

C A N A D A

PROVINCE OF QUEBEC
District of Montréal

(Class Action)
SUPERIOR COURT

N°: 500-06-001129-218

HA VI DOAN

Petitioner

v.

CLEARVIEW AI INC.

Respondent

**APPLICATION FOR PERMISSION TO AMEND THE APPLICATION
FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE**
(Arts. 206, 585 C.C.P.)

**TO THE HONOURABLE JUSTICE DONALD BISSON, COORDINATING JUDGE OF
THE CLASS ACTION DIVISION OF THE SUPERIOR COURT, SITTING IN AND FOR
THE DISTRICT OF MONTRÉAL, THE PETITIONER STATES AS FOLLOWS:**

1. On February 5, 2021, Ms. Ha Vi Doan (the “**Petitioner**”) filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* against the Respondent Clearview AI Inc. (the “**Application**”), the whole as more fully appears from the Court record.
2. The Petitioner initially filed this proceeding *de bene esse* to protect the Class Members’ rights in connection with a previously-filed proposed class action in the Federal Court (the “**Proposed FC Class Action**”), as more fully appears from the Court record.
3. The present proceeding was inactive pending the adjudication of the application to certify the Proposed FC Class Action, as more fully appears from the Court record.
4. Following the Federal Court’s judgment denying certification of the Proposed FC Class Action, the Petitioner has now re-activated this proceeding.

5. Accordingly, and as previously announced in August 2023, the Petitioner now seeks the Court's permission to amend the *Modified Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* dated September 14, 2023 (the "**Modified Application**") attached hereto as **Exhibit R-1**.
6. The main proposed amendments relate to the following:
- (a) The correction and reformulation of certain defined terms and grammatical phrases for ease of reading and clarity;
 - (b) The renaming of the definition of the "Privacy Breach Class" as the "Class" and the specification of same, including the addition of a start date and a geographic limitation;
 - (c) The update of allegations to reflect new facts, such as the procedural context, the Respondent's activities, and the investigation of the Respondent's activities by Canadian authorities;
 - (d) The addition and reformulation of allegations regarding:
 - (i) the Respondent's activities and the Class Members' personal information affected by those activities;
 - (ii) the elements relevant for determining whether the composition of the class makes it difficult or impracticable to apply the rules for mandates or for consolidation of proceedings and for determining whether the Petitioner is a proper representative; and
 - (iii) the Petitioner's personal claim, the Class Members' claims and the Respondent's liability towards the Class;
 - (e) The correlative adjustments of the proposed identical, similar or related questions of fact or law, the conclusions sought on the merits of the class action, and the conclusions sought at the authorization stage; and
 - (f) The correlative filing of exhibits in connection with points (c) and (d).
- the whole as it appears from Exhibit R-1.
7. The proposed modifications do not result in an entirely new application having no connection with the original application.

8. To the contrary, the claims advanced in the proposed class action remain the same and remain grounded in the Respondent's violation of the proposed Class Members' privacy and image rights through the scraping and use of their personal information on the Internet.
9. The proposed modifications are proportionate and will not delay the proceedings since the proposed class action has not yet been authorized, the authorization hearing has not yet been scheduled, and a supervising judge has not yet been assigned to the proceeding, as more fully appears from the Court record.
10. Accordingly, permitting these modifications is in the interest of justice.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the Petitioner to amend the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, as set forth in the *Modified Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* dated September 14, 2023, Exhibit R-1;

THE WHOLE without costs, except in the event of contestation.

Montréal, September 15, 2023

Alexeev Attorneys Inc

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AFFIDAVIT

I, the undersigned, Molly Krishtalka, lawyer, exercising my profession at 2000 McGill College Avenue, suite 600, in the city and district of Montréal, province of Québec, H3A 3H3, do hereby declare the following:

1. I am one of the lawyers for the Petitioner Ha Vi Doan in the present matter;
2. All the facts contained in this *Application* are true.

and I have signed

Molly Krishtalka

MOLLY KRISHTALKA

Sworn before me, by technological means,
in Montréal on September 15, 2023

Geneviève Forget

Geneviève Forget, # 221773
Commissioner of oaths for Quebec

NOTICE OF PRESENTATION

TO: IMK LLP
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Lawyers for the Respondent Clearview AI Inc.

TAKE NOTICE that the Petitioner's *Application for Permission to Amend the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* shall be presented for adjudication before the honourable Donald Bisson, j.c.s., at the Montréal Courthouse situated at 1 Notre-Dame Street East, Montréal, on a day and time to be determined by the Court.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, September 15, 2023

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LIST OF EXHIBITS

(in support of the *Application for Permission to Amend the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*)

EXHIBIT R-1 *Modified Application for Authorization to Institute a Class Action and to Obtain the Status of Representative dated September 14, 2023.*

Montréal, September 15, 2023

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District of Montréal

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SUPERIOR COURT

N°: 500-06-001129-218

HA VI DOAN

Petitioner

v.

