

**BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

**IN RE: TIKTOK MINOR PRIVACY  
LITIGATION**

**MDL No.**

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**BRIEF IN SUPPORT OF PLAINTIFF NICK MCKISSICK’S MOTION TO TRANSFER  
ACTIONS TO THE NORTHER DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C.  
§ 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

**I. INTRODUCTION**

Plaintiff seeks respectfully move the Judicial Panel on Multidistrict Litigation for an Order, pursuant to 28 U.S.C. § 1407, that transfers consolidates Plaintiff’s Action<sup>1</sup> and all Related Actions<sup>2</sup> that seek economic loss and other equitable remedies relating to Defendants Bytedance, Inc.; Bytedance, Ltd.; TikTok, Ltd.; TikTok, Inc.; TikTok PTE. Ltd.; and TikTok U.S. Data Security, Inc. (hereinafter, the “TikTok Defendants”) failure disclose that TikTok collects and sells personally identifiable information (“PII”) of millions of minor children, without the consent of the minors or their parents, to the United States District Court for the Northern District of California before the Honorable Yvonne Gonzalez Rogers; Like other cases currently before Judge Gonzalez Rogers in MDL No. 3047, Plaintiff McKissick’s case arises out of his minor child’s use of a social media platform, TikTok. Specifically, his claims arise from TikTok’s insufficient age verification policies and failure to notify parents or obtain parental consent to collect minor users’ PII.

At the time of this filing, approximately seven (7) cases have been filed across five (5) United States district courts arising from this conduct. As set forth fully below, action by this Panel to transfer, consolidate, and coordinate these actions in the Northern District of California before Judge Gonzalez Rogers who is currently presiding over the related multidistrict litigation

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<sup>1</sup> *McKissick, et. al., v. Bytedance, Inc., et. al.*, 3:24-cv-08051-AGT (N.D. Ca.) (Nov. 15, 2024).

<sup>2</sup> See Attached Schedule of Actions (collectively, the “Related Actions”).

No. 3047 will promote their just and efficient prosecution, enhance judicial economy, and serve the convenience of the parties. The consolidation and transfer before Judge Gonzalez Rogers or, alternatively, the inclusion of these cases in MDL No. 3047 is appropriate where, as here, common questions of fact and law abound, and transfer will further the convenience of the parties and witnesses, promote the just and efficient conduct of these actions and serve the goals of judicial economy, thereby advancing the overall interests of the Court. Consolidation and transfer either as a separate MDL or with MDL No. 3047 is appropriate because the Related Actions involve common issues of law and fact and the same TikTok Defendants as those in MDL No. 3047. Plaintiffs therefore respectfully request that the Panel determine that Plaintiff McKissick’s action—along with the Related Actions and all other cases arising out of TikTok’s collection of minor users’ PII—be transferred for inclusion in MDL No. 3047.

## **II. BACKGROUND**

On November 15, 2024, Plaintiff filed suit in the United States District Court for the Northern District of California against the TikTok Defendants. Plaintiff and the Related Actions each allege that TikTok failed to disclose that it collects and sells PII of minor children including, but not limited to: name, age, profile image, password, email, phone number, address, “approximate” location, social media account information, phone and social media contacts, messages sent to and received from other TikTok users, information in the clipboard of a user’s device, and payment card numbers. Upon information and belief, the TikTok Defendants collect and sell access to this personal data without the minors’ or their parents’ notice, knowledge, or consent, in violation of the Children’s Online Privacy Protection Act of 1998 (“COPPA”) and Children’s Online Privacy Protection Rule (“Rule” or “COPPA Rule”), a federal statute and regulations that protect children’s privacy and safety online. It also defies an order entered in

2019 to resolve a lawsuit in which the United States alleged that TikTok Inc.'s and TikTok Ltd.'s predecessor companies similarly violated COPPA and the COPPA Rule by allowing children to create and access accounts without their parents' knowledge or consent, collecting data from those children, and failing to comply with parents' requests to delete their children's accounts and information. Plaintiffs allege that TikTok did so knowingly, due to its lax age verification procedures. Like the actions already pending in MDL No. 3047, each of the Related Actions is based on the same or substantially similar allegations concerning TikTok's insufficient and defective age verification measures and TikTok's knowledge that millions of minors use its app.

### **III. ARGUMENT**

#### **a. Transfer and Consolidation of These Cases is Appropriate Under 28 U.S.C. § 1407.**

28 U.S.C. §1407(a) authorizes the transfer of civil actions pending in different federal district courts to a single federal district court for coordinated or consolidated pretrial proceedings so long as this Panel determines that the cases involve common questions of fact, and that the transfer will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the litigation. The Panel typically considers four factors in deciding whether to transfer a case under Section 1407:

- a. the elimination of duplication in discovery;
- b. the avoidance of conflicting rules and schedules;
- c. the reduction of litigation cost; and
- d. the conservation of the time and effort of the parties, attorneys, witnesses, and courts.

Here, each of these factors are met.

