IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CANCER STEP OUTSIDE THE BOX, LLC, TY BOLLINGER and CHARLENE BOLLINGER, Plaintiffs, v. DEPARTMENT OF STATE, et al., Defendants.	Civil Action No. 3:24-cv-1465-AAT Judge Aleta A. Trauger

DEFENDANT X CORP.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO TRANSFER

I. INTRODUCTION

This action should not be maintained in the Middle District of Tennessee, because this Court is not a proper venue for this case. This Court should sever and transfer Plaintiffs' claims against X Corp. to the Northern District of Texas under the applicable version of X Corp.'s Terms of Service to which Plaintiffs agreed (the "Relevant Terms"). The Relevant Terms contain an applicable, mandatory, valid, and enforceable forum selection clause that required Plaintiffs to assert their claims against X Corp. in Texas, not in this Court. Therefore, under that forum selection clause, X Corp. respectfully requests this Court transfer Plaintiffs' claims against X Corp. to the Northern District of Texas.

II. BACKGROUND

A. Plaintiffs' Allegations

Plaintiffs allege they own and operate the businesses TTAC Publishing, LLC and TTAV Global, LLC, for which "TTAC" stands for "The Truth About Cancer" and "TTAV" stands for

"The Truth About Vaccines." Dkt. 7 ("FAC") ¶ 357. Plaintiffs allege they have used these businesses to disseminate their "viewpoints on COVID," which "do not adhere to those of the [federal] Government," including by allegedly posting "'vaccine-hesitant' content" regarding the "fake pandemic." *Id.* ¶¶ 22, 380 (brackets omitted).

Plaintiffs allege the federal government has tried to "silence" their "competitive speech" regarding COVID, including by "blacklist[ing] Plaintiffs" as sources of misinformation. *Id.* ¶¶ 22, 30. The government also allegedly issued "directives" through nongovernmental organizations to social media platform operators Meta, Google, and X Corp. (collectively, "Platform Defendants") to "suppress" Plaintiffs' speech.[1] *Id.* ¶ 358. According to the FAC, Defendants' conduct constitutes "censorship" and "blackballing" of Plaintiffs, which allegedly caused them "lost business opportunities" and "reduced advertising / web trafficking revenue," as well as a "threat to their lives and / or physical wellbeing" and "loss of voice / speech." *Id.* ¶ 40.

Plaintiffs allege that X Corp. operates the social media platform Twitter.[2] *See id.* ¶¶ 6, 399. X Corp. allegedly "suspended" Plaintiffs' five Twitter accounts, @TTAVOfficial, @truthaboutbigc, @TYCHarleneB, @CancerTruthNews, and @charlis_beauty on April 1, 2021. *Id.* ¶ 399. Plaintiffs allege two of the accounts were "restored . . . in appearance" but were "still badly restricted / shadow banned." *Id.* Plaintiffs also allege that X Corp. stated their accounts were "suspended due to multiple or repeat violations of the Twitter Rules." *Id.* ¶ 400. Meta and Google

[1] The alleged government agencies involved are the Department of State, Global Engagement Center, Department of Defense, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, Department of Health and Human Services, and the FBI (collectively, "Government"). *Id.* at 1-2. The alleged nongovernmental organizations involved are the Center for Countering Digital Hate, Inc. ("CCDH"), Media Matters for America ("MMA"), and Center for Internet Security, Inc. ("CIS") (collectively, "NGO Defendants").

[2] The social media platform Twitter has been rebranded as "X." For ease of reference, this brief continues to refer to it as "Twitter" because the FAC does so.

also allegedly suspended Plaintiffs' accounts on their respective social media platforms. *E.g.*, *id.* ¶¶ 398, 414.