CLEARVIEW AI INC.

Respondent

**MODIFIED ORIGINATING APPLICATION FOR AUTHORIZATION
TO INSTITUTE A CLASS ACTION AND OBTAIN THE STATUS
OF REPRESENTATIVE DATED SEPTEMBER 14, 2023**

(Article 575 of the *Code of Civil Procedure*)

IN SUPPORT OF HER APPLICATION, THE PETITIONER [...] RESPECTFULLY
SUBMITS AS FOLLOWS:

**1. OVERVIEW OF THE PROPOSED CLASS ACTION PROCEEDINGS AND
PROCEDURAL CONTEXT**

Technology company Clearview AI's scraping of billions of images of people from across the Internet represented mass surveillance and was a clear violation of the privacy rights of Canadians."

What Clearview does is mass surveillance and it is illegal.

Privacy Commissioners' Investigation Report, Exhibit P-8

- 1.1. In the context of provision of facial recognition and identification services to various third parties worldwide, the Respondent [...] Clearview AI Inc. ("**Clearview**" or the "**Respondent**") collects/creates, retains, includes in a database, [...] uses and/or discloses for commercial purposes ("scrapes and uses") the [...] personal [...] information, including facial photographs, of residents of Québec [...], the whole without their knowledge or consent.

- 1.2. According to Clearview’s claims, it has so far collected over thirty [...] billion facial photographs from the Internet, which it processes to create [...] unique “faceprints” of each individual pictured in those photographs.
- 1.3. Clearview’s actions amount to a blatant violation of the privacy and image rights of the proposed class members [...].
- 1.4. As part of its illegal endeavor, Clearview scraped and used images and other personal information of the Petitioner [...] Ms. Ha Vi Doan (“**Ms. Doan**” or the “**Petitioner**”) and her minor child, without their knowledge or consent, as appears from the face search report provided by Clearview further to an access to information request filed by Ms. Doan, **Exhibit P-1 [...].**

1.5. [...]

1.6. [...]

A. Procedural Context

- 1.7. In that context, on July 7, 2020, Ms. Doan, on her own behalf and on behalf of the class members described therein, filed a proposed class proceeding before the Federal Court of Canada in matter T-713-20 (the “**Proposed Federal Court Class Action**”), **Exhibit P-2.**
- 1.8. The Proposed Federal Court Class Action sought remedies related to the breaches of the right to privacy and to the breaches of copyright on behalf of the following classes:

*“a) All natural persons, who are either residents or citizens of Canada, whose faces appear in the photographs collected by Clearview (the “Collected Photographs”) (the “**Privacy Breach Class**” or the “**Privacy Breach Class Members**”); and*

*b) All natural or legal persons holding copyright and moral rights with respect to the Collected Photographs (the “**Copyright Infringement Class**” or the “**Copyright Infringement Class Members**” and, collectively with the Privacy Breach Class, the “**Class**” or “**Class Members**”).”*

[emphasis in the original]

- 1.9. For the purpose of the Copyright Infringement Class-related violations and damages, the Proposed Federal Court Class Action refers to the *Copyright Act*, R.S.C., 1985, c. C-42.

- 1.10. For the purposes of the Privacy Breach Class-related violations and damages, the Proposed Federal Court Class Action referred to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (Canada) (the “**PIPEDA**”) and to provincial privacy legislation, including the *Québec Charter of Human Rights and Freedoms*, CQLR c C-12 (the “**Québec Charter**”).
- 1.11. In the Proposed Federal Court Class Action, [...] Clearview filed a motion to strike with respect to the [...] Privacy Breach Class, as appears from Clearview’s Motion Record (Motion to strike), **Exhibit P-3** (the “**Motion to Strike**”).
- 1.12. As part of the Motion to Strike [...], Clearview took the position that the Federal Court does not have the power to apply provincial privacy legislation, in addition to the federal privacy legislation.
- 1.13. [...]
- 1.14. Though Ms. Doan contested the Motion to Strike [...], in order to protect the rights of the Privacy Breach Class Members in the event the Federal Court did not entirely uphold its powers and jurisdiction with respect to the Privacy Breach Class, Ms. Doan filed this application on a *de bene esse* basis.
- 1.15. Justice St-Louis f.c.j. granted the Motion to Strike on May 6, 2021, as appears from a copy of the judgment in Federal Court matter T-713-20 dated May 6, 2021, **Exhibit P-10**.
- 1.16. Subsequently, Ms. Doan filed a separate proposed class proceeding pursuant to s. 14 of *PIPEDA* before the Federal Court of Canada (the “**Federal Court Application**”), as appears from a copy of the Re-Amended Notice of Application dated October 24, 2022, in Federal Court matter T-1410-21, **Exhibit P-11**.
- 1.17. On March 17, 2023, Justice St-Louis f.c.j., denied certification of the Federal Court Application on the basis that:
- a) Though Ms. Doan had a reasonable cause of action under s. 14 of *PIPEDA*, there was no evidence that other class members had filed complaints with the Privacy Commissioner and thus had standing under s. 14 of *PIPEDA*; and

