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

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION,	**MDL No. 2948**
	Master Docket No. 20 C 4699
	Judge John Z. Lee
This document relates to all cases	**Magistrate Judge Sunil R. Harjani**

OBJECTION OF DENNIS LITTEKEN
TO CLASS ACTION SETTLEMENT

Something about this settlement stinks. *See Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014) (explaining that when "a judge is being urged by both adversaries to approve the class-action settlement that they've negotiated, he's at a disadvantage in evaluating the fairness of the settlement to the class . . . [but that] Members of the class who smell a rat can object to approval of the settlement.") This MDL is comprised of more than twenty class actions containing widely publicized allegations that Defendant TikTok, Inc. has used technology hidden in its video sharing mobile application to collect troves of data about U.S. consumers which it then shares with the Chinese government. Indeed, the alleged wrongdoing led to the TikTok app being banned by the U.S. military from use on government issued phones, calls from U.S. Senators for a ban of the app in the United States, and ultimately an order from the President that the app presented a "national emergency" that "threatened the national security, foreign policy, and economy of the United States" and therefore needed to be immediately sold. (Dkt. 161 at 3-4.) If TikTok did what's alleged in the ten-count, 120-page consolidated complaint, (*see generally* dkt. 114), then it has engaged in very serious, likely criminal, wrongdoing and the settlement is woefully inadequate for a company that at the same time made $34.3 billion in

2020 alone. Arjun Kharpal, *TikTok owner ByteDance's revenue surged 111% in 2020, records 1.9 billion users*, CNBC (June 17, 2021), https://www.cnbc.com/2021/06/17/chinas-bytedance-tiktok-owner-saw-revenue-surge-111percent-in-2020.html.

With its actions, TikTok is giving every indication that it engaged in wrongdoing. TikTok immediately attempted to settle the suit with counsel in the first-filed case, well before the government pressure campaign began. (Dkt. 11-1 ¶ 2.) When the case didn't immediately settle, but more cases began piling up, TikTok hand-selected counsel from a competing case where no litigation whatsoever had occurred and reached a deal that was contingent on undisclosed items and kept secret from everyone including the court. (*See* dkts. 11 & 11-1.) This settlement was reached by counsel not yet appointed by the Court to represent the class, by an undisclosed client whose case contained single claim under BIPA, and where no discovery or motions practice testing the claims had occurred. *See E.R. v. TikTok, Inc*. No. 20-cv-02810 (N.D. Ill.). It is beyond a doubt that TikTok did not have any class member's best interests at heart when it took that step. *See Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 282-83 (7th Cir. 2002) (discussing "a 'reverse auction,' the practice whereby the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant."). It's also plain that counsel attending the mediation was simply interested in reaching topline number, with no thought or insight into the value of the several claims at issue. This process reeks of collusion.

As the Court is aware, the result was a $92 million settlement to resolve all conceivable claims against TikTok. The top line number may be impressive in the abstract, but in the circumstances of this case, with a Nationwide Class of around 89 million, the number is much less noteworthy. Moreover, the Settlement is titled heavily in favor of about 1.4 million class

members who live in Illinois. And any class member looking at the settlement or the notice would conclude TikTok is paying the bulk of the $92 million because TikTok was violating the Illinois Biometric Information Privacy Act by collecting biometrics as part of its consumer data harvesting, thus entitling those Illinois class members to six times what everyone else gets. Everyone else, including Mr. Litteken, gets a pittance. But if you look closer, the only thing class members are told for sure is that TikTok didn't violate BIPA because TikTok has warranted, and Class Counsel has apparently confirmed, that TikTok has "not used the App to collect biometric information or [] identifiers as defined by [BIPA]." (Dkt. 122-1 § 7.1; *see also id.* §§ 7.2–7.3; dkt. 161 at 22.) If Class Counsel have confirmed other facts related to TikTok's wrongdoing, the class isn't told. No other justification for the contrasting treatment of Illinois subclass members ever is provided. Again, something stinks.