The FAC asserts seventeen claims: (1) "abridgment" of Plaintiffs' right to freedom of speech, against all Defendants; (2) "abridgment" of Plaintiffs' right to freedom of the press, against all Defendants; (3) "ultra vires non-final agency action," against the Government only; (4) "unlawful final agency action," against the Government only; (5) "ultra vires action beyond constitutional bounds," against the Government only; (6) "abridgment" of Plaintiffs' right to privacy, against the Government only; (7) civil conspiracy, against all Defendants; (8) violation of the Tennessee Trade Practices Act, Tenn. Code § 47-25-101, against the NGO Defendants and Platform Defendants; (9) negligence, against the NGO Defendants and Platform Defendants; (10) tortious interference with business or economic relationships, against the NGO Defendants and Platform Defendants; (11) negligent misrepresentation, against the Platform Defendants; (12) negligent design, against the Platform Defendants; (13) fraud, against the Platform Defendants; (14) promissory estoppel, against the Platform Defendants; (15) "practicing medicine without a valid license," against the Platform Defendants; (16) "treason," against the Government only; and (17) revocation of "501(c)(3) tax-exempt status," against the NGO Defendants. *Id.* at 4, ¶¶ 711–833. Plaintiffs request damages, injunctive relief, and "jail time." *Id.* ¶¶ 715, 720, 739, 745, 752, 761, 768, 769, 778, 782, 786, 790, 797, 802, 808, 816, 822, 833.

In terms of residence, Plaintiffs allege that plaintiff Cancer Stop Outside the Box, LLC is a Tennessee limited liability company headquartered in Tennessee, and that plaintiffs Ty and Charlene Bollinger are individuals who reside in Tennessee. *Id.* ¶ 43. Plaintiffs allege the Government agencies are headquartered in Washington, D.C. *Id.* ¶¶ 44–51. Regarding the NGO Defendants, Plaintiffs allege CCDH and MMA are headquartered in Washington, D.C., and CIS

is headquartered in New York. *Id.* ¶¶ 51–53. Finally, as to the Platform Defendants, Plaintiffs allege Meta is a Delaware corporation headquartered in San Mateo County, California; Google is a Delaware limited liability company headquartered in Santa Clara County, California; and X Corp. is a Nevada corporation that previously was headquartered in San Francisco County, California and currently is headquartered in Bastrop County, Texas. *Id.* ¶¶ 54–56.

B. X Corp. and the Relevant Terms

Plaintiffs created their Twitter accounts as follows: (1) @TTAVOfficial in September 2019, (2) @truthaboutbigc in April 2014, (3) @TYCHarleneB in October 2012, (4) @CancerTruthNews in March 2010, and (5) @charlis_beauty in October 2021. Declaration of Royce Matthews ("Matthews Decl.") ¶ 4 (attached hereto as **Exhibit 1**). In creating their accounts, Plaintiffs necessarily agreed to X Corp.'s Terms of Service ("Terms"). Declaration of Megan Scolari ("Scolari Decl.") ¶ 4 (attached hereto as **Exhibit 2**).

All relevant versions of the Terms give X Corp. the power to revise the Terms. *Id.*, Ex. A at 9; Ex. B at 9; Ex. C at 9; Ex. D at 10; Ex. at 10; Ex. F at 10; Ex. G at 10; Ex. H at 10; Ex. I at 8–9; Ex. J at 8–9; Ex. K at 9; Ex. L at 10; Ex. M at 9; Ex. N at 10; Ex. O at 10; Ex. P at 10; Ex. Q at 12; Ex. R at 13. All these versions also provide that when a user continues to use Twitter after the Terms have been revised, the user "agree[s] to be bound by the revised Terms." *Id.*, Ex. A at 9; Ex. B at 9; Ex. C at 9; Ex. D at 10; Ex. at 10; Ex. F at 10; Ex. G at 10; Ex. H at 10; Ex. I at 8–9; Ex. J at 8–9; Ex. K at 9; Ex. L at 10; Ex. M at 9; Ex. N at 10; Ex. O at 10; Ex. P at 10; Ex. Q at 12; Ex. R at 13. Each time X Corp. has made material changes to the Terms, users received a notification when they accessed their Twitter accounts, advising users that their use of Twitter constitutes agreement to the revised Terms. Scolari Decl. ¶ 6.