- b) The Federal Court did not have jurisdiction over the claims asserted under provincial privacy laws.

the whole as appears from a copy of the judgment dated March 17, 2023, in Federal Court matter T-1410-21, **Exhibit P-12**.

2. **THE NATURE OF THE PROPOSED CLASS ACTION AND THE PROPOSED CLASS**

- 2.1. The Petitioner [...] wishes to institute a class action in compensatory and punitive damages on behalf of the following class of which the Petitioner [...] is a member:

All natural persons, who are residents of Québec and whose facial photographs have been [...] collected by Clearview AI Inc. since August 18, 2017 (the "[...] Class" or the "[...] Class Members").

3. **THE NATURE OF CLEARVIEW'S ACTIVITIES AND FACTS GIVING RISE TO THE PROPOSED CLASS ACTION [...]**

- 3.1. Clearview is a corporation incorporated in the state of Delaware, United States of America, and registered with the Delaware Division of Corporations under file no. 6500293 and has a registered office at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, New Castle, Delaware, USA, 19801., **Exhibit P-4**.

3.2. [...]

- 3.3. Clearview provides facial recognition and identification services to third parties located throughout the world. Clearview at one time [...] identified Canada as one of its primary markets.

A. Purpose and functioning of Clearview's technology

- 3.3.1. Clearview declares that its mission is "to deliver the most comprehensive identity solutions in the world" and to help its clients "identify" individuals, and it markets its services as a "one of a kind facial search technology", the whole as it appears from:

- a) a copy of Clearview's Service Agreement, **Exhibit P-13**, from an archived version of Clearview's website current as of July 21, 2020;
- b) from marketing emails sent out to multiple distribution lists via Crimedex, *en liasse*, **Exhibit P-14**; and

c) from a copy of the patent application #20210042527 filed with the United States Patent and Trademark Office on February 11, 2021, and the patent application #202103017 published with the World Intellectual Property Association on February 18, 2021, *en liasse*, **Exhibit P-15**.

3.4. For that purpose, Clearview scrapes and uses photographs featuring human faces (the “**Facial Photographs**”) as well as their metadata, associated personal information, and other data, including the source website information (collectively, the “**Collected Data**”) [...].

3.4.1. The Facial Photographs and the Collected Data include personal information such as the facial biometric information contained in the Facial Photographs.

3.4.2. Clearview uses this facial biometric information to create a faceprint for each individual face appearing in the Facial Photograph. These faceprints are an example of emerging data, namely new personal information concerning an individual that is created by processing or combining other data.

3.4.3. Concretely, Clearview uses multiple data collection programs—known as web crawlers—to scan the Internet and collect Facial Photographs and their related Collected Data through a process known as “scraping.”

3.4.4. Clearview collects, or “scrapes,” this personal information from a wide range of websites, including notably social media platforms (such as Facebook, Twitter/X, LinkedIn, Instagram, Pinterest and many others), news media, and personal, commercial and professional websites, as appears notably from the news article entitled “Clearview AI Has New Tools to Identify You in Photos,” by Will Knight, published in WIRED on October 4, 2021, **Exhibit P-16**, as well as from Exhibits P-13 and P-14.

3.4.5. As concerns social media platforms in particular, they contain various pieces of personal information concerning users, as well as other individuals, including often their name, one or more facial photographs, their age, their language(s), their geographic location, their place of work or schooling, their hobbies and interests, their political preferences, their regular activities and social events, the individuals with whom they share or have shared familial, romantic, professional and social connections, and other personal information concerning these individuals.

3.4.6. Clearview then copies and permanently stores this personal information into its proprietary database for future use and disclosure regardless of whether the content still exists on the Internet.

3.5. In autumn 2021, Clearview claimed [...] that its database contained approximately ten [...] billion Facial Photographs, as it appears from Exhibit P-16.

