



No. S-209073  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

LISA THOMAS

PLAINTIFF

and

TIKTOK INC and TIKTOK PTE LTD

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF APPLICATION**

**Names of applicants:** Plaintiff and the plaintiff in *A.C. an infant by her Litigation Guardian Robert Andrew Cronk v. musical.ly Inc.* SCBC  
Vancouver Registry No. VLC-S-S-193384

**To:** The Defendants and their Solicitors

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr Justice Edelman at the courthouse at 800 Smithe Street, Vancouver, B.C. on October 27 and 28, 2021 at 9:00 am for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order for consent certification and notice approval in the form attached as Appendix A.

**Part 2: FACTUAL BASIS**

**Overview**

2. The present application concerns a proposed settlement of two putative class proceedings against the Defendants (collectively, “TikTok”) alleging various breaches of privacy in the operation of the app. This application is not an assessment of the merits of the settlement but only a procedural step concerning consent certification for settlement purposes and notice approval. If the Court grants the orders sought, notice will go out to Class Members, and a

further hearing will be held on a date already reserved, on January 28, 2022 to consider approval of the settlement.

**History of Proceedings**

3. Essentially, the TikTok app is used on smartphones and other devices to permit users to, among other things, make short videos and share them with other users on the platform. Beginning in about 2014, TikTok Inc's predecessor, musical.ly Inc., made available an app known formerly as "musical.ly." In 2017, TikTok made available an app known as "TikTok". In 2017, an affiliate of TikTok, ByteDance Ltd, acquired musical.ly Inc, which changed its name to TikTok Inc. Over the course of 2018, the musical.ly app's back-end operations and technology were phased out and, in August 2018, the musical.ly app's users were combined with the users of the TikTok app. At that time, the TikTok app continued to be distributed in Canada and the musical.ly app ceased to be available.

Affidavit No 1 of K McLaren

4. This action (*Thomas*) was filed on September 8, 2020. In brief, the claim alleges that TikTok, through the TikTok app on Android devices, deliberately collected users MAC addresses, in breach of Google's policies and users' privacy.

Affidavit No 1 S Turner

5. Justice Edelmann was appointed case management judge on November 17, 2020. The initial judicial management conference was set for January 5, 2021. On December 23, 2020, the plaintiff delivered the certification application and supporting affidavits from Dr Konstantin Beznosov (a professor of electrical and computer engineering at the University of British Columbia), Ms. Thomas, and a paralegal (exhibiting relevant publicly available documents). Dr Beznosov explained the nature and relevance of MAC addresses, their utility to a company like TikTok, and how TikTok's treatment of those MAC addresses could be evaluated.

6. A sequencing application was heard by Justice Edelmann over March 4<sup>th</sup> and 5<sup>th</sup>. In oral reasons, the Court ordered that the jurisdictional application by the originally named Non-Attorning Defendants would precede certification but that a schedule for certification would be set (given that the certification application would proceed at least as against the attorning

Defendants). Certification was set for January 26-28, 2022. A date was reserved for the hearing of the Non-Attorning Defendants' jurisdictional application.

*Thomas v ByteDance Ltd.*, 2021 BCSC 675

7. In the interim, as set out below, the possibility of a coordinated settlement strategy was discussed with counsel in *Cronk*. A joint approach was then made to the Defendants in both actions. To give settlement discussions the best chance, and based on the jurisdictional materials previously delivered, *Thomas* agreed to discontinue against the Non-Attorning Defendants.

Affidavit No 1 S Turner

8. The companion case *Cronk* was filed on March 3, 2019. In brief, *Cronk* alleges that the TikTok app collected private information from underage users without proper consent, in breach of minors' privacy. The claim seeks damages under the *Privacy Act*, RSBC 1996, c 373, the *Infants Act*, RSBC 1996, c 223, and at common law.

Affidavit No 1 of K McLaren

9. Service was effected on the Defendant musical.ly Inc. on June 28, 2019 in the United States. As a result of discussions with defence counsel, and a review of jurisdictional and other evidence, the action was discontinued against musical.ly and ByteDance Technology Co. Ltd., domiciled in the Cayman Islands and China, respectively.

10. The plaintiff applied for the appointment of a case management judge on October 1, 2019. The Honourable Justice Choi was appointed case management judge on November 13, 2019. The initial judicial management conference was adjourned by consent, and a JMC was scheduled for January 10, 2020. The parties attended that JMC before Justice Choi and made plans to try and move the case forward by agreement between counsel.

11. The plaintiff delivered the Notice of Application for certification and all supporting evidence on June 10, 2020. The plaintiff's certification record consisted of an affidavit from the litigation guardian for the plaintiff (Mr. Cronk), two expert reports, and a lengthy legal assistant affidavit compiling the results of counsel's investigations into the Defendant's activities.

12. The Defendant's evidence was delivered on January 29, 2021. This evidence informed both the certification process and the settlement reached between the parties. Included in the Affidavit of Daniel Habashi, General Manager of TikTok in Canada, was (i) key evidence about

class size (by age), (ii) the privacy policies at the materials times, and (iii) evidence requested under section 5, all of which helped inform the parties' views of the case. Much of this information was not available to the plaintiff from any public source. The plaintiff then delivered a reply affidavit and written argument in support of certification on March 12, 2021.

13. As a result of the preparation and exchange of application materials, it became apparent that certification and liability in *Cronk* (if the case went forward to trial) would turn on a number of factors, including: (i) the interplay between the *Infants Act* and the *Privacy Act*; (ii) the contractual terms and conditions between the Defendant and the class members; (iii) jurisdictional issues; and (iv) whether any of the claims can be adjudicated on a class-wide basis (or whether they must proceed individually). (Similar issues were raised by *Thomas*).

14. Both sides were faced with considerable uncertainty about the prospects of the claim on its merits. Whichever party was unsuccessful at certification would likely have appealed the result under the *Class Proceedings Act*, section 36. Any trial of the case was likely many years away. In addition, developments in related litigation in the United States were both cause for concern but also created an opportunity for settlement discussions.

15. In early March 2021, concurrent with the preparation of the plaintiff's reply evidence and argument in *Cronk*, the parties initiated a posture of dialogue with the Defendant regarding the potential for a negotiated resolution. The plaintiff in *Cronk* decided to involve the plaintiff in *Thomas* to explore a global resolution of all claims.

16. To facilitate the mediation, the parties agreed to a stay of the *Cronk* proceeding pending further developments. That consent order was entered July 5, 2021.

17. The parties to each of *Cronk* and *Thomas* exchanged mediation briefs with the Defendants in June and July 2021, leading up to a two-day mediation set for July 13<sup>th</sup> and 14<sup>th</sup>. With the assistance of an experienced, neutral mediator, the parties reached a resolution at the mediation. That arrangement was subsequently reduced to the full Settlement Agreement.

Affidavit No 1 of K McLaren

18. The parties now apply for consent certification and notice approval, in accordance with the terms of the Settlement Agreement.

