

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

**IN RE: TIKTOK, INC., CONSUMER
PRIVACY LITIGATION**

MDL No. 2948

Master Docket No. 20-cv-4699

Judge John Z. Lee

This Document Related to All Cases

Magistrate Judge Sunil R. Harjani

**REPLY IN SUPPORT OF CHRISTINA TRAVIS' OPPOSED MOTION TO
ACCEPT MOVANTS' TIMELY AND VALID REQUESTS FOR
EXCLUSION FROM THE SETTLEMENT, IN THE ALTERNATIVE,
OBJECTIONS TO CLASS SETTLEMENT FOR FAILURE TO PROVIDE
NOTICE REGARDING THE OPT OUT PROCEDURE**

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I. INTRODUCTION

In filing its opposition to Christina Travis’ (and 2,253 movants’) Motion, TikTok, Inc. (“TikTok”) seeks to “protect”¹ the consumers it victimized from exercising their constitutionally² and contractually protected rights and prevent them from proceeding in a private arbitration action. Each Movant entered into an arbitration agreement with TikTok (which TikTok drafted),³ governed by the Federal Arbitration Act, which shall apply to all disputes between them and TikTok. Each Movant, retained by counsel, knowingly and voluntarily seek to be excluded from settlement, and vindicate their privacy rights through their private arbitrations.⁴ Each Movant has timely opted out of the settlement, and, prior to the exclusion deadline, placed TikTok on notice of their request to proceed in an arbitration. Indeed, TikTok and Movants initiated resolution discussions before the opt out deadline, which are ongoing. Therefore, at all times, TikTok was aware of the Movants’ desire to be excluded from settlement, and was in possession of Movants’ names, and usernames/contact information.

¹ TikTok makes numerous unprofessional and baseless ethical attacks on Movants’ counsel. *See* ECF No. 224, p. 1 (“mass opt outs were also improperly solicited using deceptive advertising that ignored and disregarded the Court-approved class communications,”) p. 5-6 (similar), p. 14 (unprofessionally arguing that “class members may have been victims of the law firms.”).

² *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2559 (2011) (“In the context of a class action predominantly for money damages we have held that absence of notice and opt-out violates due process.” (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847–48 (1999) (citing *Shutts* for proposition that due process requires, at minimum, absent plaintiff be given opportunity to opt out of class).

³ <https://www.tiktok.com/legal/terms-of-service?lang=en> (last visited May 2, 2022)

⁴ Similarly to defendant in *Doordash*, TikTok prefers selective enforcement of its agreement. *See Abernathy v. Doordash, Inc.*, 438 F. Supp. 3d 1062, 1068 (N.D. Cal. 2020) (employees compelled arbitration after Doordash refused to proceed in an arbitration); *see also Miracle-Pond v. Shutterfly, Inc.*, No. 19-cv 04722, 2020 U.S. Dist. LEXIS 86083, at *2 (N.D. Ill. May 15, 2020) (granting motion to compel arbitration and staying class action where contract was formed with hyperlinked policies near a sign-in button, similar to TikTok).

First, the Movants’ motion should be granted because TikTok does not dispute that the absentee class members have an absolute right to opt out of the settlement and proceed in an arbitration. Instead, its entire opposition seeks to establish a bright line rule prohibiting attorneys’ non-misleading, and truthful “mass” solicitations, where no such rule exists. The U.S. Supreme Court held that bans on lawyer advertising are unconstitutional. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). The reason for TikTok’s unfounded, unprofessional, speculative, and unethical attacks on Movants’ counsel and *one* posting used by Freedom Law Group, is because in a few rare circumstances courts questioned some misleading solicitations and demanded corrective actions be taken before the exclusion deadline.⁵ Here, TikTok cannot point to any misleading communications from any law firm. In a desperate attempt, TikTok presents this Court with an unauthenticated and incomplete advertisement that appears to be from the Class Administrator, shamefully and falsely claiming that it belongs to one of the law firms. TikTok then includes in its motion an unambiguous and truthful post from Freedom Law Firm, which unambiguously seeks to represent individuals who wish to opt out of the class settlement. Importantly, given that TikTok was aware even before the exclusion deadline of the Movants’ desire to opt out, and their attorneys’ allegedly “misleading” and “disruptive” advertisements, the question is – why didn’t TikTok take