The Relevant Terms (version 20) are the current version of the Terms which became effective on November 15, 2024. *Id.*, Ex. R at 23. By continuing to use their accounts, Plaintiffs agreed to the Relevant Terms. *See id.* ¶ 6.[3]

The Relevant Terms state that they "govern" Plaintiffs' "access to and use of [X Corp.'s] services, including [its] various websites, SMS, APIs, email notifications, applications, buttons, widgets, ads, commerce services, and our other covered services . . . (collectively, the 'Services')." *Id.*, Ex. R at 4. In allegedly "using the Services," including Twitter, Plaintiffs "agreed to be bound" by the Relevant Terms. *Id.*

The Relevant Terms include a forum selection clause that provides:

> All disputes related to these Terms or the Services . . . will be brought exclusively in the U.S. District Court for the Northern District of Texas or state courts located in Tarrant County, Texas . . . and [Plaintiffs] consent to personal jurisdiction in those forums and waive any objection as to inconvenient forum.

Id., Ex. R at 13. The Relevant Terms also include a choice of law provision that provides: "The laws of the State of Texas, excluding its choice of law provisions, will govern these Terms and any dispute that arises between" Plaintiffs and X Corp. *Id.*

III. LEGAL STANDARD

A forum selection clause "may be enforced through a motion to transfer under [28 U.S.C.] § 1404(a)." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 59 (2013). Section 1404(a) provides, in relevant part, that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district . . . where it might have been brought." "[A] proper application of § 1404(a) requires that a forum-selection clause be given controlling weight in all but the most exceptional cases." *Atl. Marine*, 571 U.S. at

[3] Plaintiffs have posted on Twitter as recently as April 21, 2025, after the Relevant Terms were implemented. Matthews Decl. ¶ 9.

59-60 (internal quotation mark omitted). Thus, "the party opposing enforcement of the forum selection clause . . . bears the burden of showing that the clause should not be enforced." *Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922, 929 (6th Cir. 2014) (internal quotation marks omitted).

IV. ARGUMENT

A. Plaintiffs' Claims Against X Corp. Should Be Severed and Transferred to the Northern District of Texas Under the Relevant Terms' Forum Selection Clause

"In the Sixth Circuit, evaluating a forum selection clause is a two-step process." *Mayer v. gpac, LLP*, 2023 WL 3690235, at *2 (M.D. Tenn. May 26, 2023). "First, the court determines whether a forum selection clause is 'applicable to the claims at issue, mandatory, valid, and enforceable.'" *Id.* (quoting *Lakeside Surfaces, Inc. v. Cambria Co*., 16 F.4th 209, 215 (6th Cir. 2021)). If the forum selection clause meets those requirements, then "[a]t the second step, the plaintiff 'bears the burden of showing that the public interest factors weigh heavily against transfer.'" *Id.* (brackets omitted) (quoting *Lakeside Surfaces*, 16 F.4th at 215).

1. The Forum Selection Clause Applies to All of Plaintiffs' Claims against X Corp.

"[T]he Sixth Circuit . . . interpret[s] forum selection clauses with 'related to' language as covering tort or consumer protection claims 'related to' the contract's purpose." *Hasler Aviation, L.L.C. v. Aircenter, Inc*., 2007 WL 2463283, at *5 (E.D. Tenn. Aug. 27, 2007) (citing *Hugel v. Corp. of Lloyd's*, 999 F.2d 206, 209 (7th Cir. 1993)). The Relevant Terms' forum selection clause encompasses "[*a*]*ll* disputes related to these Terms or the Services." Scolari Decl., Ex. R, at 13 (emphasis added). Plaintiffs' claims[4] against X Corp. and their alleged harms all are premised on

[4] Plaintiffs' constitutional claims sound in tort. *See Pineda v. Hamilton Cnty., Ohio*, 977 F.3d 483, 490 (6th Cir. 2020) (42 U.S.C. § 1983 "creates a species of tort liability for constitutional violations" (internal quotation marks omitted)); *Batey v. Metro. Gov't Dep't of Codes*, 2016 WL 8711722, at *2 n.1 (M.D. Tenn. Sept. 9, 2016) ("[A] plaintiff complaining of a constitutional violation must utilize 42 U.S.C. § 1983." (internal quotation mark omitted)).

allegations that X Corp. suspended, restricted, or "shadow banned" their Twitter accounts. *E.g.*, FAC ¶¶ 399, 713–14, 717–18, 734–38, 760, 767, 775–76, 781–82, 788–90, 797, 799–802. Thus, Plaintiffs' claims against X Corp. are "disputes related to . . . the Services," and therefore fall within the scope of the Relevant Terms' forum selection clause. *See Unique Shopping Network, LLC v. United Bank Card, Inc.*, 2011 WL 2181959, at *10 (E.D. Tenn. June 3, 2011) (forum selection clause broadly applied to contract, tort, and statutory claims); *Hasler Aviation*, 2007 WL 2463283, at *5 (forum selection clause applied to tort and Tennessee statutory claims).