### *The Terms of Settlement*

19. The proposed settlement has the following key features, which are favourable to the Class:

- a. The settlement is for the amount of CAD \$2 million, plus \$26,629 in costs reimbursement, all inclusive.
- b. In exchange for the payment of the settlement amount, the Defendants will consent to certification and receive a release with no admission of liability, upon court approval. The settlement will resolve all outstanding litigation against TikTok about privacy in Canada.
- c. After payment of fees and expenses, the funds will be distributed *cy pres* to the Law Foundation of British Columbia and certain other public-interest organisations with relevant experience, as contemplated by the *Class Proceedings Act*, section 36.2.

Affidavit No 1 of K McLaren

### *Amendment of Notice of Civil Claim*

20. As part of the Settlement, the Notice of Civil Claim in the *Thomas* action will be amended to assert all claims on behalf of the Class and Subclass, including the claims previously advanced in *Cronk* (the “**Proposed Amended NOCC**”). In addition, the Proposed Amended NOCC will include any other claims previously made in U.S. privacy litigation against the Defendant TikTok Inc.

Affidavits No 1 of S Turner & K McLaren

Stay order in *Cronk*

21. The Proposed Amended NOCC will not be filed until Court approval of the Settlement is final. The purpose of this approach is to prevent an unnecessary amendment followed by a reversal of the same amendment in the event that the settlement is not approved – thereby avoiding unnecessary burden on the Court and making the Settlement easier to implement.

22. The existing stay of *Cronk* will be extended pending the settlement approval hearing, with the consent of the plaintiff in *Cronk*.

Notice

23. Notice will be distributed by a combination of direct notice by email, along with indirect notice by newspaper publication and posting in both official languages. Direct notice is to be preferred, and that option is available here. Indirect notice is less likely to be effective but is used to backstop the direct notice campaign. The form of notice is attached to the Settlement Agreement.

Affidavit No 1 of K McLaren

Certification Criteria and Notice

24. On the basis of the evidence put forward in relation to certification, and on the basis of the proposed settlement, the criteria for certification under the *Class Proceedings Act* are met.

Affidavits No 1 and 2 of L Thomas

Affidavit No 1 of R Cronk

Affidavit No 1 of K McLaren

Affidavit No 1 of S Turner

Affidavit No 1 of A Harte

Affidavit No 1 of D Habashi in *Cronk*

Affidavit No 1 of R Hamidi in *Cronk*

25. The plaintiff Lisa Thomas is prepared to act as the representative plaintiff on behalf of the Class and has indicated her approval of the proposed settlement, consent certification, notice plan, and fees. She has no conflicts with the Class. A.C. by her litigation guardian Robert Cronk is prepared to act as the representative plaintiff on behalf of the Subclass, and have indicated their approval of the proposed settlement, consent certification, notice plan, and fees, including the *Cronk* stay and that action's subsequent dismissal. They have no conflicts with the class.

Affidavit No 2 of L Thomas

Affidavit No 1 of R Cronk

Affidavit No 1 of K McLaren

**Part 3: LEGAL BASIS**

26. The Plaintiff pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 50, the *Civil Rules*, and the Court's inherent jurisdiction.

**Amendment of the Thomas Action and continued stay of the Cronk Action**

27. The Court has a wide discretion under the Rules to permit an amendment. The Defendants consent to the amendment of the *Thomas* claim in the form set out in the Proposed Amended NOCC, solely for settlement purposes. The amendment is to include all outstanding, and settled, claims in the same proceeding. The Plaintiff in *Cronk* also consents to the inclusion of those claims in this proceeding (*Thomas*), and the extension of the stay in *Cronk* pending the settlement approval hearing. This Court has previously employed a similar procedure in the context of settlement approval of multiple actions, in *Sipos v. Netlink Computer Inc.*

SCR R 6-1

*Navarro v. Doig River First Nation*, 2016 BCSC 2006

*Sipos v. Netlink Computer Inc.*, 2021 BCSC 183

See also *Warner v Google LLC*, 2020 BCSC 1108

**Consent Certification**

28. The test for certification is altered where there is a proposed settlement to be considered. In that circumstance, it is proper to apply a modified approach to the certification inquiry in light of the proposed settlement, and the class need only establish that there is a “*prima facie* case” for certification.

Branch & Good, *Class Actions in Canada*, 2d ed. at 17.260 citing *Haney Iron Works Ltd v. Manufacturers Life Insurance Co.* 1998 CanLII 3085 (BC SC)

*Rezmuves v. Hohots*, 2019 ONSC 4871 (“Where certification is sought for the purposes of settlement, all the criteria for certification must still be met. However, compliance with the certification criteria is not as strictly required because of the different circumstances associated with settlements”)

29. This case meets the *prima facie* standard and the action should be certified as a class proceeding on consent. All of the requirements set out in section 4 of the *Class Proceedings Act* are met; in particular:

- a. Under section 4(1)(a), the pleadings must disclose a cause of action. The Proposed Amended NOCC pleads breaches of the *Privacy Act*, the *Business Practices and Consumer Protection Act*, and the *Infants Act*, and the common law torts of intrusion upon seclusion, unlawful means and unjust enrichment.

*Tucci v. Peoples Trust*, 2020 BCCA 246

*Garland v. Consumers' Gas Co.*, 2004 SCC 25

*A.I. Enterprises Ltd. v. Bram Enterprise Ltd.*, 2014 SCC 12

- b. Under section 4(1)(b), there is an identifiable class of two or more persons. The proposed class definition in this case has objective criteria and is sufficiently clear; any particular person's claim to membership in the class is determinable by stated, objective criteria and they can determine whether they are members. The proposed representative plaintiffs are class and subclass members as those terms are defined in the Settlement Agreement.
- c. Section 4(1)(c) requires that the claims of class members raise a common issue. This issue does not have to be determinative of liability and does not have to predominate over issues affecting only individual class members. The answers do not have to be the same for each class member. The proposed common issue here is a suitable common issue.
- d. To satisfy section 4(1)(d) a class proceeding must be the preferable procedure for the fair and efficient resolution of the common issues. This criterion is necessarily relaxed in a proposed settlement and consent certification.

*Bona Foods Ltd v. Ajinomoto U.S.A. Inc.*, 2004 CanLII 17525 (ON SC)

- e. Finally, section 4(1)(e) requires that there be a representative plaintiff who 1) would fairly and adequately represent the interests of the class, 2) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and 3) does not have, on the common issues, an interest that is in conflict with the interests of other class members. The proposed representative plaintiffs meet these stated criteria.



30. Consent certification of this action as a class proceeding for settlement meets the three goals of class proceedings as described by the Supreme Court of Canada in the seminal trilogy of *Rumley v. British Columbia*, 2001 SCC 69, *Hollick v. Toronto (City)*, 2001 SCC 68, and *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, and affirmed in *AIC Limited v. Fischer*, 2013 SCC 69, namely 1) access to justice, 2) judicial economy, and 3) behaviour modification.