⁵ See *In Re Facebook Biometric Info. Privacy Litig.*, No. 15-03747 (N.D. Cal. Sept. 22, 2020), ECF No. 487 (**Exh. I**) (admonishing counsel for running an advertisement on Facebook, where notice was also given, inviting class members to “fill out a claim” which caused confusion by a number of class members, and reiterating that the solicitation process should be “forthright, candid, and honest, and it cannot be disruptive); *Chalian v. CVS Pharmacy, Inc.*, No. 2:16-cv-8979-AB-AGR, 2020 U.S. Dist. LEXIS 206078, at *14 (C.D. Cal. Oct. 30, 2020) (issuing a temporary restraining order (which was subsequently lifted to allow counsel to communicate with their clients) upon request of both class counsel and defendant, restraining communications by certain absentee class members and their agents, where numerous class members received an unsolicited text message from a toll-free number warning them about the “danger” of the imminent settlement, and provided a link to an extensive website containing a myriad of inaccurate statements about class settlement).

any corrective action or alert this Court? The answer is simple – because the advertisements were not misleading, or disruptive.

Second, TikTok **admits** that each opt out was submitted by unique individuals, and thus, the opt outs must be processed. *See* ECF No. 224 (“TT Oppo.”), p. 2. The Class Administrator owed a fiduciary duty to absentee class members to process the separate opt outs and not to “invalidate” them at TikTok’s request in order to minimize their liability.

Third, **none** of the opt outs were rejected for any defects. The Notice given to the class did not even require the information TikTok lists as missing. Importantly, TikTok and the Class Administrator were on notice of the Movants’ names, usernames and/or contact information, and their desire to be excluded from the settlement. At the very minimum, the opt outs were in substantial compliance, and any inadvertent errors resulted from excusable neglect. Counsel for Movants compiled contact information for TikTok and this Court to again verify their clients’ information. *See* Exh. J, Exh. L. Therefore, Movants’ Motion should be granted.

II. COUNSEL WAS NOT PROHIBITED FROM ADVERTISING

TikTok’s main⁶ argument is that the Settlement Agreement (“SAR”) and the Court placed an unconstitutional ban on counsel prohibiting soliciting and representing groups of individuals. TT Oppo p. 2⁷ (“mass” opt-outs occur when numerous individual opt outs are solicited and

⁶ TikTok spends a majority of its arguments within Sections II and III reciting the SAR and the Court’s Order, neither of which prohibit mass solicitations by attorneys. TikTok does not argue that the SAR terms were incorporated into the Notice or were required for a valid opt out. The Notice sent to class members only stated that a valid opt out must contain a signature under penalty of perjury. The penalty of perjury language on TikTok’s “Exclusion” form were never approved by the Court.

⁷ TikTok’s proposed definition of the “mass” opt out is not within the SAR or any of the Court’s orders, and contradicts the language within the SAR where the words “mass” and “class” appear to be used interchangeably. SAR §10.1. TikTok’s counsel also refers to the Movant’s motion as a “mass” filing, which again confirms their understanding that a “mass” filing means a single filing

submitted jointly as part of a coordinated campaign by the same law firm or group of firms.”); *id.* p. 3. In TikTok’s view, absentee class members not only should be deprived of their due process rights to opt out, they also lose a right to hire counsel, and all law firms are entirely banned from their constitutional rights⁸ to represent or solicit representation of individuals who wish to be excluded. This position is contrary to the law, ethics, and reason. If the parties’ intentions were to prohibit attorneys’ solicitations of clients, such settlement provision would be unethical, imposing restriction on counsel’s practice of law and consumers’ rights to be represented by counsel of their choosing.⁹ Unsurprisingly, Class Counsel does not join TikTok in its arguments and interpretations and is not opposing the requested exclusions.

on behalf of others. See TT Oppo, pp. 1, 11 (“Defendant . . . opposes the mass motion” and “Here, the 2,254 individuals who are part of the mass motion . . .”).

