



This is the 1st
Affidavit of S Turner
in this proceeding and
was made on
25/OCT/2021

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

AFFIDAVIT #1 OF SARO TURNER

I, Saro Turner, barrister & solicitor, of 18th Floor – 777 Dunsmuir Street, Vancouver, British Columbia, AFFIRM THAT:

1. I am a lawyer for the plaintiff, Lisa Thomas, and proposed class members in this action and as such have personal knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of the information, and I believe that information to be true. I make this affidavit in support of the application for consent certification, followed by settlement and fee approval.

2. This affidavit supplements the Affidavit No 1 of Kevin McLaren (“**McLaren Affidavit**”), which sets out general background applicable to this proceeding, as well as detailing the history of *A.C. an infant by her Litigation Guardian Robert Andrew Cronk v. musical.ly Inc. et al*, SCBC Vancouver Registry No. VLC-S-S-193384 (*Cronk*), a companion case to this action.

Timeline of this Proceeding

3. This action 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.

4. Service was effected on the Defendants TikTok Pte Ltd and TikTok Inc. on September 22, 2020 and October 7, 2020, respectively. As described in each affidavit of service filed in the Vancouver Registry on November 6, 2020, a copy of the notice of civil claim was delivered to each of TikTok Pte Ltd and TikTok Inc. at their business addresses, respectively in Singapore and the United States.

5. 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. The plaintiff applied for the appointment of a case management judge by letter dated November 6, 2020. The Honourable Justice Edelmann was appointed case management judge on November 17, 2020. The initial judicial management conference was set for January 5, 2021.

7. In advance of the first JMC, the originally named Defendants, ByteDance Ltd, TikTok Ltd and TikTok LLC (the "**Non-Attorning Defendants**"), communicated their position that they intended to contest the Court's jurisdiction by means of a jurisdictional motion heard prior to certification. The Non-Attorning Defendants filed jurisdictional responses on December 29, 2020. The Defendants TikTok Inc and TikTok Pte Ltd did not. The Defendants also stated their intention to bring a summary trial application dismissing the entirety of the plaintiff's claim. The plaintiff confirmed her intention to proceed expeditiously to certification, and to seek to compel the filing of a Response to Civil Claim from the Defendants.

8. At the JMC on January 5, 2021, Justice Edelmann ordered that a sequencing application be held over two mornings on March 4th and 5th, 2021. The Non-Attorning Defendants were

ordered to deliver their sequencing materials by February 2nd, and the other Defendants were directed to file their Responses to Civil Claim by February 26th.

9. On February 2nd, the Defendants delivered their sequencing materials for the jurisdictional motion. The plaintiff delivered her response on February 16th.

10. The attorning Defendants provided their Response to Civil Claim on February 26th. The availability of that pleading – not standard in many proposed class actions, at least prior to certification – helped to inform the contours of the case.

11. The sequencing application was heard by Justice Edlmann over March 4th and 5th. Judgment was reserved until March 12th. In oral reasons, the Court ordered that the jurisdictional application by the 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. June 22nd was reserved for the hearing of the Non-Attorning Defendants’ jurisdictional application.

12. In the interim, as set out in the McLaren Affidavit, 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.

13. To give settlement discussions the best chance, and based on the jurisdictional materials previously delivered, *Thomas* agreed to discontinue against the Non-Attorning Defendants.

14. With those arrangements made, the parties moved forward with the mediation process.

15. I share and adopt the views of Mr. McLaren, set out in the McLaren Affidavit, concerning the challenges facing this proceeding and the rationale for settlement on the terms reached.

16. The settlement contemplates amendment of the Notice of Civil Claim in *Thomas* to include all of the claims from *Cronk*, as well as the claims made in U.S. litigation against TikTok Inc. (as described in the McLaren Affidavit), but which had not yet been advanced in Canada. The reasons for doing so are several. As set out in our letter to the Court on August 18, 2021, a copy of which is attached as **Exhibit “A”** to this affidavit, there is already a stay in *Cronk*.

Rather than use Court resources to certify and settle two separate actions about privacy allegations against the Defendants, the parties propose to deal with all issues in *Thomas* only. Accordingly, *Thomas* needs to include all claims from *Cronk*.