### Notice Approval

31. Under the *Class Proceedings Act*, s. 35(5), in approving a settlement, the court must consider whether notice should be given, and its form and content.

*Class Proceedings Act*, s 35(5)

32. The factors in considering the form and scope of notice are set out in the *Class Proceedings Act*, s. 19. Relevant factors include the cost of giving notice; the size of the individual claims of the class members; and the number of class members. The notice may be given by posting, advertising, or publishing.

*Class Proceedings Act*, s 19(3) and (4)

33. As set out in *Branch & Good*, “notice need not be perfect in either its reach or its contents. Whether a proposed notice is appropriate in a particular case depends on the circumstances. ... The Act[] leave[s] the type of notice to the discretion of the court”. The notice must be understandable to the lay person.

*Branch & Good*, at 10.40-10.50, 10.220

34. The notice proposed here is intelligible, informative and tailored to the circumstances of this case. The plan for posting and publication of notice is national and should ensure sufficient exposure to class members. Direct notice is more likely to be effective than other forms of notice, and that is what is contemplated here.

Affidavit No 1 of K McLaren

*Denluck v The Board of Trustees for the Boilermakers’ Lodge 359 Pension Plan*, 2020 BCSC 1460 (“Direct notice ... is the form of notice most likely to ensure that the certification and settlement of this action is brought to the attention of class members.”)

*Lavier v. MyTravel Canada Holidays Inc.*, 2011 ONSC 3149

(“direct notice has a higher take-up rate than other kinds of notice.”)

35. Substantially similar notice and distribution processes were approved by this Court recently in each of *McLean v Cathay Pacific Airways Limited*, 2021 BCSC 1456 and *Dwor et al v car2go Canada Limited et al*, SCBC S-205424.

36. For all these reasons, the claim should be certified on consent and the notice of settlement hearing approved.

**Part 4: MATERIAL TO BE RELIED ON**

37. Affidavits Nos 1 and 2 of L Thomas;

38. Affidavit No 1 of R Cronk;

39. Affidavit No 1 of S Turner;

40. Affidavit No 1 of K McLaren;

41. Affidavit No 1 of A Harte;

42. Affidavit No 1 of D Habashi in *Cronk*;

43. Affidavit No 1 of R Hamidi in *Cronk*;

44. Proposed Amended Notice of Civil Claim in this proceeding, and Notice of Civil Claim in *Cronk*;

45. Pleadings and materials filed herein;

46. Any other such material as counsel may put forward and this Honourable Court accept.

The applicants estimate that the application will take two (2) hours.

[ x ] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

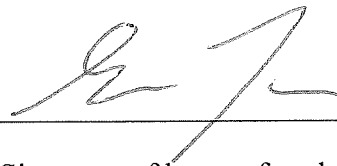
(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: October 15, 2021



Signature of lawyer for plaintiffs

Mathew Good

Saro Turner

Kevin McLaren

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this notice of application

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....  
Signature of [ ] Judge [ ] Master

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
  - discovery: production of additional documents
  - other matters concerning document discovery
  - extend oral discovery
  - other matter concerning oral discovery
  - amend pleadings
  - add/change parties
  - summary judgment
  - summary trial
  - service
  - mediation
  - adjournments
  - proceedings at trial
  - case plan orders: amend
  - case plan orders: other
  - experts
-

APPENDIX A

No. S-209073  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

LISA THOMAS

PLAINTIFF

and

TIKTOK INC and TIKTOK PTE LTD

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE EDELMANN } \_\_\_/\_\_\_/2021

ON THE APPLICATION of the plaintiff, Lisa Thomas, coming on for hearing at Vancouver, BC on October 27 and 28, 2021; and on hearing Mathew P. Good, Kevin McLaren, Saro Turner, Alexia Majidi and Ryan Matheuszik jointly for the plaintiff Lisa Thomas and the plaintiff A.C. by her litigation guardian Robert Cronk in *A.C. an infant by her Litigation Guardian Robert Andrew Cronk v. musical.ly Inc.* SCBC Vancouver Registry No. VLC-S-S-193384; and Tommy Gelbman and Carla Breadon for the Defendants;

THIS COURT ORDERS that:

1. For the purposes of the Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement dated July 13, 2021 (“**Settlement Agreement**”), and attached as **Schedule A** to this Order, apply to and are incorporated into this Order;

2. This action, as set out in the Proposed Amended Notice of Civil Claim, in the form attached as Schedule B to this Order, is certified as a class proceeding as against the Defendants for settlement purposes only;
3. The Proposed Amended Notice of Civil Claim shall not be filed with the Court by the Plaintiffs unless and until the Court grants final approval of the Settlement Agreement;
4. The class is defined as: “All physical persons in Canada (including their estates, executors, or personal representatives) who used the TikTok platform on or before the date of certification” (the “**Class**” and “**Class Members**”);
5. The included subclass is defined as: “All physical persons in Canada (including their estates, executors, or personal representatives) who used the TikTok platform at any time on or before the date of certification while under the age of majority in their province” (the “**Subclass**”);
6. Lisa Thomas is appointed the representative plaintiff on behalf of the Class, and A.C. by her litigation guardian Robert Cronk is appointed the representative plaintiff on behalf of the Subclass;
7. Mathew P Good Law Corporation, Hammerco Lawyers LLP and Slater Vecchio LLP are appointed class counsel on behalf of the Class (“**Class Counsel**”);
8. The following common issue is certified:

Was the privacy of Class Members breached by any of the Defendants during the Class Period in the operation of the TikTok App?
9. Notice is approved in the form set out as Schedule B to the Settlement Agreement;
10. Notice of certification will be distributed as provided for by Section 11 of the Settlement Agreement;
11. The stay of proceeding in *A.C. an infant by her Litigation Guardian Robert Andrew Cronk v. musical.ly Inc.* SCBC Vancouver Registry No. VLC-S-S-193384 is extended pending

the approval of the settlement in this action, by consent.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

.....  
Signature of  
Lawyer for Class

.....  
Signature of Tommy Gelbman  
Lawyer for the Defendants TikTok Inc. and TikTok Pte Ltd.

By the Court.

.....  
Registrar



**SCHEDULE A**  
**[Settlement Agreement]**

**SCHEDULE B**

Amended by Order of Justice Edelmann, made [DATE], 2021

No. S-209073  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

LISA THOMAS

PLAINTIFF

and

~~BYTEDANCE LTD, TIKTOK LTD, TIKTOK LLC,~~  
TIKTOK INC and TIKTOK PTE LTD

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**AMENDED NOTICE OF CIVIL CLAIM**

(TikTok - ~~Traeking~~ Privacy Breaches)

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFF'S CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. TikTok Inc. is an American company that operates a video social networking app, originally named *Musical.ly* and currently named *TikTok* (the “App”). The App collects information from its users, including but not limited to email addresses, phone numbers, usernames, first and last names, short biographies, biometric data, geolocation data and a profile picture (the “Private Information”).