⁸*Bates*, 433 U.S. at 383 (holding that attorneys hold constitutional right to not be subjected to blanket suppression on solicitations); *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 85 L. Ed. 2d 652, 105 S. Ct. 2265 (1985) (struck down a ban on attorney advertising despite “mere possibility” that some members of population might find advertising “offensive”)

⁹ See e.g. Ill. R. Prof’l Conduct R. 5.6(b) (prohibiting agreements with a restriction on lawyer’s right to practice); ABA Section of Litigation Ethical Guidelines for Settlement Negotiations, August 2002, § 4.2.1 (prohibiting provisions restricting lawyer’s representation of clients in the future litigation); ABA Formal Op. 93-371 (commenting that a defense lawyer may not require a provision prohibiting counsel from representing clients); LACBA Ethics Opinion 468 (March 16, 1992) (opining that a provision prohibiting lawyer’s representation of future plaintiffs is unethical); Md. Bar Ass’n Ethics Op. 82-53 (1982) (concluding that attorney may not **ask for or agree to** a provision prohibiting counsel from rendering future services to potential clients in” pending, parallel, or future litigation); Cal. State Bar Ass’n Formal Op. No. 1988-104 (similar); see also *In re Gormally*, 212 N.J. 486 (N.J. Dec. 19, 2012) (reprimanding attorney as a result of a provision imposing restrictions on lawyer’s right to practice); *In re Hager*, 812 A.2d 904, 919 (D.C. 2002) (finding a provision precluding counsel from representing future consumers on similar claims to be unethical and against public policy); *Adams v. Bellsouth Telcoms.*, 2001 U.S. Dist. LEXIS 24821, *45 (S.D. Fla. Jan. 29, 2001) (recommending substantial sanctions and ethical courses for inclusion of a settlement provision restricting their practice of law). See also ACC DOCKET, John K. Villa, *Practice Restrictions in Settlement Agreements* (June 2007) (discussing ethics and ethical opinions concerning various limitations on practice of law). Agreements restricting lawyer’s right to advertise as a result of a settlement also have been found to be unethical. ABA Formal Op. 00-417; Colo. Ethics Op. 92; Ariz. Ethics Op. 90-06 (1990). In fact, even less restrictive provisions were determined to be unethical. COPRAC Formal Opinion No.

This Court did not issue a uniform ban on attorney advertisement; it only prohibited attorneys from submitting a single opt out on behalf of multiple clients. ECF No. 162 p. 30; *see e.g. In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 226 (3d Cir. 2002) (disallowing “mass opt outs” i.e., a single opt out filing signed by attorney on behalf of many individuals); *Hallie v. Wells Fargo Bank, N.A.*, No. 2:12-cv-00235-PPS-APR, 2015 U.S. Dist. LEXIS 54481, at *10-11 (N.D. Ind. Apr. 27, 2015) (same); *Larson v. AT&T Mobility LLC*, No. 07-5325, 2009 WL 10689759, at *3 (D.N.J. Jan. 16, 2009) (same). This was not the case – as each individual signed their separate opt out requests. TikTok cannot point to a single sentence from the Court’s order which places a uniform ban on “solicitations.”

Moreover, TikTok is mistaken to argue that a failure to impose a restriction on counsel’s practice of law and solicitation of exclusions could hypothetically terminate a settlement (although not this one). This was never the Court’s concern, nor does TikTok argue that it would have terminated this lucrative settlement as a result of .00002% of filed exclusions. Additionally, Courts have a “fiduciary responsibility, as the guardian of the rights of the absentee class members,” and not defendant. *In re NFL Players’ Concussion Injury Litig.*, 961 F. Supp. 2d 708, 713 (E.D. Pa. 2014); *see also In re Agent Orange Prod. Liab. Litig.*, 800 F.2d 14, 18-19 (2d Cir. 1986) (“when a potential conflict arises between the named plaintiffs and the rest of the class, . . . the attorney’s duty to the class requires him to point out conflicts to the court so that the court may take appropriate steps to protect the interests of absentee class members”). TikTok’s argument is hypothetical and baseless.