#### **i. Commonality Among the Related Actions**

As an initial matter, the Related Actions each assert the same or similar claims based on multiple common factual allegations and will involve common legal theories. As such, transfer

and coordination will assist the parties and the courts in avoiding duplicative rulings on the common issues in dispute and will also serve the convenience of the parties and witnesses and promote the just and efficient resolution of the litigation. Common questions of fact exist, and may be presumed, where two or more complaints assert comparable allegations against similar defendants based on similar transactions and events. *See In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales, Practices, and Products Liab. Litig.*, 704 F. Supp. 2d 1379, 1381 (J.P.M.L. 2010). Here, the complaints filed in the Related Actions assert common questions of fact by virtue of Plaintiff's allegations of the Defendants' wrongful conduct in collecting and using minor children's PII without parental consent. Common question of facts and law include but are not limited to:

- a. Whether TikTok has or had a practice of collecting Personal Information from children who were younger than 13 years old without notifying their parents and obtaining verifiable parental consent beforehand;
- b. Whether TikTok has or had a practice of using Personal Information from children who were younger than 13 years old without notifying their parents and obtaining verifiable parental consent beforehand;
- c. Whether TikTok's practices violate the Children's Online Privacy Protection Act of 1998 ("COPPA") and the Children's Online Privacy Protection Rule ("COPPA Rule");
- d. Whether TikTok engaged in unlawful business practices;
- e. Whether TikTok engaged in unfair business practices;
- f. Whether TikTok has unjustly received and retained monetary benefits from Plaintiff's minor child and Class Members by profiting off the use of their Personal Information; and
- g. Whether Class Members are entitled to damages and/or restitution, and if so, the method of computing damages and/or restitution.

**ii. Commonality Between the Related Actions and MDL No. 3047**

The Related Actions share common factual allegations and will involve common legal

theories with the Related Action as well as other cases against the TikTok Defendants in MDL No. 3047. In particular, both the Related Actions and the cases against the TikTok Defendants in MDL No. 3047 allege:

- a. TikTok’s age verification measures are defective;
- b. TikTok’s parental controls are defective; and
- c. TikTok and its employees have long known that children misrepresent their ages to pass through TikTok’s age gate, and that despite other measures purportedly designed to remove children from the platform, children are ubiquitous on TikTok;

The Panel cited to various common questions of fact that overlap with Plaintiff’s Action and the Related Action, including but not limited to whether Defendants “fail to verify users’ ages” or “encourage adolescents to bypass parental controls” as reasoning in consolidating and transferring MDL No. 3047 to the Northern District of California. (Doc. No. 37 at 2.) For these same reasons, consolidation and transfer is appropriate here.

**iii. Transfer is Convenient and Will Promote Just and Efficient Litigation.**

Given the common factual and legal issues set forth above, consolidation and transfer will avoid conflicting rules and schedules by eliminating inconsistent rulings and moving towards adjudication with minimum delay. As this Panel has stated, “transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole, even if it might inconvenience some parties to that action.” (Doc. No. 37) (citing *In re Crown Life Ins. Co. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001)).

Consolidation will also reduce litigation costs by streamlining and providing a path forward for all cases without duplication of effort among multiple parties. This will conserve the time and resources of all parties—including attorneys, witnesses, and judicial resources—by avoiding duplicate depositions, expert witnesses, and evidentiary hearings. Where consolidation

will necessarily avoid the risk of duplicative and costly discovery proceedings, it is favored. *See In re Zostavax (Zoster Vaccine Live) Prods. Liab. Litig.*, 330 F. Supp. 3d 1378, 1379 (J.P.M.L. 2016). With consolidation, duplicative discovery will be eliminated and there will be no risk of inconsistent judicial rulings. *See In re Actos Prods. Liab. Litig.*, 840 F.Supp.2d 1356 (J.P.M.L. 2011).

Here, centralization will help avoid duplicative discovery that would delay the swift, efficient, and cost-effective adjudication of these matters. Plaintiff, and presumably the Related Actions, requires discovery concerning TikTok’s age verification procedures, which is also at issue in MDL No. 3047. Moreover, discovery is well underway in MDL No. 3047 involving the conduct at issue.

**b. The Panel Expressed a Preference for Centralization of Cases Involving Social Media Platforms’ Age Verification Procedures.**

In consolidating and transferring MDL No. 3047 to the Northern District of California, the Panel cited to various common questions of fact, including whether Defendants in the MDL “fail to verify users’ ages” or “encourage adolescents to bypass parental controls”—questions that are essential to Plaintiff and the Related Actions’ legal theories. (*See* Doc. No. 37 at 2). The Panel ultimately found that given the common issues in the cases against the various social media companies, centralization would “eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to motions to dismiss and Daubert motions; and conserve the resources of the parties, their counsel, and the judiciary” as well as “serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation” (Doc. No. 37 at 2.) The same reasoning supports transfer and consolidation of the Related Actions here, which allege that TikTok knowingly collected and used minors’ PII without parental consent, which was made possible by TikTok’s lax age verification procedures.