To cover the stench, Class Counsel have taken a series of steps, some more extraordinary than others, to make this inadequate settlement seem fairer than it is. They first tried to cover up the relatively small size of the settlement by relying almost exclusively on publication notice and making misleading statements about the feasibility of providing direct notice to nearly every class member though the TikTok app. Only when called out by Mr. Litteken and the Court did TikTok apparently agree to in-app notice, at no cost, that Class Counsel was unable to negotiate. This poor notice allowed Class Counsel to claim Class Members were getting sufficient relief, but only based on the claim rates that inadequate notice would produce. Next, Class Counsel sought to protect their anticipated request for one-third of the settlement in fees by setting the objection deadline before they are required to file their fee petition, in blatant violation of Seventh Circuit authority. Class Counsel also have further frustrated the objection process by listing differing objection criteria in the class notice and the preliminary approval order they

drafted. And as has already been laid out, Ms. Carroll has gone far out of the bounds of a vigorous and healthy debate about what kinds of settlements benefit class members and are deserving of judicial approval through her attempts to get Mr. Litteken and his counsel to drop their objection to this unfair settlement. (*See* dkts. 165, 178.) This certainly calls Ms. Carroll's adequacy as class counsel into question. *See Creative Montessori Learning Ctrs. v. Ashford Gear LLC*, 662 F.3d 913, 919 (7th Cir. 2011).

In other words, a flawed process produced predictably flawed results. The Court should deny the request for final approval. At a minimum, the Court must order Settlement Class Counsel to re-notice the class with sufficient information concerning their fee request and adjust the objection deadline accordingly.

I. Required Information Concerning Objector

The counsel-drafted preliminary approval order, (dkt. 162), and the notice provided to the class, list different sets of information for class members to submit in order to object to the settlement. (*Compare id.* ¶ 9 (requiring seven categories of information) *with* § 16 at https://perma.cc/D7C5-2L9R (requiring three categories of information). Both sets require far more information from objectors than is provided to the class about the Class Representatives supposedly protecting their interests. Mr. Litteken believes that the information required by the notice is sufficient and that no objecting class member should be denied their right to object because they provided what the settling parties told them was required. *Johnson v. Quantum Learning Network, Inc.*, No. 15-CV-05013-LHK, 2016 WL 8729941, at *3 (N.D. Cal. Aug. 12, 2016) (Koh, J.) ("The Settlement and Notice should be consistent so that a Class Member wishing to object is able to do so properly.") Nevertheless, Mr. Litteken will provide the following requested information, with the exception of his retainer agreement with his counsel,

his declaration, and his counsel's declaration, unless compelled to do so by this Court. Mr. Litteken objects to those requirements as an unnecessary barrier to asserting his right to object. *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 n.3 (1st Cir. 2015) ("Because parties to a settlement have a shared incentive to impose burdensome requirements on objectors and smooth the way to approval of the settlement, district courts should be wary of possible efforts by settling parties to chill objections.") His signature and that of his counsel are more than adequate. Personal information is redacted per Fed. R. Civ. P. 5.2.

Name: Dennis Litteken
Address: [redacted]
Phone Number: [redacted]
TikTok Handle: [redacted]

This objection applies to all class members in part, and to class members who are not part of the favored Illinois Subclass. Mr. Litteken is represented by, and intends to appear at the final approval hearing though, his counsel Jay Edelson, Ryan D. Andrews, and J. Eli Wade-Scott of Edelson PC. His counsel have objected to the following settlements within the last five years: (1) *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty., Ill.) (objection overruled); (2) *Remijas v. Neiman Marcus*, No. 14-cv-1735 (N.D. Ill.) (objection sustained, *see* 341 F. Supp. 3d 823 (N.D. Ill. 2018); (3) *Cohen v. Fedex*, No. CIVDS1818604 (Sup. Ct. San Bernardino Cnty.) (objection overruled); and (4) *In re NCAA Student-Athlete Concussion Injury Litig.*, No. 13-cv-9116 (N.D. Ill.) (objection sustained in substantial part, *see* dkts. 115, 246). The orders addressing each of these objections are matters of public record.

II. Setting the Deadline for Class Counsel to Move for Fees After the Objection Deadline Violates Rule 23(h).

In an attempt to insulate their apparently forthcoming request for more than $30 million in attorney fees from meaningful opposition, Class Counsel drafted, and this Court entered, a

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