunil R. Harjani
This Document Relates)	
to All Cases)	

MEMORANDUM OPINION AND ORDER

In August 2018, the Beijing-based technology company ByteDance, Ltd. (“ByteDance”) launched a social media platform and entertainment application known today as TikTok (“TikTok” or “the App,” formerly known as Musical.ly) in the United States and elsewhere abroad. The App, which allows users to share relatively short homemade videos, quickly became one of the most ubiquitous in the world, and boasts more than 800 million active users across the globe today.

Soon after the App exploded in popularity across the United States, however, so too did concerns, and litigation, about its handling of user data. The lead plaintiffs (“Plaintiffs”) in this multidistrict litigation (“MDL”) are United States residents who allege that the subsidiaries of ByteDance—TikTok, Inc. (formerly Musical.ly, Inc.), TikTok, Ltd., ByteDance Inc., and Beijing ByteDance Technology Co., Ltd. (collectively, “Defendants”)—have been flouting U.S. privacy law by surreptitiously harvesting and profiting from Plaintiffs’ private information, including their biometric data, geolocation information, personally identifiable information, and

unpublished digital recordings, through the App. Following months of negotiations, Plaintiffs have reached a settlement agreement with Defendants that would provide \$92 million in monetary relief and an array of injunctive relief for the putative settlement class.

Before the Court is Plaintiffs' motion for preliminary approval of the settlement agreement, as well as various objections from putative class members. For his part, Objector Dennis Litteken contends that the settlement agreement is not fair, reasonable, and adequate, because it does not reflect the net expected value of continued litigation to the class, and that the proposed notice plan is deficient. Objector Mark S., as parent and legal guardian of his minor son, A.S., echoes these contentions and adds that the settlement does not account for conflicts between minor and non-minor class members and that the proposed release is overly broad vis-à-vis the proposed settlement in a somewhat related case pending in this judicial district. Finally, Objectors Brian Behnken and Joshua Dugas insist that the proposed opt-out procedure is so onerous as to violate due process and the Federal Arbitration Act. For the reasons set forth below, the objections are overruled, and Plaintiffs' motion for preliminary approval is granted.

I. Background

A. **Procedural History**

The first of the twenty-one putative class actions comprising this MDL was filed in the Northern District of California in November 2019. *See Hong v. ByteDance, Inc.*, No. 19 C 7792 (N.D. Cal.) (Koh, J.). Led by one of the future members of

Plaintiffs' Interim Co-Lead Counsel team, the parties in *Hong* first engaged in mediation in April 2020. The mediation was facilitated by Layn R. Phillips, a former United States District Judge for the Western District of Oklahoma and founder of Phillips ADR Enterprise, an experienced and well-respected alternative dispute resolution firm.

Beginning in late April 2020, the other twenty putative class actions were filed in four separate federal districts: the Northern District of California, the Central District of California, the Southern District of Illinois, and the Northern District of Illinois. On May 15, 2020, counsel from one of these cases filed a motion with the Judicial Panel on Multidistrict Litigation ("JPML") to consolidate the then-nineteen related actions and to transfer them to one district court for pretrial proceedings pursuant to 28 U.S.C. § 1407. After some contentious litigation, the JPML selected this district, and specifically this Court, on August 12, 2020. *See* 8/12/20 JPML Transfer Order, MDL No. 2948, ECF No. 2.

The next day, on August 13, 2020, Defendant's counsel and Plaintiffs' counsel from eleven of the MDL member cases participated in a second round of mediation with Judge Phillips. Spearheaded by another future member of Plaintiffs' Interim Co-Lead Counsel team, this mediation had been months in the making. By that time, extraordinary political pressure had mounted against TikTok's U.S. operations, culminating in an August 6, 2020, executive order by then-President Trump declaring that TikTok presented "a national emergency" that "threaten[s] the national security,

foreign policy, and economy of the United States.” Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 6, 2020).

The executive order gave ByteDance forty-five days to sell TikTok’s U.S. operations to a U.S. company before the App would be banned in this country, although the White House later extended the deadline. *See* Proclamation No. 10,061, 85 Fed. Reg. 51,297 (Aug. 14, 2020). In light of this ultimatum, Defendants were motivated at the second mediation session to resolve this litigation in order to shed TikTok’s existing liabilities and maximize its value in preparation for sale.¹ After more than twelve hours of negotiation, this mediation session ended in an agreement in principle for class-wide resolution. The terms were later memorialized in a signed agreement on September 4, 2020, although it remained confidential, even from the Court, for some time thereafter.

On September 28, 2020, the Court appointed three attorneys to serve as Plaintiffs’ Co-Lead Counsel, one to serve as Plaintiffs’ Liaison Counsel, and five to serve as members of the Plaintiffs’ Steering Committee (collectively, the “Plaintiffs’ Leadership Group”). *See* Case Management Order No. 3, ECF No. 94. In making these selections, the Court drew upon the attorneys’ efforts “in identifying or investigating potential claims in the action”; their “experience in handling class actions, other complex litigation, and the types of claims asserted in the action”; their

¹ Although ByteDance initially agreed to sell its U.S. operations of TikTok to Oracle and Walmart later in September 2020, a final agreement never materialized, and negotiations have since stalled as the Biden administration has shelved Trump’s threat to blacklist the App. *See, e.g.,* Bobby Allyn, *Biden Administration Pauses Trump’s TikTok Ban, Backs Off Pressure to Sell App*, National Public Radio, Feb. 10, 2021, <https://www.npr.org/2021/02/10/966584204/> (last accessed Sept. 29, 2021).

“knowledge of the applicable law”; and the resources that they would “commit to representing the class”; as well as among other factors pertaining to their “ability to fairly and adequately represent the interests of the class.” *See* Fed. R. Civ. P. 23(g)(1)(A)–(B). The Court also was driven by a desire to diversify the members of the Plaintiffs’ Leadership Group in terms not only of their individual experiences, locations, attributes, and qualifications, but also of their relationship to and involvement in the settlement efforts thus far, in hopes that such diversity would promote more robust efforts to represent the interests of the putative class as a whole.

Once the Court designated the members of the Plaintiffs’ Leadership Group, they engaged in an extensive effort to evaluate the September 4, 2020, settlement agreement. Members were tasked with analyzing an array of legal, factual, and strategic issues; evaluating confirmatory discovery, including interrogatories, document requests, depositions by written question; reviewing the results of a weeks’-long, on-site inspection of TikTok’s source code conducted by a world-renowned expert; and engaging in further negotiations with Defendants. *See* Pls.’ Mot. Prelim. Approval Class Action Settlement (“Pls.’ Mot.”), Ex. F, Carroll Decl. ¶¶ 29–37, ECF No. 122-6. Through these efforts, the Plaintiffs’ Leadership Group achieved an addendum to the settlement agreement that strengthens many of its terms, especially with regard to injunctive relief, as well as a consensus amongst Plaintiffs on the terms now presented before the Court.

Amid these settlement efforts, Plaintiffs filed a consolidated amended class action complaint on December 18, 2020. *See* Consolidated Am. Class Action Compl.

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