17. In addition, it is our understanding that the Defendants are seeking to resolve all outstanding litigation in Canada relating to allegations about their privacy practices that have previously been the subject of complaint in the United States. For that reason, the claims are included for the purpose of providing a release in respect of them. In our evaluation of the claims' prospects, as plaintiffs' counsel, we considered the relative strength of those additional allegations. In the opinion of plaintiffs' counsel, those claims were no stronger than, and likely weaker than, the existing claims in *Thomas* and *Cronk*. As explained in the McLaren Affidavit at paragraph 34(d) this is particularly due to the fact that, unlike in the US, there is no equivalent privacy legislation relating to biometric information and/or video privacy in Canada, and no entitlement to statutory liquidated damages in Canada, in contrast to legislation in certain states in the United States. The claims were also overlapping in material respects.

18. In order to prevent any unnecessary amendment to the Notice of Civil Claim in *Thomas*, followed by a reversal of the same amendment in the event that the settlement is not approved, the settlement contemplates the Amended Notice of Civil Claim not being filed until approval is final. In my view, this is a sensible way of avoiding unnecessary burden on the Court and makes the agreement easier to implement.

AFFIRMED BEFORE ME in the
City of Vancouver in the
Province of British Columbia
This 25th of October 2021



A Commissioner for Taking Affidavits
In the Province of British Columbia

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SARO TURNER

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OUR FILE NO. CA0013-1

August 18, 2021

BY E-MAIL to sc.civil_va@BCCourts.ca

Supreme Court of British Columbia
Vancouver Registry, Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Attention: Manager, Supreme Court Scheduling

Re: Lisa Thomas v. ByteDance Ltd. et al
SCBC Vancouver Registry No. S-209073 [Thomas]

A.C. an infant by her Litigation Guardian Andrew Cronk v. Musical.ly Inc.
SCBC Vancouver Registry No. S-193384 [Cronk]

Dear Sir,

Please provide this letter to the Honourable Mr Justice Edelman (the case management judge in *Thomas*), and to the Honourable Madam Justice Choi (the case management judge in *Cronk*), and to Chief Justice Hinkson or his designate, as appropriate.

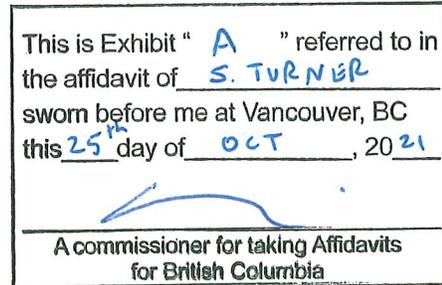
We write on behalf of the Plaintiffs in each of *Thomas* and *Cronk*, with the consent of the Defendants in each of the actions.

All parties to both *Thomas* and *Cronk* have reached a confidential global settlement regarding the outstanding class proceedings against TikTok. Under the *Class Proceedings Act*, RSBC 1996 c 50, s 35, the settlement requires court approval. We write to seek direction from the Court as to the procedure to give effect to the settlement.

With a view to achieving judicial efficiency and preserving party and court resources, rather than certify and settle two separate actions, the parties propose to consolidate all claims into a single action. The Plaintiffs would then seek certification of that single action for the purpose of obtaining settlement approval under the *Class Proceedings Act*.

The parties respectfully propose the following to give effect to this proposal:

1. Maintain the stay of the *Cronk* action, which is stayed by order entered July 5, 2021, enclosed for ease of reference.





2. Amend the Notice of Civil Claim in *Thomas* to produce a single proceeding in *Thomas* that would plead all claims resolved as part of the mediation.
3. Request that the certification and settlement approval applications be assigned to Justice Edelmann, and the global settlement approval process be permitted to go forward before Justice Edelmann in *Thomas*, to be heard on the date previously scheduled for certification in that matter: January 26, 2022 (scheduling order enclosed for ease of reference).
4. Maintain the currently scheduled Judicial Management Conference on September 9, 2021 at 9:00 am to address any procedural issues with Justice Edelmann.

We look forward to the Court's direction and would be pleased to address any matters arising. In light of the confidentiality of the settlement, we respectfully request that the correspondence and filings in relation to *Cronk* and *Thomas* not be filed on the public record until such time as the settlement is made public.

Yours truly,

SLATER VECCHIO LLP

A handwritten signature in black ink, appearing to read "Saro J. Turner".

Saro J. Turner

Counsel for the Plaintiff in *Thomas*

Direct Line (604) 602-5459

/sdt

Enclosure(s)

cc: Counsel for the Defendants in *Thomas* and *Cronk*
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