

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Moulton, Shulman, Rosado, O'Neill Levy, JJ.

6989	THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, etc., Plaintiff-Respondent,	Index No. 452749/24 Case No. 2026-01418
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-against-

TIKTOK INC., et al.,
Defendants-Appellants.

O'Melveny & Myers LLP, New York (Ross B. Galin of counsel), for appellants.

Letitia James, Attorney General, New York (Anthony R. Raduazo of counsel), for respondent.

Order, Supreme Court, New York County (Anar Rathod Patel, J.), entered on or about March 9, 2026, which granted plaintiff's motion to compel defendants to produce documents responsive to its requests for production 18, 19, 20, 24, and 36, unanimously modified, on the law, to vacate the requirement that defendants produce "affidavit(s) from individual(s) with firsthand knowledge that describes the database sources, and productions (both to date and as directed herein), how the figures are calculated, any assumptions applied to exclude or include data, and the results supplied," and otherwise affirmed, without costs.

Although defendants have now produced documents responsive to the underlying order, the appeal is not moot because there is a continuing dispute with respect to the sufficiency of the production. Further, the underlying order is appealable as of right, as

it decided a motion made on notice and “affects a substantial right” (*see* CPLR 5701 [a] [2] [v]; *Bank of N.Y. Mellon v WMC Mtge., LLC*, 140 AD3d 585, 585 [1st Dept 2016]).

Plaintiff’s discovery demands were not “palpably improper” (*Bell v Cobble Hill Health Ctr., Inc.*, 22 AD3d 620, 621 [2d Dept 2005]). Accordingly, the motion court did not act improperly to the extent it tailored rather than vacated them (*see Strout v CF E 88 LLC*, 213 AD3d 589 [1st Dept 2023] [court “properly declined to strike plaintiff’s discovery demands entirely, opting instead to prune them”]; *Lopez v Bendell*, 206 AD3d 515, 515-16 [1st Dept 2022]). The court essentially ordered production of the same categories of documents requested by plaintiff, with a few adjustments to account for the fact that many documents did not exist in the form requested. Although plaintiff did not specifically request any affidavits from defendants concerning the parameters of their searches, the court providently exercised its discretion to order defendants to provide affidavits to support their claims that certain documents do not exist, and to explain their efforts to collect and review documents.

The majority of plaintiff’s demands, as tailored in part by the motion court, were not improper. The financial documents are relevant to the calculation of civil penalties and disgorgement. Defendants’ “contention that [plaintiff] can obtain all necessary information from [documents] already disclosed does not require denial of [plaintiff’s] request for discovery of other potentially relevant documents” (*Frey v Itzkowitz*, 203 AD3d 601, 601 [1st Dept 2022]). In any event, defendants’ prior production was insufficient insofar as it contained very little information about costs, included information for only a portion of the relevant time period, and did not include any information about defendant ByteDance Ltd.

The board materials sought by plaintiff are likely to include relevant information,

including regarding the safety of the TikTok platform (relevant to liability), defendants' knowledge thereof (relevant to liability and to bad faith), and defendants' financial position and revenue from the TikTok platform (relevant to penalties and disgorgement). Defendants have not demonstrated that it would be unduly burdensome to review all of ByteDance Ltd.'s board materials. It is not clear what steps, if any, defendants took to ascertain how difficult it would be to collect relevant documents from ByteDance Ltd., and there is no affidavit or other evidence in the record reflecting such efforts. To the extent defendants' position is that no responsive board materials exist, the motion court providently exercised its discretion in ordering defendants to provide an affidavit or affidavits to this effect. To the extent defendants object to reviewing board materials with respect to certain topics, they should object to these topics specifically rather than to the necessity of collecting and reviewing ByteDance Ltd. board materials in general.

However, the motion court improvidently exercised its discretion in ordering defendants to produce "affidavit(s) from individual(s) with firsthand knowledge that describes the database sources, and productions (both to date and as directed herein), how the figures are calculated, any assumptions applied to exclude or include data, and the results supplied," as the contemplated affidavit(s) would address substantive issues

more appropriately explored via depositions.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style with a large initial "S".

Susanna Molina Rojas
Clerk of the Court