3.5.1. Clearview's database continues to grow every day:

a) As of March 2023, that number reached thirty billion, the whole as it appears from the news article entitled "Clearview AI used nearly 1m times by US police, it tells the BBC" published by BBC News on March 27, 2023, **Exhibit P-17**.

b) Clearview has stated that it seeks to grow its database to one hundred billion facial images so that "almost everyone in the world will be identifiable", as it appears from the news article entitled "Facial recognition firm Clearview AI tells investors it's seeking massive expansion beyond law enforcement" by Drew Harwell, published by the Washington Post on February 16, 2022, **Exhibit P-18**, and the fifty-five-page pitch deck prepared by Clearview in December 2021 and referred to in Exhibit P-18, **Exhibit P-19**.

3.5.2. In Clearview's own words, it "has compiled the world's largest set of facial profiles, including metadata and associated persons—mapping out the world's faces and their connections," as it appears from Exhibit P-19.

3.6. To achieve its goals [...], Clearview developed an algorithm allowing it to extract the biometric facial information contained in every Facial Photograph [...] and to translate it into a facial vector, effectively creating a unique "faceprint" for every Class Member, the whole as appears from Exhibit P-8.

3.6.1. These facial vectors created by Clearview are stored and indexed in Clearview's database in association with their associated Facial Photographs and Collected Data.

3.6.2. This emerging data created, stored, included in Clearview's database, used, and disclosed by Clearview is not limited to the Class Members' facial vectors (or "faceprints") and includes other new personal information arising from Clearview's use of the Facial Photographs and the Collected Data (collectively with the Facial Photographs and the Collected Data, the "**Personal Information**").

3.7. Clearview's actions in relation to the Personal Information of the Class Members [...] take place without the knowledge or consent of the Class Members [...].

3.7.1. Indeed, until published reporting by the New York Times in early 2020, Clearview was “unknown to the general public,” as it appears from the news article entitled “Before Clearview Became a Police Tool, It Was a Secret Plaything of the Rich,” by Kashmir Hill, published in The New York Times on March 5, 2020, **Exhibit P-20**.

B. Use of Clearview's technology

3.8. Coupling the powers of its gigantic database of Personal Information, as well as [...] of its facial recognition algorithm, Clearview provides facial recognition services to third parties, including law enforcement agencies.

3.9. These facial recognition services are provided as follows:

- a) Clearview's client obtains, by any means of its choosing, a photograph of an individual (the “**Query Photo**”);
- b) Through a Clearview user account, Clearview's client accesses Clearview's database, uploads the Query Photo and runs a search based on the Query Photo within Clearview's database;
- c) Clearview instantly generates and provides its client with a file containing all of the Facial Photographs within Clearview's database whose faceprints match—as defined and determined by Clearview—the faceprint(s) of the Query Photo, as well as the related Personal Information, such as, often, the individual's name, location, circle of friends, family, etc.

the whole as it appears from Exhibit P-1, Exhibit P-8, Exhibit P-19, and Exhibit P-20.

3.9.1. To generate the search results, Clearview harvests the facial biometric data contained in the Query Photo, creates a facial vector (or “faceprint”), and compares this faceprint against each and every Facial Photograph and their facial vectors within its database.

3.9.2. As Clearview then aggregates, collates, and presents search results to its clients, Clearview invariably provides the client with Personal Information concerning the individuals whose Facial Photographs appear in the search results.

3.9.3. Furthermore, since Clearview includes in its database a permanent copy of all Personal Information it scrapes and uses, Clearview's database and facial recognition technology also allows its users to obtain (1) historical or archived personal information, (2) personal information an individual may have sought to protect via privacy settings, and (3) emerging data created by the processing of historical or archived data, as appears from the example given in the news article entitled "This man says he's stockpiling billions of our photos" by Donie O'Sullivan, published by CNN Business on February 10, 2020, **Exhibit P-21**.

3.9.4. Worse yet, facial recognition algorithms present well-known accuracy issues when applied to racialized persons. The use of a Facial Photograph picturing a racialized person as a Query Photo may provide a Clearview search report containing the Personal Information related to at least one other racialized person, as it appears from Exhibit P-8.

3.10. In sum, Clearview scrapes and uses [...] sensitive personal information through illegal methods [...], and does so, on an unprecedented scale.

3.10.1. Clearview has taken, and continues to take all of these steps, without informing or requesting the consent of the individuals whose Facial Photographs appear in Clearview's database.

3.10.2. Nor has Clearview disclosed the existence of its database containing personal biometric information to the Commission d'accès à l'information du Québec (the "CAI") as required by the *Act to establish a legal framework for information technology*, CQLR c C-1.1, ("**QC LFIT**"), as it appears from Exhibit P-8.