2. Among the users of the App users are children under the age of majority (the “Underage Users”). The Defendants collected, used, retained, and commercialized the Private Information

of Underage Users without obtaining parental consent of the Underage Users, and profited from it. The Defendants' wrongful acts violated the *Privacy Act*, RSBC 1996, c 373, the *Infants Act*, RSBC, c 223, and related enactments, and unjustly enriched it at the expense of Underage Users.

3. In addition, for at least 18 months prior to November 18, 2019, ~~ByteDance Ltd and its subsidiaries~~ (collectively, "**ByteDance**") TikTok Inc. and TikTok Pte. Inc. deliberately intercepted, collected, recorded and exploited the personal information of people using the TikTok App on Google's Android mobile operating system ("**AndroidOS**"), in contravention of Google's policies. Despite Google's policies prohibiting the collection of unique device identifiers known as MAC addresses (further defined below), TikTok not only deliberately collected device MAC addresses through the exploitation of a bug in AndroidOS, but also added an extra layer of data encryption to the TikTok App designed to conceal this violation of user privacy from Google and users. Users of the TikTok App are not given an option to consent to the collection of their device's MAC address, and it would be unknown to them that this data collection was occurring.

4. Furthermore, the Defendants have used automated software, proprietary algorithms, AI, facial recognition, and other technologies to commercially profit from Plaintiff's and Class Members' identities, unique identifying information, biometric data and information, images, video and digital recordings, audio recordings, clipboard data, geolocation, names, e-mail addresses, passcodes, social media accounts, messaging services, telephone numbers, and other private, non-public, viewing history, digital activities, or confidential data and information, or meaningful combinations thereof, all of which is **Private Information**, as more fully set out below. Some or all of the Private Information has been surreptitiously transmitted to China. All of this is done without the knowledge or consent of users, including the Plaintiff's and Class Members.

4.5. TikTok ~~ByteDance~~'s deliberate and clandestine practices intentionally invade Class Members' privacy solely to enrich ~~ByteDance~~ the Defendants, primarily through the sale of advertising. TikTok ~~ByteDance~~'s unlawful acts violated the *Privacy Act*, RSBC 1996, c 373 and related enactments. Through this suit, Canadians (~~outside Quebec~~) seek to hold ~~ByteDance~~ the Defendants accountable for this misconduct.

## *The Parties*

~~2. The defendant ByteDance Ltd (字节跳动有限公司), is a company incorporated in the Cayman Islands with a principal place of business at Xueyuan S Rd, Shuangyushu, Haidian District, China, 100080, and an address for service at PO Box 31119, Grand Pavilion Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 1205, Cayman Islands. ByteDance Ltd is the management entity for the TikTok app. ByteDance Ltd carries on business worldwide, including in British Columbia and Canada, by making the TikTok app available to Canadian users and selling advertising to Canadian businesses.~~

~~3. The defendant TikTok Ltd is a company incorporated in the Cayman Islands, with a subsidiaries based in the United States and elsewhere. TikTok Ltd is a wholly owned subsidiary of ByteDance Ltd, and has an address for service at PO Box 31119, Grand Pavilion Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 1205, Cayman Islands. TikTok Ltd carries on business worldwide, including in British Columbia and Canada, by making the TikTok app available to Canadian users and selling advertising to Canadian businesses.~~

~~4. TikTok LLC is an American limited liability corporation registered in the state of Delaware, with an address for service c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 USA. TikTok LLC is a wholly owned subsidiary of TikTok Ltd. TikTok LLC carries on business worldwide, including in British Columbia and Canada, by making the TikTok app available to Canadian users and selling advertising to Canadian businesses.~~

~~5.6. TikTok Inc is an American company incorporated in Delaware with an address for service c/o Harvard Business Services, Inc., 16192 Coastal HWY, Lewes, Delaware, 19958 USA. TikTok Inc is a wholly-owned subsidiary of ByteDance Ltd. TikTok Inc carries on business worldwide, including in British Columbia and Canada, by making the TikTok App available to Canadian users and selling advertising to Canadian businesses.~~

~~6.7. TikTok Pte Ltd is a company incorporated pursuant to the laws of Singapore with an address at 8 Marine View, #43-00, Asia Square Tower 1, Singapore 018960. TikTok Pte Ltd is a wholly-owned subsidiary of TikTok Ltd, and carries on business worldwide, including in British~~

Columbia and Canada, by making the TikTok App available to Canadian users and selling advertising to Canadian businesses.

~~7.8. Together, ByteDance Ltd, TikTok Ltd, TikTok LLC, TikTok Inc, and TikTok Pte Ltd are “ByteDanceTikTok” and the “Defendants”. Each of the Defendants was an agent of the other for the purposes of developing, distributing, and operating the TikTok app. All The Defendants participated in the provision of the TikTok App to users and advertisers in Canada and the collection of MAC addresses Private Information at issue in this proceeding, as set out below. The precise roles of each of the Defendants are well known to them.~~

8.9. The Plaintiff Lisa Thomas is a resident of British Columbia. At all material times she was a user of the TikTok App on AndroidOS devices, including a Samsung S10. Until the public revelations of TikTok’s misconduct regarding MAC addresses, she was unaware that the Defendants had collected the unique MAC address of the AndroidOS devices she used to access the TikTok App. She was similarly unaware that the Defendants used this unique identifier to track her activity. She did not consent to collection of her MAC address or her Private Information.

9.10. The Plaintiff brings this claim on her own behalf and on behalf of:

All physical persons in Canada (including their estates, executors, or personal representatives) who used the TikTok platform on or before the date of certification

~~all individuals in Canada, other than Excluded Persons and residents of Quebec, who used the TikTok app on AndroidOS devices from the date ByteDance began collecting MAC addresses of such individuals until the date this action is certified as a class proceeding ( the “Class”, “Class Members” and “Class Period”), and an included Subclass of:~~

All physical persons in Canada (including their estates, executors, or personal representatives) who used the TikTok platform at any time on or before the date of certification while under the age of majority in their province (the “Subclass” and “Subclass Members”).

~~Excluded Persons means:~~

- ~~1. Directors and officers of ByteDance and their immediate families;~~
- ~~2. Counsel for the parties, and the case management and trial judge in this proceeding, and their immediate families.~~

## **The Underage User Allegations**

### **Collection of Children's Private Information by the Defendants**

11. Since at least 2014, TikTok Inc. has operated the App. The App is available to download from Apple's App Store, the Google Play Store, and the Amazon Appstore, but generates revenue for the Defendants through various means. Since 2014, over 200 million users have downloaded the App worldwide, including in Canada.

12. To register for the App, users provide their email address, phone number, username, first and last name, a short bio, and a profile picture. Between December 2015 and October 2016, the Defendants collected geolocation information from users of the App.

