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 - ~~Tracking~~ 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.

~~1.~~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 "~~ByteDance~~TikTok" 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 Sates *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.

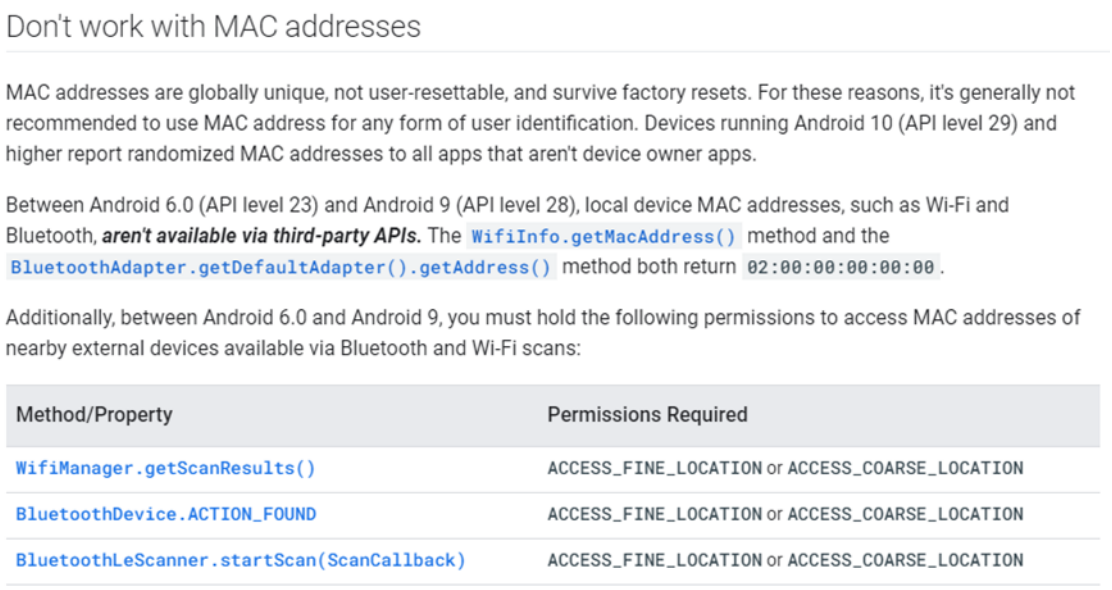
~~11.~~33. Because a MAC address is both unique and unchanging, it can be used to track a user even if they opt out of data tracking, set the AndroidOS system settings to prevent apps from tracking them, reset their assigned unique advertising ID, or delete an app and reinstall it later.

~~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
`WifiManager.getScanResults()`	`ACCESS_FINE_LOCATION` or `ACCESS_COARSE_LOCATION`
`BluetoothDevice.ACTION_FOUND`	`ACCESS_FINE_LOCATION` or `ACCESS_COARSE_LOCATION`
`BluetoothLeScanner.startScan(ScanCallback)`	`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 Defendants~~ByteDance~~ have used the MAC addresses to compile lists of devices associated with a user, and monitor and track users across devices. The Defendants~~ByteDance~~ 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 control~~s~~ 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
And to Mathew P Good Law Corporation by email at mat@goodbarrister.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

[x] 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:

[x] 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