3.10.3. Although Clearview justifies its actions by declaring that it only scrapes images available on public websites, Clearview has received cease and desist letters from multiple social media platforms who considered that Clearview's activities violated their terms and policies, as it appears from the news article entitled "Google, YouTube, Venmo and LinkedIn send cease-and-desist letters to facial recognition app that helps law enforcement" updated version published by CBS News on February 5, 2020, **Exhibit P-22**.

3.10.4. Clearview's activities constitute mass surveillance of the Class Members.

C. Clearview's clients and other users

3.10.5. As a for-profit entity, Clearview sells and/or provides its services to its paying and trial clients after they request access to Clearview, as it appears from the news article entitled "Clearview's Facial Recognition App Has Been used by the Justice Department, ICE, Macy's, Walmart, and the NBA" by Ryan Mac,

Caroline Haskins and Logan McDonald and published by BuzzFeed News on February 27, 2020, **Exhibit P-23**.

- 3.10.6. Clearview's clients have included more than 2,200 public and private entities in 27 countries worldwide, including Canada, and has included more than 3,100 law enforcement agencies as clients in the United States alone, as it appears from Exhibits P-23 and P-19.
- 3.10.7. For more than a year before the New York Times' reporting on Clearview's activities (in early 2020), Clearview's technology was "freely used in the wild by the company's investors, clients, and friends", the whole as it appears, for example, from Exhibit P-20.
- 3.10.8. Clearview has provided, marketed and promoted its services in Canada, including notably:
- a) In February 2020, its founder and CEO affirmed that "Clearview is focused on doing business in USA and Canada". As of that time, Clearview provided its technology to at least forty Canadian public and private entities, including most notably to the Royal Canadian Mounted Police (the "**RCMP**"). Collectively, the RCMP and other Canadian entities ran thousands of searches in Clearview's database, the whole as it appears from a selection of news articles, *en liasse*, **Exhibit P-24**.
 - b) As of July 21, 2020, Clearview used a testimonial from a Canadian client in law enforcement to market and promote its services, as it appears from Exhibit P-14.

D. Investigation of Clearview's activities by Canadian authorities

- 3.11. Faced with such operations and given the public concern expressed by members of the Canadian public and by Canadian lawmakers, on February 21, 2020, the Office of the Privacy Commissioner of Canada and its counterparts in Québec, British Columbia and Alberta (the "**Privacy Commissioners**") launched a joint investigation with respect to Clearview, as appears from a press release, **Exhibit P-7**.
- 3.12. In March 2020, Clearview stated that it had suspended access to all Clearview users in Canada, with the exception of the RCMP. On July 6, 2020, [...] Clearview announced that it would indefinitely suspend its contract with the RCMP.

- 3.12.1. However, to this day, Clearview continues to scrape and use Personal Information sourced from Canada and of Canadian individuals, including Class Members.
- 3.12.2. As a result, Clearview's clients can, from their geographic locations outside of Canada, use Clearview's database, and access the Personal Information of the Class Members.
- 3.12.3. Moreover, there is no indication that Clearview's clients cannot do so while they are physically in Canada.
- 3.13. On February 3, 2021, the Privacy Commissioners issued a joint Report of Findings # 2021—001 with respect to Clearview's activities (the "**Investigation Report**"), **Exhibit P-8**.
- 3.14. The Investigation Report concludes that Clearview's mass scraping and use of personal information via its database and facial recognition tool constitute [...] illegal mass surveillance and identification by a private party for commercial purposes [...] and blatantly violates the right to privacy of Canadians on a massive scale (Exhibit P-8 at par. 72, 79).
- 3.15. At the issuance of the Investigation Report, the Privacy Commissioners notably made the following statements:

"Technology company Clearview AI's scraping of billions of images of people from across the Internet represented mass surveillance and was a clear violation of the privacy rights of Canadians."

"What Clearview does is mass surveillance and it is illegal. It is completely unacceptable for millions of people who will never be implicated in any crime to find themselves continually in a police lineup. Yet the company continues to claim its purposes were appropriate, citing the requirement under federal privacy law that its business needs be balanced against privacy rights. Parliamentarians reviewing Bill C-11 may wish to send a clear message, through that bill, that where there is a conflict between commercial objectives and privacy protection, Canadians' privacy rights should prevail."—Daniel Therrien, Privacy Commissioner of Canada.

"Clearview's massive collection of millions of images without the consent or knowledge of individuals for the purpose of marketing facial recognition services does not comply with Québec's privacy or biometric legislation. The stance taken by Clearview that it is in compliance with the laws that apply to it, underscores the need for greater oversight of the use of this technology as well as providing regulatory authorities with additional tools

of deterrence like those proposed in Bill 64.”—Diane Poitras, President of the Commission d'accès à l'information du Québec.