1988-104 (opining that counsel’s agreement not to mention a particular case in his advertising material is unethical); LECBA SF, Opinion 2012-1 (concluding that prohibiting disclosure of public facts regarding past representation is unethical).

TikTok also contends that Plaintiffs' Lead Counsel negotiated a premium by prohibiting solicitations of mass opt outs in lieu of a blow-up clause. It is highly doubtful that *Plaintiffs Lead Counsel* would engage in unethical tactics while serving the role of class counsel. Also, contrary to TikTok's arguments, "negotiated benefit to all parties" must be disregarded when it comes to unethical provisions restricting practice of law or violative of due process rights of absentee class members.¹⁰ Thus, Movants must be allowed to opt out of the settlement.

III. TIKTOK'S UNFOUNDED ATTACKS ON COUNSEL'S ETHICS ARE IMPROPER AND DO NOT WARRANT INVALIDATION OF ANY OPT OUTS

TikTok's unprofessional and unsubstantiated attacks on well-reputed and ethical firms should be disregarded. TikTok initially presents two unauthenticated advertisement pages, falsely claiming that both belong to the Movants' counsel. The first advertisement was not used by either of the law firms. The undersigned counsel conducted a google search of the image and found this image on a website generating memes.¹¹ It is likely that the ad was run by Angeion Group LLC. See ECF No. 196 ¶¶ 12 (explaining that it posted ads on websites where TikTok class members were predicted to visit). No law firm would run an ad that does not state "attorney advertising."

TikTok does not challenge any advertisements by Clarkson or Kind Law. As to the truthful posting from Freedom Law Firm, it unambiguously and truthfully stated that "attorneys Freedom Law Firm are assisting individuals who are interested in being excluded from the class action." TT Oppo, p. 7. TikTok fails to show what is deceptive about this advertisement. Although TikTok

¹⁰ It is highly unlikely that even if the Settlement Agreement contained a "blow-up" clause that TikTok would exercise it simply because less than 2,300 absentee class members elected to opt out of a settlement agreement, given that it would obtain release of liability for nearly 100 million individuals.

¹¹ See <https://en.dopl3r.com/index.php/memes/dank/tiktok-lawsuit-user-data-allegedly-shared-with-third-parties-users-could-be-compensated-share-me-inbox/1471220> (last visited May 2, 2022).

takes issue with a statement that the law firm is willing to represent individuals “*seek[ing]* a more significant monetary recovery,” TikTok does not dispute that the statement is truthful.

Counsel was not required to include every possible disclosure imaginable and provide exhaustive legal advice on every online post, as TikTok suggests. TikTok fails to explain why counsel was required to provide a long list of additional disclosures and caveats such as “warning class members that any attempt to do so would forever forfeit their right to a payment from the existing Settlement,” the risks of litigation, that “Court has found settlement fair, reasonable and adequate” and so on. TT Oppo pp. 6-8. It is not possible or practical to provide every piece of legal advice and disclose all possible risks and benefits of one’s individual proceeding through an advertisement. Frank and full legal advice occurs within the sacred and confidential context of the attorney-client relationship. Moreover, not a single opt out has claimed they were deceived or confused by the opt out advertisements. TikTok’s suggestion to include a link to the Court-approved settlement notice or website does not fair any better. Doing so would be misleading, and create a false impression that the counsel is associated with the class counsel.