2. The Forum Selection Clause Is Mandatory

"A forum selection clause is mandatory 'only if it contains clear language specifying that litigation *must occur* in the specified forum.'" *Mayer*, 2023 WL 3690235, at *3 (quoting *Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 768 (5th Cir. 2016)) (forum selection clause stating South Dakota courts were the "sole and exclusive forum" was mandatory). The Relevant Terms' forum selection clause is mandatory because it provides that Plaintiffs' claims against X Corp. "be brought exclusively" in a Texas court. Scolari Decl., Ex. R at 13; *see also C&S Outdoor Power Equip., Inc. v. Odes Indus. LLC*, 2019 WL 4197608, at *3 (W.D. Tenn. Sept. 4, 2019) (forum selection clause stating "that a suit 'shall exclusively' be litigated in" Texas was mandatory).

3. The Forum Selection Clause Is Valid

"[T]o be valid," a "forum selection provision must be a legally binding contract." *Walker v. AMVAC Chem. Corp.*, 2018 WL 5023417, at *6 (E.D. Tenn. Mar. 21, 2018). State contract law governs the validity inquiry, and federal courts apply the choice of law rules of the forum state to determine which state's law applies. *Id.* (citing *Wallace Hardware Co., Inc. v. Abrams*, 223 F.3d 382, 391 (6th Cir. 2000)).

The Relevant Terms' choice of law provision requires that Texas law be applied. Scolari Decl., Ex. R at 13 ("The laws of the State of Texas, excluding its choice of law provisions, will

govern these Terms and any dispute that arises between" Plaintiffs and X Corp.). Under Tennessee choice of law rules, contractual choice of law provisions are enforceable where the chosen law has a "material connection with the transaction." *Goodwin Bros. Leasing v. H & B Inc.*, 597 S.W.2d 303, 306 (Tenn. 1980). Texas has a material connection here because X Corp. is headquartered in Texas. FAC ¶ 56; *see also Walker*, 2018 WL 5023417, at *7 ("California law has a material connection with the transaction here because it is home to one of the parties."). Thus, Texas law determines whether the Relevant Terms' forum selection clause is valid.

Under Texas law, "sign-in-wrap agreements" are enforceable when "notice of the terms and conditions was reasonable." *StubHub, Inc. v. Ball*, 676 S.W.3d 193, 201 (Tex. App. 2023). "A sign-in-wrap agreement notifies users of the existence of the website's terms and conditions and advises users that they are agreeing to the terms when registering an account or signing in." *Id.* After the Relevant Terms became effective, Plaintiffs received notice that their continued use of Twitter constituted agreement to the Relevant Terms. *See* Scolari Decl. ¶ 6; *Dow Jones & Co., Inc. v. Harris*, 749 F. Supp. 3d 776, 789 (W.D. Tex. 2024) (user with notice of terms "assented to be bound by the terms of the agreement each time he used the websites"); *Walker v. Neutron Holdings, Inc.*, 2020 WL 703268, at *4 (W.D. Tex. Feb. 11, 2020) (user bound by sign-in-wrap agreement), *report & recomm. adopted*, 2020 WL 4196847 (W.D. Tex. Apr. 8, 2020). After receiving such notice, Plaintiffs continued to use Twitter and therefore agreed to the Relevant Terms. Matthews Decl. ¶ 9; Scolari Decl. ¶ 6 & Ex. R at 13. Thus, the Relevant Terms' forum selection clause is valid. *See Walker*, 2018 WL 5023417, at *9 (forum selection clause was valid where plaintiff was bound by agreement containing the clause).