“Our investigation reveals the vast amount of personal information collected without people’s knowledge or consent. It is unacceptable and deeply troubling that a company would create a giant database of our biometric data and sell it for profit without recognizing its invasive nature. The results of our work also point to the need to strengthen our privacy laws to properly protect the public.” — Michael McEvoy, Information and Privacy Commissioner for British Columbia”

as appears from a news release dated February 3, 2021, **Exhibit P-9**.

3.16. The Privacy Commissioners thus urged Clearview to:

“(i) cease offering the facial recognition services that have been the subject of this investigation to clients in Canada;

(ii) cease the collection, use and disclosure of images and biometric facial arrays collected from individuals in Canada; and

(iii) delete images and biometric facial arrays collected from individuals in Canada in its possession”,

as appears from the Investigation Report, Exhibit P-8, par. 111.

3.17. Clearview refused to commit to implementing the above requests, as appears from the Investigation Report, Exhibit P-8, par. 117.

3.18. On December 14, 2021, further to its investigation of Clearview, the CAI issued a judgment in which it found that Québec privacy and protection of personal information legislation applied to Clearview, that Clearview had breached multiple provisions of these statutes, and issued multiple orders, as it appears from the CAI judgment dated December 14, 2021, in file n. 1023158-S, **Exhibit P-25**.

3.19. Clearview has since obtained a stay of this judgment pending its appeal of same, as it appears from the court dockets as of August 26, 2023, in file n. 500-80-042393-224 and in file n. 500-17-119872-227, *en liasse*, **Exhibit P-26**.

3.20. In some jurisdictions, Clearview has implemented measures to:

- a) limit or prevent Clearview’s scraping and use of the Facial Photographs created or uploaded to the Internet within those jurisdictions and the related Personal Information;

- b) limit or prevent Clearview’s creation of facial vectors or other emerging data from Personal Information uploaded from or associated with a certain geographic location;
- c) limit or prevent Clearview’s users from initiating searches of Clearview’s database using Query Photographs associated with or uploaded from a certain geographic location and/or
- d) allow the residents of that jurisdiction to:
 - i) Access and/or correct their Personal Information scraped and used by Clearview;
 - ii) Access information about their Personal Information disclosed to third parties and those third parties;
 - iii) Opt out from their Personal Information appearing in Clearview’s search results; and/or
 - iv) Have their Personal Information deleted from Clearview’s database.

as it appears from as it appears from Clearview’s Privacy Policy as of March 10, 2022, and as of August 25, 2023, *en liasse*, **Exhibit P-27**, from Clearview’s “Privacy & Requests” webpage as of August 25, 2023, **Exhibit P-28**, from the *Declaration of Thomas Mulcaire* dated May 6, 2020, in Case No. 20 C 512, *David Mutnick v. Clearview AI, Inc. et al*, in the United States District Court for the Northern District of Illinois, Eastern Division, **Exhibit P-29** and from an online article entitled “Photographer’s Guide to Photo Metadata,” published by Format Magazine, **Exhibit P-30**, and from Clearview’s Illinois Resident Opt-Out Form, **Exhibit P-31**.

3.21. As concerns the measures in paragraph 3.20(a)(b) and (c) above, Clearview has not implemented any such measure with respect to Québec or any other Canadian jurisdiction.

3.22. Canadians had partial access to the measures in 3.20(d)(i) and (iii) for a period of time, as it appears from the news article entitled “Canadians can now opt out of Clearview AI facial recognition, with a catch” by Thomas Daigle, published by CBC News on July 10, 2020, **Exhibit P-32**.

- 3.23. As of October 2021, Clearview no longer allows Canadians to access these measures.
- 3.24. Since Clearview has begun scraping and using the Class Members' Facial Photographs, Clearview's activities have affected the Class Members as:
- a) Any Clearview client or other user, whether physically within or outside the province of Québec, could and can use Clearview's services to access, view, use, and disclose the Personal Information of the Class Members; and
 - b) The Personal Information of the Class Members was and is scraped and used on an ongoing basis by Clearview.
- 3.25. Although the Privacy Commissioners formally informed Clearview that its activities were unlawful and constituted violations of the privacy rights of Canadian citizens and residents, and recommended that Clearview cease those unlawful activities, Clearview knowingly retains the Personal Information of Canadian citizens and residents, and continues to scrape and use same, thus continually increasing the amount of personal information concerned and the number of Class Members.
- 3.26. Since then, Clearview has not taken any steps or measures to inform the Class Members of the scraping and use of their Personal Information in its database, to obtain their consent for the scraping and use of their Personal Information, or to prevent or minimize further violations of Canadian and Québec law or the Class Members' privacy and image rights.