TikTok also mistakenly takes issue with the “hashtags” listed on the bottom for the law firm which specializes in bankruptcy - #FreeFromDebt #BankruptcyLaw. First, the ad is clear that the law firm intends to represent the individuals in a private arbitration action for those individuals who wish to be excluded from the settlement. Second, the ad makes no guarantees of a recovery, and merely states that the firm will “assist” individuals in an arbitration. Third, as discussed above, counsel simply cannot provide every possible disclosure within every online posting. As a practical matter, this is done through attorney-client privileged communications. Although the counsel cannot reveal its communications with the movants, counsel can attest that they complied with their ethical requirements. In fact, the claimants have confirmed their understanding that they are

giving up their rights to receive compensation under the settlement by signing the exclusion forms, and that they are doing so out of their own free will. *See* Exhs. B-G; *see also Hallie*, 2015 U.S. Dist. LEXIS 54481, at *10-11 (N.D. Ind. Apr. 27, 2015) (holding that individually signed opt outs requirement “heightens the likelihood that each class plaintiff will make an informed, individualized decision whether to opt out.”).

TikTok’s continues its unprofessional attacks and speculations regarding attorneys’ communications with their clients by falsely stating that they are “unethical because the law firms seeking to opt-out masses of class members have little to lose and everything to gain[.]” Yet, the opposite is true. Each of the law firms representing the movants takes the risk of litigating the actions with the Movants. Traditionally, consumers with contracts containing arbitration provisions had little to no options to pursue their individual claims.¹² Now some law firms are willing to step in and assist the consumers with their claims. Yet instead of showing respect for their hard work, invested resources, and willingness to represent the individuals, TikTok unfairly foists upon well-reputed counsel speculative and unprofessional attacks.

Counsel for Movants are not seeking to pursue these cases for an improper purpose. They are consumer advocates who seek to preserve their clients’ rights to proceed with their claims in a contractually binding arbitration.

¹² Only a few years ago, virtually every company compelled arbitration of every class action to avoid liability, knowing that attorneys could not pursue a large number of cases through arbitration. Now, when some law firms stepped in to fight this injustice and found a way to do so, willing to help consumers vindicate their rights in pursuit of a larger recovery than can be achieved through a class action, TikTok, suddenly realized that it would be less expensive for it to obtain a release from nearly 100 million individuals through a class settlement. Although TikTok is about to obtain a class-wide release for nearly 100 million of class members, it continues to vigorously fight against exclusion of less than 0.00002% of class members and deprive these individuals of their due process rights. TikTok’s conduct, as well as its offensive and unprofessional remarks, is shameful.

In support of its offensive arguments, TikTok references the *Facebook* Settlement without fully explaining what transpired in that action.¹³ In the *Facebook* Settlement, after reaching settlement, another law firm, seeking to represent excluded individuals, began to run another advertisement, on Facebook (where the Notice was scheduled to be distributed), which mimicked the language of the notice, inviting individuals to “fill out a claim.” *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 623 (N.D. Cal. 2021), *aff’d*, No. 15-03747, 2022 WL 822923 (9th Cir. 2022); Transcript of Proceedings pp, 3-4 [ECF No. 487] (Exh. I). The class members were confused and thought they were opting in and making a claim to participate in the settlement, when in reality they were solicited to opt out. *Id.* Class counsel requested the Court to intervene because the advertisement caused immediate confusion to class members and not because it was a “mass solicitation.” *Id.* A number of people even left comments on the Facebook page stating “I’m very confused . . . “I’m somehow excluded from the class action.”) The court in *Facebook* was concerned with the use of the word “claim” because it was a “baited [] hook,” especially since the class members clearly interpreted it to be an invitation to opt into a class settlement. *Id.* p. 13. In fact, the court in *Facebook* reiterated that **“if you want to do something about opt-outs, you can do that, but it has to be forthright, candid, and honest, and it cannot be disruptive.”** *Id.* The decision in *Facebook* supports Movants’ Motion.