Although the Related do not allege social media addiction, the degree to which factual and legal issues overlap, and discovery will be duplicative, weighs in favor of transfer. As this Panel previously stated:

That individualized factual issues may arise in each action does not—especially at this early stage of litigation—negate the efficiencies to be gained by centralization. The transferee judge can address unique issues using separate discovery tracks for each defendant or platform and employ separate motion tracks, to the extent necessary. The Panel has centralized product liability cases involving similar products made by different manufacturers where there will be overarching issues of general causation. *See, e.g., In re Fluoroquinolone Prods. Liab. Litig.*, 122 F. Supp. 3d 1378, 1379 (J.P.M.L. 2015). In addition to persuasively arguing that causation issues will overlap, the Meta defendants point out that all defendants likely will assert the same defenses. Centralization of all actions, therefore, will allow for efficient coordination of briefing and rulings on motions to dismiss, as well as *Daubert* motions.

(Doc. No. 37 at 2.)

**c. Transfer to the Northern District of California is an Appropriate Transferee District.**

Even absent the existence of MDL No. 3047, the Northern District of California would be an appropriate transferee district, and Judge Gonzalez Rogers is capable of effectively overseeing this litigation. As an initial matter, California is the nexus of wrongful conduct alleged in the Related Actions. Defendants operate as a common enterprise with Defendants TikTok Inc., TikTok U.S. Data Security Inc., and ByteDance, Inc. each having principal places of business in California.

The Panel typically takes into consideration various factors in determining the most appropriate transferee forum, including: (1) convenience of the parties; (2) location of witnesses and other evidence; (3) whether the district is in an accessible metropolitan location; (4) experience in management of class actions and complex litigation; (5) the caseload of the transferee district; and (6) the number of cases pending in the jurisdiction. *See e.g., In re Wheat Farmers Antitrust Class Action Litig.*, 366 F. Supp. 1087, 1088 (J.P.M.L.1973); *In re*

*Preferential Drug Prod. Pricing Antitrust Litig.*, 429 F. Supp. 1027, 1029 (J.P.M.L. 1977); *In re Tri-State Crematory Litig.*, 206 F. Supp. 2d 1376, 1378 (J.P.M.L. 2002); *In re Gen. Motors Corp. Dex-Cool Prod. Liab. Litig.*, 293 F. Supp. 2d 1381, 1382 (J.P.M.L. 2003); *In re Educ. Testing Serv. Prt 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004); see also MANUAL FOR COMPLEX LITIGATION 20.131 (4th ed. 2016) (Relevant factors include “the site of the occurrence of the common facts, where the cost and inconvenience will be minimized[,] and the experience, skill, and caseloads of available judges.”).

Given that several of the TikTok Defendants are headquartered in California, and litigation against TikTok in MDL No. 3047 is already centralized in the Northern District of California, there is simply no more convenient or more appropriate forum for transfer. The witnesses and evidence at issue are likely located in California, depositions would be most conveniently taken in California, and the parties and their counsel are already accustomed to litigating similar issues in the Northern District of California before Judge Gonzalez Rogers, who has effectively and efficiently managed MDL No. 3047 for the past two years and who is familiar with the parties and the issues. Given that a substantial amount of work has already taken place before Judge Gonzalez Rogers, centralization in the Northern District of California would serve judicial efficiency and convenience of the parties.

Moreover, Judge Gonzalez Rogers has the requisite experience, skill, and caseload to take on this litigation. The judge selected to oversee this litigations should have “the ability and temperament to steer this complex litigation on a steady and expeditious course . . . .” *In re: Microsoft Corp. Windows Operating Sys. Antitrust Litig.*, MDL 1332, 2000 WL 34448877 (J.P.M.L. 2000). This panel has also emphasized the importance of experience when coordinating and consolidating cases pursuant to 28 U.S.C. § 1407. See *In re: Pradaxa*



*(Dabigatran Etexilate) Prods. Liab. Litig.*, MDL No. 2385, Doc. 106 (assigning Judge David R. Herndon due, in part, to his experience handling another large pharmaceutical litigation). Judge Gonzalez Rogers has the necessary subject matter knowledge, experience, and ability to effectively and judiciously guide and manage this litigation. Given her experience, perceived availability, and demonstrated commitment to the efficient administration of this litigation, the Northern District of California is the appropriate Court, and Judge Gonzalez Rogers is the appropriate judge, for managing this litigation in a manner that will facilitate this litigation for the benefit of all parties.

#### **IV. CONCLUSION**

For the reasons set forth fully herein, Plaintiffs respectfully request that this Panel transfer all noticed Related Actions, and all subsequently filed tag-along cases as plead only against the TikTok Defendants involving claims relating to TikTok's collection and use of minor users' PII without parental notice or consent, to the Northern District of California for pre-trial centralization before Judge Yvonne Gonzalez Rogers and/or for inclusion in MDL No. 3047 pursuant to JPML Rule 7.1(b)(i).

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Respectfully submitted:

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