4. FACTS GIVING RISE TO THE [...] CLAIMS

A. The Petitioner's Claim

- 4.1. Ms. Doan is a citizen of Canada and resides in the province of Québec.
- 4.2. Passionate about photography and human faces, Ms. Doan regularly takes photographs of other individuals both personally and in the context of her work as a professional photographer.
- 4.2.1. Prior to beginning her career as a professional photographer, Ms. Doan obtained a bachelor's degree in computer science and worked in that field.
- 4.3. From time to time, Ms. Doan also takes Facial Photographs and has Facial Photographs taken of her [...] (the "**Doan Photographs**").

- 4.3.1. The Doan Photographs contain Ms. Doan's biometric information, which she considers to be highly sensitive personal information.
- 4.3.2. Like many other Québec residents, Ms. Doan uses the Internet, to participate in online communities and other virtual spaces for personal, social, professional, and expressive purposes.
- 4.3.3. As concerns social media in particular, Ms. Doan uses these platforms to interact and communicate with friends, family, and other community members, including by uploading and sharing Doan Photographs or photographs of her minor child.
- 4.3.4. In addition to her personal and social usage of the Internet, Ms. Doan also maintains an Internet presence—that includes the Doan Photographs—in order to maintain and grow her photography-related activities, including to interact with members of her personal and professional communities.
- 4.3.5. Like many other Québec residents, Ms. Doan has a digital footprint resulting from her Internet usage, including Facial Photographs and other Personal Information appearing on social media platforms and other websites.
- 4.3.6. As is common, some of Ms. Doan's Personal Information appearing on the Internet was provided by her, while other aspects were uploaded by other persons.
- 4.4. Accordingly, a significant amount of Ms. Doan's Personal Information appears on the Internet, including on Ms. Doan's own website as well as on social media platforms such as Facebook and Instagram.
- 4.4.1. Ms. Doan maintains her Internet presence in a manner that is coherent with the use she wishes to make of her own image and with the expectation that others will respect her privacy and her right to control the use of her image.
- 4.4.2. Notably, Ms. Doan expects that the personal information shared in these virtual spaces will be used solely for the purpose for which she has shared it, and that having a presence on the Internet does not make her Personal Information public information, publicly accessible information, or otherwise part of the public domain.
- 4.4.3. On July 6, 2020, after becoming aware of Clearview's activities, Ms. Doan, using a Doan Photograph, wrote to Clearview to obtain, and ultimately did obtain a search report (Exhibit P-1) containing the Facial Photographs deemed by Clearview's algorithm to be sufficiently similar to the Doan Photograph as

well as the related Personal Information, as it appears from the email exchange between Ms. Doan and Clearview beginning on July 6, 2020, **Exhibit P-33**.

4.4.4. This search report includes Personal Information pertaining to her, to her minor child, and to at least one other person (Exhibit P-1).

4.4.5. With respect to the Personal Information in Exhibit P-1 concerning Ms. Doan or her minor child, Ms. Doan has never:

- a) made it available in the public domain, whether on the Internet or otherwise; and
- b) consented that anyone—including Clearview—process the Doan Photographs and the related Personal Information to create new Personal Information concerning her or her minor child.

4.5. Ms. Doan's Personal Information has been scraped [...] and used by Clearview, without her knowledge or consent [...].

4.6. Clearview also, without Ms. Doan's knowledge or consent and to her detriment, has, in relation to herself and her minor child [...]:

- a) Scraped and used their Personal Information for a purpose (1) that is foreign to that for which she initially uploaded or authorized the uploading of this Personal Information to the Internet, and (2) that she finds to be inappropriate, unreasonable, and unexpected;
- b) Created, retained, used and/or disclosed emerging data containing their Personal Information;
- c) Established a file on them without a legitimate reason and included their biometric information in a database without disclosing same to the competent authorities;
- d) Failed to provide Ms. Doan with continuous access to the contents of this file;
- e) Violated their expectation of privacy; and
- f) Given access to their Personal Information to Clearview's users, including Canadian law enforcement agencies such as the RCMP, although they have never been implicated in a crime.