¹³ TikTok also references an entirely inapplicable case, *Mullen v. GLV, Inc.*, 334 F.R.D. 656 (N.D. Ill. 2020). In *Mullen*, after plaintiff successfully certified a class action, *defendants* sent mass emails and other communications to the represented class members – despite being unauthorized to do so, encouraging the class members to opt out, to sabotage plaintiff’s certified class action against them. *Id.* at 660. This is not the case here, where counsel is being retained by the individuals who wish to opt out and proceed in private arbitration. The collected cases cited in *Mullen* similarly address other improper or abusive communications between defendants and class members. *See also Kleiner v. First Nat’l Bank*, 751 F.2d 1193, 1203 (11th Cir. 1985) (prohibiting defendant from communicating with the class).

TikTok’s other cases are similarly inapplicable here because neither law firm engaged in misleading communications. *See e.g. In re McKesson HBOC, Inc. Sec. Litig.*, 126 F.Supp. 3d 1239, 1244 (N.D. Cal. 2000) (where the advertisement was deceptively listed as a “Notice” which implied that it was a notice of settlement); *Georgine v. Amchem Prods.*, 160 F.R.D. 478, 492 (E.D. Pa. 1995) (communications were blatantly false and coercive – claiming that class members participating in class settlement would obtain “nothing,” or “no money,” and making similar false statements through an extensive campaign, resulting in over 230,000 exclusion requests); *Chalian v. CVS Pharmacy, Inc.*, No. 16-8979, 2020 WL 7347866, at *4 (C.D. Cal. Oct. 30, 2020) (class members received a text message about the “danger” of the settlement with a link to a website with numerous misleading statements); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (JG), 2014 U.S. Dist. LEXIS 142213, at *29 (E.D.N.Y. Oct. 3, 2014) (a third party settlement group called class members stating that “they would not receive their share of settlement” unless they sign up with them). Furthermore, it is surprising that TikTok also seeks to rely on *Georgine*. There, multiple law firms engaged in an extensive advertising campaign, which contained blatantly false statements about the class settlement, including making statements that class members will get “nothing” if they do not opt out” and myriad similar false statements. 160 F.R.D. 478. The false advertising campaign was so disruptive that over 230,000 class members opted out. *Id.* Nonetheless, although the Court voided the exclusions, it ordered a second notice plan to be conducted, which advised class members of their rights, and still provided them with an opportunity to opt out. *Id.* TikTok, despite its baseless and offensive remarks, does not seek any such remedy, nor can it point out to any false or misleading communications.

The four law firms involved here engaged in ethical, non-disruptive, truthful, candid, non-misleading communications, the extent of which cannot be disclosed due to confidentiality. They

certainly believe in the Movants' claims and their rights must be preserved. TikTok likely raises these very arguments due to the fact that counsel for the Movants must strictly comply with the ethical responsibilities in preserving confidentiality of these communications, and are unable to disclose the extent of these communications. Counsel for TikTok has not presented any evidence that would depict presence of any abusive or misleading communications. Indeed, not a single opt out has complained of deception or confusion in connection with said communications. The Court, should, therefore, reject TikTok's unsubstantiated arguments.

IV. MOVANTS' OPT OUTS ARE EFFECTIVE AND TIMELY; ALTERNATIVELY, MOVANTS SHOULD BE ENTITLED TO CURE ANY DEFECTS

A. Movants Complied With the Court-Approved Notice Requirements.

It is important to note that there were serious issues with the Notice in this case. The *proposed* notice submitted to, and later approved by, the Court did not require a statement under the penalty of perjury. The notice approved by the Court **instead**, stated that the exclusion was required to state: (i) the name of the action; (ii) the person's or entity's full name, address, email address and telephone number; (iii) specific statement of the person's or entity's intention to be excluded from the settlement; (iv) the identity of the person's or entity's counsel, if represented; and (v) the person's or entity's authorized representative's signature and the date on which the request was signed. (ECF No. 122-4; 162). These requirements (as well as prohibition against mass opt outs) were *not* incorporated into the Notice sent to the Class Members. Thus, the class members did not receive any notice that they were required to submit items (i) through (v). As discussed in Movants' motion, Movants cannot be required to submit more than the Notice required.