13. Commencing in July 2017, TikTok requests age information from new users during the registration process for an App account, and prevents individuals who indicate that they are under 13 from creating accounts. The Defendants did not request age information for existing users who had already created App accounts prior to July 2017.

14. The App provides a platform for users to create videos and then synchronize them with music or audio clips from either the App's online music library or music stored on the user's device. The App's online library has millions of song tracks, including songs from popular children's movies and songs popular among tweens and younger children. The App offers simple tools to create and edit videos. Once the video is completed, the user has the option to name the video with a title before posting and sharing the video publicly.

15. In addition to creating and sharing videos, the App provides a platform for users to connect and interact with other users. Users can comment on the videos of other users, and have the option to "follow" other users' accounts so that they can view more of their videos in the future. Popular users can have millions of "fans" following their accounts. A user's account is set to public by default, which means that a user's profile bio, username, profile picture, and videos are public and searchable by other users. Users have the option to set their accounts to "private"

so that only approved followers can view their videos; however, users' profiles, including usernames, profile pictures and bios, remain public and searchable by other users.

16. The App also allows users to send direct messages to communicate with other users. These direct messages can include colorful and bright emoji characters ranging from animals, smiley faces, cars, trucks, and hearts, among many others. By default, an App user can direct message any other user.

17. Until October 2016, the App had a feature where a user could tap on the "my city" tab, which provided the user with a list of other users within a 50-mile radius, and with whom the user could connect and interact with by following the user or sending direct messages.

18. The Defendants were aware that Underage Users were using the App. As of at least October 2016, on the Musical.ly websites, it has provided parents guidance about their child's use of the App. Until April 2017, the webpage stated, for example, "If you have a young child on Musical.ly, please be sure to monitor their activity on the App."

19. The App does not provide a function for users, including Underage Users, to close their accounts, and instead requires users to send an email to the Defendants to close their accounts.

20. In December 2016, a third party publicly alleged in an interview with the cofounder of the App that seven users whose accounts were among the most popular in terms of followers appeared to be children under 13. Shortly thereafter, the Defendants then reviewed its most popular users and determined an additional 39 appeared to be under 13. In February 2017, the Defendants sent messages to these 46 users' email addresses telling users under 13 to edit their profile description to indicate that their accounts were being run by a parent or adult talent manager. The Defendants did not take any steps to ensure that the person who was responding to the request was a parent and not the child user.

21. In December 2017, ByteDance Ltd. acquired Musical.ly Inc. In August 2018, the Musical.ly app was merged with the App under the TikTok name. Musical.ly Inc. continued to operate the merged app.

22. The Defendants' decision to collect Private Information from Underaged Users was planned and deliberate, and was made knowing that Underaged Users had not consented to or were capable of consent, and were not aware of the implications of the collection, and that their



guardians were likewise not aware and had not consented to the collection of the Private Information.

23. The Defendants collected, retained and used the Private Information of Underaged Users for its own benefit.

24. The collection, retention and use of the Private Information of Underaged Users by the Defendants was unauthorized.

25. As a result of the unauthorized collection, retention and use of the Private Information of Underaged users, Subclass Members have been deprived by:

- a) suffering a loss and violation of privacy;
- b) being unfairly induced into making in-App purchases; and
- c) suffering an increased risk of exploitation by adults.

26. As a result of the unauthorized collection, retention and use of the Private Information of Underaged Users by the Defendants, they have been enriched by:

- a) selling advertisements to third parties on the basis of the Private Information;
- b) selling the Private Information to third parties;
- c) selling customer profiles of Underaged Users containing Private Information to third parties;
- d) profiting from in-App purchases made by Underaged Users.

27. Collecting, retaining and using the Private Information was in the Defendants' economic interest, and provided them with a competitive advantage in the marketplace.

28. The Defendants have admitted collecting the Private Information from Underaged Users, and did not take proper, or any, steps to remove the Private Information of Underaged Users who it knew were using the App.

29. The Defendants operated from, amongst other jurisdictions, the United States. The United States *Children's Online Privacy Protection Act (COPPA)* requires that websites and online services directed to children obtain parental consent before collecting personal information

from children under the age of 13. The Google Play Store, Apple Store, and Amazon App store terms explicitly incorporated COPPA regardless of an end user's location.

30. Despite the explicit provisions of COPPA, the Defendants collected Private Information from Underage Users without parental consent.

31. On February 27, 2019, the Defendants agreed to pay a \$5.7 million fine to settle a US Federal Trade Commission complaint alleging breaches of COPPA in the United States. At that time, the fine was the largest civil penalty ever collected in a case involving protection of children's privacy.

### **The MAC Address Allegations**

#### ***MAC Addresses and Unique Identifiers***

~~10.~~32. A media access control address (“**MAC address**”), also known as a “physical address” or a “burned-in address” is a unique identifier assigned by the manufacturer to the wired or wireless network chip used to access a data network over Ethernet, WiFi, or Bluetooth. A MAC address is unique to a device, and can be used to track that device. Typically, the user of a device cannot change the MAC address assigned to their device.

~~11.~~33. Because a MAC address is both unique and unchanging, it can be used to track a user even if they opt out of data tracking, set the AndroidOS system settings to prevent apps from tracking them, reset their assigned unique advertising ID, or delete an app and reinstall it later.

~~12.~~34. MAC addresses are personal information deserving of protection. In particular, MAC addresses need to be kept separate from a person's real name, registered name, physical location and biographical details. Otherwise, the combination of some or all of that information with a MAC address permits the data holder to track and monitor users across a wide spectrum of services, even when users have legitimately attempted to protect their privacy.

#### ***Google Policies Prohibit Collection of MAC Addresses on AndroidOS Devices***

~~13.~~35. Since at least 2015, both Google and Apple have banned the collection of MAC addresses by apps available on the Google Play Store and the iOS App Store, respectively.

Google explicitly prohibits collecting MAC addresses in its best practices, and designed AndroidOS 6.0 and up to prevent apps from collecting MAC addresses:

### Don't work with MAC addresses

MAC addresses are globally unique, not user-resettable, and survive factory resets. For these reasons, it's generally not recommended to use MAC address for any form of user identification. Devices running Android 10 (API level 29) and higher report randomized MAC addresses to all apps that aren't device owner apps.

Between Android 6.0 (API level 23) and Android 9 (API level 28), local device MAC addresses, such as Wi-Fi and Bluetooth, **aren't available via third-party APIs**. The `WifiInfo.getMacAddress()` method and the `BluetoothAdapter.getDefaultAdapter().getAddress()` method both return `02:00:00:00:00:00`.