4. The Forum Selection Clause Is Enforceable

A court will enforce a valid forum selection clause unless the nonmoving party makes "a strong showing that it should be set aside" because (1) "the clause was obtained by fraud, duress,

or other unconscionable means"; (2) "the designated forum would ineffectively or unfairly handle the suit"; or (3) "the designated forum would be so seriously inconvenient such that requiring the plaintiff to bring suit there would be unjust." *Wong v. PartyGaming Ltd.*, 589 F.3d 821, 828 (6th Cir. 2009). None of these circumstances are present here.

First, Plaintiffs' agreement to the Relevant Terms' forum selection clause was not obtained by fraud, duress, or other unconscionable means. Plaintiffs voluntarily agreed to the forum selection clause by using Twitter after receiving notice that the Relevant Terms became effective. Matthews Decl. ¶ 9; Scolari Decl. ¶ 6 & Ex. R at 13. That the FAC asserts fraud-based claims against X Corp. cannot, as a matter of law, show that Plaintiffs' agreement to the Relevant Terms' forum selection clause was obtained by fraud. *See Wong*, 589 F.3d at 828 ("General claims of fraud do not suffice to invalidate the forum selection clause." (brackets omitted)).

Second, Plaintiffs cannot show that the Northern District of Texas would ineffectively or unfairly handle this action. *See All-Am. Moving Grp., LLC v. XO Commc'ns Servs., LLC*, 2020 WL 13616873, at *3 (W.D. Tenn. Dec. 7, 2020) ("[I]t is difficult to imagine an argument that the federal courts in Virginia would ineffectively or unfairly handle this matter."). The Northern District of Texas is well-equipped to handle this case.

Third, Plaintiffs cannot show that litigating in the Northern District of Texas would be so seriously inconvenient that enforcing the Relevant Terms' forum selection clause would be unjust. *See Wong*, 589 F.3d at 830 (requiring plaintiffs to litigate in Gibraltar was not unjust); *Walker*, 2018 WL 5023417, at *10 ("A designated forum set in a difficult to reach and far-away land is typically not the sort of inconvenience that will render a forum selection clause unenforceable.").

In sum, the Relevant Terms' forum selection clause applies to Plaintiffs' claims, and is mandatory, valid, and enforceable.

B. Plaintiffs Cannot Meet Their Burden of Showing the Public Interest Factors Overwhelmingly Disfavor Transfer

A court will enforce a valid forum selection clause unless the nonmoving party demonstrates that the following public interest factors "overwhelmingly disfavor a transfer": (1) "the administrative difficulties flowing from court congestion"; (2) "the local interest in having localized controversies decided at home"; and (3) "the interest in having the trial of a diversity case in a forum that is at home with the law." *Atl. Marine*, 571 U.S. at 62, 67 & n.6. "Because public interest factors will rarely defeat a transfer motion, the practical result is that forum selection clauses should control except in unusual cases." *Id.* at 51.

Plaintiffs cannot show that this is an "unusual case" where the public interest factors "overwhelmingly disfavor" enforcing a valid forum selection clause. There is no indication the Northern District of Texas is afflicted with administrative difficulties from court congestion. Tennessee does not have a greater "local interest" than Texas because, while Plaintiffs allegedly reside in Tennessee, X Corp. resides in Texas. FAC ¶¶ 43, 56; *see also Branch v. Mays*, 265 F. Supp. 3d 801, 809 (E.D. Tenn. 2017) (Arkansas, where defendant resided, and Tennessee, where plaintiff resided, had equal interests). And a Texas court would be more "at home" with applying Texas law, which is required under the Relevant Terms' choice of law provision. *See* Scolari Decl. Ex. R at 13; *Des-Case Corp. v. Madison Indus. Holdings LLC*, 2018 WL 1858161, at *5 (M.D. Tenn. Apr. 17, 2018) (choice of law provision requiring application of Delaware law supports transfer to Delaware).

In sum, this Court should transfer Plaintiffs' claims against X Corp. to the Northern District of Texas pursuant to the Relevant Terms' forum selection clause.

V. CONCLUSION

For these reasons, this Court should sever and transfer Plaintiffs' claims against X Corp. to the Northern District of Texas.

Dated: April 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5.01, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send e-mail notification of this filing to all counsel of record, which includes:

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