Still, the submitted opt outs substantially complied with all of these requirements, although some contact information may have been missing. Certainly, some individuals felt reserved about

providing some of their personal information on the exclusion forms. The majority of Kind Law/Freedom Law Group opt outs are missing only an email address, while complying with all other requirements. All of Clarkson's opt outs were signed under penalty of perjury. TikTok challenged 1 of Clarkson's opt outs, even though Clarkson timely provided all of their legal names, usernames, and opt outs. For 39 of them Clarkson also timely provided "missing" information. Therefore, TikTok's challenge of these opt outs is disingenuous at best.

Counsel is more than willing (and has previously offered to TikTok) to provide additional information to validate these opt outs. *See* Hart Decl. **Exh. J**; Kind Declaration, **Exh. L**. If the opt outs were rejected for missing information, Movants would have immediately supplied it.¹⁴

B. TikTok's Individual Challenges Are Irrelevant and Baseless.

Movants will address TikTok's specific and individual challenges of specific movants wherein it mainly challenges the missing email address of Kind Law/Freedom Law Group opt outs, and some contact information for 139 opt outs from Clarkson. First, TikTok's arguments fail because the Class Administrator did not reject any of these opt outs as a result of any deficiencies. Instead, the Administrator only invalidated the opt outs because they were submitted "en masse."

Second, TikTok is mistaken. For example, TikTok challenges two opt outs which contained individuals' usernames/fictitious names,¹⁵ and some of the opt outs were missing one of the contact

¹⁴ TikTok vaguely mentions that out of 2,254 exclusion requests 66 individuals submitted a claim form to the Class Administrator. TikTok fails to state who these individuals are, or even when they submitted the form. After review of the report (Exh. K), counsel was only able to decipher that none of Clarkson's movants submitted an opt in. Unable to review a full report with the names of the individuals and dates of submission, counsel cannot address this further.

¹⁵ The two listed opt outs are clients of Freedom Law Group and Kind Law. "JaydenDropemOff Frog" has a user name "JaydenDropemOff" who frequently posts videos of frogs, and is known in social media/TikTok and on other channels through this fictitious name. "Wob Wob" chose not to disclose his full legal name, although his name was provided to TikTok. Given TikTok's extensive data collection on its users, their unlawful collection of personally identifiable data and content, TikTok knows nearly everything there is to know about them through their behaviors and interests.

information pieces, while provided other contact information and/or TikTok's usernames. As discussed above, the actual Notice sent out to class members only stated the Court-approved requirement of expressing their "desire to be excluded from the settlement class."¹⁶ All Movants complied with the Notice, and no further information was required from them. Nevertheless, they provided additional contact information.

TikTok's numerous arguments regarding the duplicative nature of some opt outs, layouts, or similar speculations are unavailing.¹⁷ As discussed, counsel for Movants have offered to provide any necessary information to confirm the individual nature and unambiguous desire to opt out to TikTok's counsel. Kind Decl. Exh. D.

C. Movants Should Be Afforded More Time To Correct Any Defects.

All movants have "effectively and timely" communicated their desire to be opted out. *Allianz Glob. Invs. GMBH v. Bank of Am. Corp.*, 463 F. Supp. 3d 409, 438 (S.D.N.Y. 2020) ("The class member must show that [opt-out] notice was effectively and timely communicated."). Thus, even if the Court finds that any opt outs to be deficient, more time should be afforded to correct those defects.

TikTok's attempt to shame or portray these individuals in an offensive light through the use of their usernames or signatures is simply inappropriate.

¹⁶ See <https://tiktokdataprivacysettlement.com/important-documents.php> (Notice of Settlement) (last visited May 2, 2022).