Additionally, between Android 6.0 and Android 9, you must hold the following permissions to access MAC addresses of nearby external devices available via Bluetooth and Wi-Fi scans:

Method/Property	Permissions Required
<code>WifiManager.getScanResults()</code>	ACCESS_FINE_LOCATION or ACCESS_COARSE_LOCATION
<code>BluetoothDevice.ACTION_FOUND</code>	ACCESS_FINE_LOCATION or ACCESS_COARSE_LOCATION
<code>BluetoothLeScanner.startScan(ScanCallback)</code>	ACCESS_FINE_LOCATION or ACCESS_COARSE_LOCATION

~~14.36.~~ Google Play Store policies warn developers that they must seek “explicit consent of the user” before associating an advertising identifier with “personally-identifiable information or ... any persistent device identifier”.

~~15.37.~~ At all material times, ~~ByteDance was~~ the Defendants were aware of these prohibitions and restrictions on the collection of MAC addresses by Google for apps, including the TikTok App, distributed through the Google Play Store for AndroidOS devices.

~~16.38.~~ Users’ MAC addresses were not necessary to the operation of the TikTok App.

### ~~Underaged Users~~

~~17.~~ ~~ByteDance makes the TikTok app available to users between the ages of 13 and the age of majority (“Underaged Users”). The Defendants do not require parental consent for such users and have treated them in the same manner as users of the age of majority. Underaged Users are Class Members and part of the Class.~~

***ByteDance's-The Defendants' Collection of MAC Addresses from TikTok Users***

18.39. From a date currently unknown to the Plaintiff, but well known to the Defendants, the Defendants ByteDance exploited a bug in AndroidOS to circumvent the restriction against collecting MAC addresses from users of the TikTok App on AndroidOS devices, including the Plaintiff and Class Members.

19.40. Further, to conceal its wrongdoing, ByteDance-the Defendants employed an extra layer of data encryption to obscure the fact that it was collecting users' MAC addresses from Google and users.

20.41. TikTok App users, including the Plaintiff and Class Members, had no knowledge that ByteDance-the Defendants had collected a device's MAC address and was using this to track the user's activities. TikTok App users, including the Plaintiff and Class Members, did not and were not given any opportunity to consent to ByteDance-the Defendants collecting or using their MAC addresses.

21.42. ByteDance-The Defendants acted deliberately to devise a scheme to surreptitiously collect the MAC addresses and exploit them for its own benefit. The Defendants ByteDance collected, retained, and used the MAC addresses for its their own benefit.

22.43 The particulars of what the Defendants ByteDance have done with users' MAC addresses are well known to the Defendants, but necessarily include cross-referencing it against users' names and profiles, and user activity, on the TikTok App, to compile granular and invasive profiles of users. In addition, the DefendantsByteDance have used the MAC addresses to compile lists of devices associated with a user, and monitor and track users across devices. The DefendantsByteDance have exploited that information to sell advertising, user profiles, and personal information to third parties for its own profit.

23.44. As a result of the unauthorised collection, retention, and use of the MAC addresses, the Plaintiff and Class Members have been deprived by suffering a loss and violation of privacy, which has an economic value to them and to the Defendants.

24.45. As a result of the unauthorised collection, retention, and use of the MAC addresses, the Defendants ByteDance have been economically enriched by:

- a. selling advertising to third parties on the basis of the MAC addresses for display to users of the TikTok App;
- b. selling the MAC addresses and associated data to third parties;
- c. selling customer profiles containing the MAC addresses and associated data to third parties;
- d. advancing its own research and development agenda, turning users into unwitting test subjects, to profit its own commercial interests; and
- e. permitting the Defendant ByteDance to track and exploit users across services, including beyond the TikTok App.

25.46. Collecting, retaining, and using the MAC addresses was in the Defendants' ByteDance's economic interest, and provided it with a competitive advantage in the marketplace and it profited by it.

26.47. The Defendants' ByteDance's actions were unconscionable. In circumstances in which The Defendants ByteDance's completely controls the operation of the TikTok App, and where users have no visibility into its mechanism of action, it took advantage of its position of power over users to exploit them and benefit itself. The Defendant ByteDance took advantage of the inability of users, including the Plaintiff and Class Members, to protect their own interests because of ignorance or inability to understand the existence, nature or character of its collection of MAC addresses.

27.48. The Defendants' ByteDance's actions breached the *Criminal Code of Canada*, sections 402.1 and 402.2(2). These gross violations of privacy negate any justification, which is denied, for its collection of MAC addresses.

28.49. The Defendants' ByteDance's wrongdoing became public on about August 11, 2020, when the *Wall Street Journal* broke the story.

### **Unauthorised Collection of Private Information**

50. In addition to and separately from the collection of Private Information from Underaged Users and the wrongdoing related to MAC addresses, the Defendants have collected, manipulated and used the Private Information of Class Members in breach of privacy.

### **Mechanics and Scope of Private Information Collection**

51. The Defendants require that users provide certain Personal Information before users can create or post videos. The Defendants collect user videos by transferring any video created by a user, including videos that are not shared publicly, to a domain controlled by the Defendants: muscdn.com. The taking of private videos is not disclosed to users. The App also takes user and device information by infiltrating mobile devices to access and extract further Private Information.

52. The Defendants transmit physical location data and video viewing histories to third parties without users' knowledge or consent. For example, where a user is physically situated at different times, what videos a user views, when a user views videos, and which videos a user "like" is transmitted to Facebook for the purpose of formulating targeted advertising to users. The taking of Private Information begins after the downloading process but before a user creates an account or videos, and continues even after a user closes the app. The Defendants access Private Information created outside of an unrelated to the App by accessing, for example, the clipboard on users' devices, private messaging apps, and other sensitive data and information.

53. The Defendants also record and collect biometric information, such as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, which allows recording of race, gender and age related information. The Defendants apply facial and voice recognition technology to TikTok videos. Biometric information, a sub-group of Personal Information, is collected to further enhance and augment complex algorithms that track and record profiles of users.

### **Exploiting the Private Information of Users**

54. The Defendants create a dossier of private and personally identifiable and content for each TikTok user for their own economic and financial gain. Through their unlawful collection of Private Information, the Defendants analyse users' consumption habits, and preferences, which in turn makes targeting them with advertising more efficient, effective, and lucrative. The Defendants unlawfully earn and continue to earn profits and revenues from the collection of Private Information.

55. The Defendants also transfer the Private Information outside the care and control of their United States and Singapore-based corporate personalities, without user consent or notice, which creates a risk of use of the Private Information by the Government of China. The Defendants' privacy policy does not advise nor seek consent from users that their Personal Information will be transferred to China, for any purpose. Further, or in the alternative, the Defendants transfer users' Personal Information to other tech giants based in China, such as Tencent Holdings Limited and Alibaba Holding Group Limited in exchange for undisclosed commercial benefit to the Defendants.

## Part 2: RELIEF SOUGHT

### On behalf of all Class Members

~~29.56.~~ An order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50;

~~30.57.~~ Statutory damages for breach of the *Privacy Act BC* for residents of British Columbia;

~~31.58.~~ Statutory damages or disgorgement for breach of the *Privacy Act SK* for residents of Saskatchewan;

~~32.59.~~ Statutory damages or disgorgement for breach of the *Privacy Act MB* for residents of Manitoba;

~~33.60.~~ Statutory damages or disgorgement for breach of the *Privacy Act NL* for residents of Newfoundland & Labrador;

~~34.61.~~ Damages for the tort of intrusion upon seclusion for residents of Yukon, Northwest Territories, Alberta, Nunavut, Ontario, New Brunswick, Nova Scotia and Prince Edward Island;

~~35.~~ ~~Statutory compensation under the *Infants Act*, RSBC 1996, c 223, s 20 and related enactments;~~

~~62.~~ Disgorgement of all benefits received by the Defendants attributable to the unauthorised collection, retention, and use of the Private Information;

~~36.63.~~ Punitive damages;

~~64.~~ An injunction to restrain the impugned practices by the Defendants;

~~65.~~ In addition or in the alternative, a declaration and an injunction to restrain or prohibit further collection, retention, use or disclosure of Private Information from Underage Users, under the *Business Practices and Consumer Protection Act*, s 172;

~~37.66.~~ Interest on all amounts under the *Court Order Interest Act*, RSBC 1996, c 79;



On behalf of Subclass Members

67. A declaration that any agreement by an Underage User for the collection, retention, use or disclosure of Private Information is unenforceable under the *Infants Act*, s 19;

68. Statutory compensation under the *Infants Act*, s 20.

~~38. An injunction to restrain the impugned practice by the Defendants;~~

~~39. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;~~

40.70. Such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

41.71. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Privacy Act BC* and related enactments, the *Infants Act* and related enactments, the *Court Jurisdiction and Proceedings Transfer Act*, and the *Supreme Court Civil Rules*.

#### ***Breach of the Privacy Act (BC)***

42.72. The *Privacy Act*, RSBC 1996, c 373, s 1 creates a tort, actionable without proof of damage, where a person, wilfully and without a claim of right, violates the privacy of another.

43.73. The Defendants' acts as set out above constituted "eavesdropping or surveillance" on Class Members within the meaning of the *Privacy Act BC*, s 1(4).

44.74. The Defendants breached the *Privacy Act BC*, s 1 and the Plaintiff and Class Members' privacy as set out above when they collected, retained and used MAC addresses Private Information from the Plaintiff and Class Members wilfully and without a claim of right.

45.75. The Plaintiff and Class Members resident in British Columbia are entitled to statutory damages as a result of the Defendants' breaches under the *Privacy Act BC*, s 1.

#### ***Breach of the Privacy Act (SK)***

46.77. The *Privacy Act*, RSS 1978, c P-24, s 2 creates a tort, actionable without proof of damage, where a person, wilfully and without a claim of right, violates the privacy of another.

47.78. The Defendants' acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act SK*, s 3(a).

48.79. The Defendants breached the *Privacy Act SK* and Class Members' privacy as set out above when they collected, retained and used Private Information MAC addresses from Class Members wilfully and without a claim of right, and without Class Members' consent, express or implied.

49.80. By their conduct set out above, the Defendants has breached the *Privacy Act SK*, ss 2 and 3(c).

~~50~~.81. Class Members resident in Saskatchewan are entitled to statutory damages as a result of the Defendants' breaches under the *Privacy Act SK*, s 2 under s 7(a) or disgorgement under s 7(c).

***Breach of the Privacy Act (MB)***

~~51~~.82. The *Privacy Act*, CCSM, P125, s 2 creates a tort, actionable without proof of damage, where a person to substantially, unreasonably, and without claim of right, violates the privacy of another.

~~52~~.83. The Defendants' acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act MB*, s 3(a).

~~53~~.84. The Defendants breached the *Privacy Act MB* and Class Members' privacy as set out above when they collected, retained and used Private Information ~~MAC addresses~~ from Class Members wilfully and without a claim of right, and without Class Members' consent, express or implied.

~~54~~.85. Class Members resident in Manitoba are entitled to statutory damages as a result of the Defendants' breaches under the *Privacy Act MB*, s 2 under s 4(1)(a) or disgorgement under s 4(1)(c).

***Breach of the Privacy Act (NL)***

~~55~~.86. The *Privacy Act*, RSNL 1990, c P-22, s 3(1) creates a tort, actionable without proof of damage, where a person, willfully and without a claim of right, violates the privacy of an individual (natural person).

~~56~~.87. The Defendants' acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act NL*, s 4(a).

~~57~~.88. The Defendants breached the *Privacy Act NL* and Class Members' privacy as set out above when they collected, retained and used Private Information ~~MAC addresses~~ from Class Members wilfully and without a claim of right, and without Class Members' consent, express or implied.

~~58.~~89. By their conduct set out above, the Defendants have breached the *Privacy Act* NL, ss 3 and 4(c).

~~59.~~90. Class Members resident in Newfoundland and Labrador are entitled to statutory damages as a result of the Defendants' breaches under the *Privacy Act* NL, s 3 under s 6(1)(a) or disgorgement under s 6(1)(c).

### ***Intrusion upon Seclusion***

~~60.~~91. For Class Members resident in Ontario and other common law provinces except British Columbia, Saskatchewan, Manitoba and Newfoundland and Labrador, it is a tort, actionable without proof of harm, for a defendant to:

- a. intentionally or recklessly;
- b. invade a plaintiff's private affairs or concerns;
- c. without lawful justification;
- d. where a reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.

~~61.~~92. As set out above, through their unauthorized interception, collection, and recording and exploitation of Class Members' Private Information MAC addresses, the Defendants committed the tort of intrusion upon seclusion against Class Members. The Defendants intentionally, or at a minimum recklessly, invaded the private affairs or concerns of the Class Members. The Defendants' actions were without lawful justification. A reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.

~~62.~~93. These Class Members are entitled to damages as a result of the Defendants' tortious acts.

### ***Breaches of the Business Practices and Consumer Protection Act ("BPCPA")***

94. The Defendants have breached the *BPCPA*.

95. The Plaintiff and Class Members used the App for purposes that are primarily personal, family or household and are "consumers" within the meaning of s. 1 of the *BPCPA*.

96. The App is a “good” or “service” within the meaning of s. 1 of the *BPCPA*.
97. The Defendants are a “supplier”, within the meaning of s. 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.
98. The use of the App is a “consumer transaction”, within the meaning of s. 1 of the *BPCPA*.
99. By its conduct set out above, the Defendants breached ss. 4, 5, 8 and 9 of the *BPCPA*. The Defendants’ actions constitute unfair and unconscionable business practices.
100. The Plaintiff and Class Members have suffered loss within the meaning of s. 171 of the *BPCPA* as a result of the Defendants’ contraventions of the *BPCPA*.
101. The Defendants engaged in or acquiesced to the contraventions that caused the loss and damage to the Plaintiff and Class Members, within the meaning of s. 171 of the *BPCPA*.
102. The Plaintiff and Class Members are entitled to damages under s. 171 of the *BPCPA*.
103. The Plaintiff and Class Members are entitled to a declaration to proclaim the Defendants’ wrongdoing and an injunction to restrain further abuses, under the *BPCPA*, s 172.
104. The Plaintiff and Class Members rely upon parallel provisions and the common law in the other provinces and territories of Canada. Class Members resident outside British plead and rely on *inter alia*: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, 2002, SO, c 30, Sch A; *Consumer Protection Act*, CQLR c P-40.1; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection Act*, RSPEI 1988, c C-19; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; each as amended from time to time and with regulations in force at material times.