¹⁷ TikTok is "troubled" by the fact that Clarkson's submission inadvertently included some duplicates (which Counsel corrected – ECF No. 220), and notes that some individuals "appear to have signed multiple *different* opt out forms on the same day. TT Oppo p. 12. TikTok points out one individual, who signed an identical form twice on the same day. The form is the same; the individual elected to re-sign the same form. The issue with the layout is similarly unavailing. If TikTok has an issue with several specific forms (which it does not identify), Counsel can specifically address any questions about the minimal layout changes. Clarkson can verify that the opt out forms obtained through a docusign program are as they were presented to the class members. If necessary, it can extract a specific form(s) from any specific clients directly from the docusign program, and even provide the IP address from which each individual form was signed.

As to the fourteen individuals whose opt outs were excluded from the original motion, Class Administrator's report appears to indicate that all of 433 of Clarkson's clients' exclusion requests have been timely submitted and received. *See* TT Oppo. p. 2 (discussing receipt of 2,254 of unique opt outs by the Class Administrator); 196 ¶¶ 39-40 (similar); Exh. K. Clarkson was submitting multiple opt outs in batches, and it is unclear which submitted batches were received (certain confirmations of delivery were depicted as "awaiting pick up"). *Assuming arguendo*, the Class Administrator did not receive the timely submission for the fourteen individuals, these opt outs, and any other opt outs found deficient, should be excused based on inadvertence, surprise, and excusable neglect. *See e.g.* Fed R. Civ P. 6(b); *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) (neglect to submit was excusable based on "(1) the danger of prejudice to the [opposing party], (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith."); *In re Vitamins Antitrust Class Actions*, 356 U.S. App. D.C. 70, 73, 327 F.3d 1207, 1209 (2003) (allowing untimely opt out submitted 12 days after the entry of final approval and finding that the 73-day delay was the result of excusable neglect by counsel); *Fox v. Iowa Health Sys.*, No. 18-cv-327-jdp, 2021 U.S. Dist. LEXIS 36880, at *5 (W.D. Wis. Feb. 26, 2021) (allowing late opt out due to excusable neglect); *Snyder v. Ocwen Loan Servicing, LLC*, 2019 U.S. Dist. LEXIS 80926, at *10-11 (allowing late opt-outs without requiring motions from class members themselves under court's "considerable discretion to allow late . . . opt-outs to go forward"); *In re Brand Name Prescription Drugs Antitrust Litig.*, 171 F.R.D. 213, 216 (N.D. Ill. 1997) (filing of a new lawsuit during opt out period was sufficient notice of opt out); *In re VMS Sec. Litig.*, No. 89 C 9448, at *2, 1992 U.S. Dist. LEXIS 12141 (N.D. Ill. Aug. 13, 1992) (allowing late opt outs where a few class

members claimed that they mailed the opt out requests to the wrong address); *see also McCubrey v. Boise Cascade Home & Land Corp.*, 71 F.R.D. 62, 67 (N.D. Cal. 1976) (allowing opt outs based on substantial compliance).

There is no question that both TikTok and the Class Administrator had actual notice of these exclusion requests before the deadline. Class Administrator and TikTok also timely received the individuals' names and TikTok's usernames and/or their contact information.¹⁸ There is no prejudice to TikTok as a result of this inadvertently delayed submission. There is no additional impact on the proceeding. When the inadvertent submission was discovered, counsel immediately remedied the situation by filing the corrected submission. At all times, counsel acted in good faith and provided TikTok and the Class administrator with the names and usernames/contact information of all of its clients – prior to the deadline. Importantly, they were rejected for only one reason – because they were solicited through an advertising campaign, which is not a valid reason for rejection.

Therefore, the Movants complied with the Notice requirements, or their submission should be allowed due to excusable neglect.

VI. CONCLUSION

Movants have an absolute due process right to be excluded from the Settlement Agreement. Here, Movants complied with the requirements, and submitted their individually signed opt outs. TikTok's unprofessional, unfounded, *ad hominem* attacks on Counsel challenging Counsel's ethics ring hollow, as TikTok has not established any misconduct whatsoever by Counsel.

¹⁸ Clarkson submitted requests to release individuals' collected information with the opt outs to TikTok, which contained the individuals' contact information.

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Respectfully submitted,
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