### **Unlawful Means Tort**

105. By its conduct set out above, the Defendants intended to injure the Plaintiff and Class members through the collection of Private Information as a means to enrich itself. The Defendants acted unlawfully against Google, Apple and Amazon by breaching their policies in order to inflict injury on the Plaintiff and Class Members. Google, Apple, and Amazon did or would have suffered loss as a result, and would have a cause of action against the Defendants for *inter alia* breach of contract, misrepresentation, and the breaches of COPPA.

106. The Plaintiff and Class Members waive this tort and elect to pursue restitutionary remedies against the Defendants for their unlawful acts. The Defendants must disgorge to Plaintiff and Class Members an amount attributable to the value it received for or attributable to the collection, retention, and use of the Private Information.

### **Unjust Enrichment**

107. As set out above, the Defendants have been enriched by the collection, retention, and use of the Private Information from Class Members.

108. The Plaintiff and Class Members have been deprived through the loss of privacy and Private Information.

109. There is no juristic reason why the Defendants should have received or should retain this benefit. The lack of consent, the breaches of the *Infants Act* and the *Age of Majority Act*, *COPPA*, and the *Criminal Code of Canada*, RSC 1985, c 46, ss 402.1 and 402.2(2), negate any juristic reason including contract why the Defendants should have received or should retain the benefit.

110. In particular, the Private Information which was shared by the Defendants with advertisers and others falls within the definition of “identity information” under the *Criminal Code*, s 402.1. The unauthorised sharing, collection, retention, and use by the Defendants of the Private Information with third parties, recklessly or wilfully blind to the ways in which that conduct increased the risks of illegal hacking, identity theft, sexual exploitation of minors and

related crimes constitutes trafficking in identity information within the meaning of the *Criminal Code*, s 402.2(2).

111. As a result, the Defendants have been unjustly enriched by the benefits it received from the Plaintiff and the Class Members.

112. Justice and good conscience require that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the collection, retention, and use of the Private Information from the Class Members.

### ***Breaches of the Infants Act***

~~63.~~113. Persons under the age of majority are afforded special protection in British Columbia and elsewhere in Canada. Contracts made with minors are unenforceable by operation of the *Age of Majority Act*, RSBC 1996, c. 7 and the *Infants Act*, RSBC 1996, c 223, s. 19(1) and related enactments. Infants are entitled to compensation under the *Infants Act*, s 20 if a contract is unenforceable.

~~64.~~114. Personal information relating to youth and children is of particular sensitivity. Any collection use or disclosure of such private information must be done bearing in mind the age of the person whose private information is collected.

~~65.~~115. Underaged Users could not and did not provide consent to the Defendants for the collection, retention, use or disclosure of their ~~MAC addresses~~ Private Information.

~~66.~~116. There was no enforceable or any contract here to permit the collection of ~~MAC addresses~~ the Subclass Members' Private Information. Underaged Users are entitled to compensation from the Defendants for inter alia their loss of privacy.

~~67.~~117. Infants are entitled to compensation under the *Infants Act*, s 20 if a contract is unenforceable.

~~65.~~118. The terms of use between the Defendants and the Underaged Users are unenforceable. Subclass Members are entitled to compensation from the defendants for inter alia their loss of privacy.

~~66.119.~~ The ~~Plaintiff and Class Subclass~~ Members rely upon parallel provisions and the common law in the other provinces and territories of Canada.

### ***Punitive Damages***

~~67.120.~~ The Defendants' misconduct, as described above, was malicious, oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. The Defendants violated the trust and security of Class Members. The Defendants did it deliberately, knowing that their actions were in breach of Google's policies and deliberately attempted to conceal their wrongdoing. The Defendants' actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

### ***Joint and Several Liability***

~~68.121.~~ The Defendants are jointly and severally liable for the acts of each of them.

### ***Injunction***

~~69.122.~~ The Plaintiff and Class Members are entitled to an injunction under the *Law and Equity Act*, RSBC 1996, c 253 to restrain this conduct by the Defendants now and into the future.

### ***Discoverability***

~~70.123.~~ The Plaintiff and Class Members could not reasonably have known that:

- a. they sustained injury, loss or damage as a consequence of the Defendants' actions in respect of MAC addresses; or
- b. having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages until, at the earliest, August 11, 2020 when the *Wall Street Journal* broke the story regarding MAC addresses.

~~71.124.~~ The Plaintiff and Class Members plead and rely on postponement and discoverability under the *Limitation Act*, SBC 2012, c 13, s 8.



~~72.125.~~ In addition, the Defendants, through the covert scheme they undertook to collect the MAC addresses and the Private Information, willfully concealed the fact of the misuse of the Plaintiff and Class Members' MAC addresses and the Private Information without consent, and that this was caused or contributed to by the Defendants' acts or omissions. The Plaintiff and Class Members rely on *Pioneer Corp. v. Godfrey* and the *Limitation Act*, s 21(3).

~~73.126.~~ The Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No M098 and related enactments to suspend the running of the limitation period from March 26, 2020.

### ***Service on the Defendants***

~~74.127.~~ The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

~~75.128.~~ The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

~~76.129.~~ An action under the *Privacy Act* must be determined in the Supreme Court of British Columbia (*Privacy Act*, s 4).

Plaintiff's address for service:

Slater Vecchio LLP  
1800 - 777 Dunsmuir Street  
Vancouver, BC V7Y 1K4

With a copy to Hammerco Lawyers LLP by email at [kmclaren@hammerco.ca](mailto:kmclaren@hammerco.ca)  
And to Mathew P Good Law Corporation by email at [mat@godbarrister.com](mailto:mat@godbarrister.com)

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: \_\_\_\_\_, 2021

For: \_\_\_\_\_  


Signature of lawyer for plaintiff  
Anthony A Vecchio, Q.C.  
Kevin McLaren  
Mathew P Good

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the Defendants ~~ByteDance Ltd, TikTok Ltd, TikTok LLC, TikTok Inc, and TikTok Pte Ltd~~ outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim for damages arising out of the Defendants' ByteDance's breaches of privacy through unauthorised collection of user data.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28*

*Court Order Interest Act, RSBC 1996, c 79*

*Privacy Act, RSBC 1996, c 373*