- 4.7. By its actions, Clearview has [...] violated and continues to violate Ms. Doan's privacy and image rights and those of her minor child, and has breached and continues to breach its legal obligations as concerns their Personal Information [...].
- 4.8. [...]
- 4.9. [...]
- 4.10. As a result, Ms. Doan felt violated, afraid and disturbed, and has suffered significant harm stemming from fear, stress, loss of privacy, loss of control over her and her minor child's image and personal information, and inconvenience.
- 4.10.1. She is especially concerned and alarmed by Clearview's use of her digital footprint to create—in its search report—a comprehensive biographical collage of her as an individual.
- 4.10.2. Clearview's creation and use of this collage amount to digital surveillance of Ms. Doan, as creating a comparable collage in physical (not virtual) spaces would have required Clearview to stalk Ms. Doan for multiple years and/or otherwise unlawfully obtain her Personal Information.
- 4.10.3. The concerns raised by the Privacy Commissioners in the Investigation Report regarding the efficacy and accuracy of Clearview's technology, in particular with respect to visible minorities, were realized in Ms. Doan's case, where the search results she received two photographs of one or more other Asian women, as it appears from Exhibit P-1.
- 4.11. As a racialized person, this misidentification compounds and aggravates the harms [...] suffered by Ms. Doan, especially given that Clearview expressly markets its technology to law enforcement personnel [...].
- 4.12. [...]
- 4.13. [...]
- 4.14. As Ms. Doan's situation demonstrates, Clearview's service is not comparable or similar to the image search functions offered by Internet search engines, such as Bing and Google, as appears from screenshots of the Google image search for the same Doan Photograph previously submitted to Clearview, **Exhibit P-34.**

B. The Class Members' Claims

- 4.15. As set out below, the facts giving rise to an individual action by each Class Member are identical or similar to the facts giving rise to Ms. Doan's claim.
- 4.16. The Facial Photographs and other Personal Information of the Class Members, like all other Internet users, appear on a wide variety of websites and platforms across the Internet, including notably social media platforms, message boards, personal, commercial and professional websites, and online news media.
- 4.17. Every Class Member's Personal Information has been (and continues to be) scraped and used by Clearview in furtherance of its facial recognition services, as it appears notably from the news article "Les pratiques de la GRC comportent des « lacunes graves et systémiques »" by Tristan Péloquin, updated version published by La Presse on June 10, 2021, **Exhibit P-35**, and from the face search report provided by Clearview further to an access to information request filed by Ms. Louise Campbell, **Exhibit P-36**.
- 4.18. The Class Members' Personal Information has been scraped and used by Clearview without their knowledge or consent since they have generally never:
- a) made their Personal Information available in the public domain, whether on the Internet or otherwise;
 - b) consented to Clearview's scraping and using their Personal Information; or
 - c) consented to Clearview's processing of their biometric information and other Personal Information to create a faceprint or other emerging data.
- 4.19. Clearview also, without the Class Members' knowledge or consent, and to their detriment, has:
- a) Scraped and used their Personal Information for a purpose (1) that is foreign to that for which they initially uploaded or authorized the uploading of their Personal Information to the Internet, and (2) that they find to be inappropriate, unreasonable, and unexpected;
 - b) Created, retained, included in a database, used and/or disclosed emerging data about them containing sensitive Personal Information;

- c) Established files about them without a legitimate reason and included their biometric information in a database without disclosing same to the competent authorities;
- d) Failed to provide them with continuous access to the contents of the file it established about each of them;
- e) Violated their expectation of privacy; and
- f) Given access to their Personal Information to Clearview's users, including Canadian law enforcement agencies such as the RCMP.

4.20. These actions by Clearview violate the Class Members' expectations of privacy with regard to their Internet presences and with regard to their Personal Information.

4.21. Indeed, the Class Members did not expect—and could not have expected—that their Internet presences and their personal information could be the subject of these actions by Clearview without their consent or knowledge.

4.22. As of the date of this application, no Class Member can, on their own, determine whether their Personal Information was scraped and used by Clearview or viewed by Clearview's users.

4.23. However, Clearview's users effectively had access to the Class Members' Personal Information and used same every time they made a query within Clearview's database.

4.24. Through its actions, Clearview has violated the Class Members' privacy and image rights and breached its legal obligations concerning their Personal Information. All of these violations and breaches are ongoing.

4.25. As a result of Clearview's actions, the Class Members have suffered serious harm stemming from fear, stress, loss of privacy, loss of control over their images and their personal information, and inconvenience.

4.26. In particular, Clearview's use of the Class Members' respective digital footprints to create individual biographical collages concerning them constitutes digital surveillance of each of the Class Members, and is thus especially troubling.

4.27. As concerns all Class Members who are racialized persons, Clearview's actions engage an increased risk of misidentification.

4.28. This risk of misidentification compounds and aggravates the harms suffered by the Class Member in question.

5. CLEARVIEW'S LIABILITY VIS-À-VIS THE [...] CLASS

5.1. By scraping and using the Class Members' [...] Personal [...] Information, [...] Clearview breached its statutory obligations under Canadian and Québec law as well as the Class Members' privacy and image rights.

5.2. [...]

5.2.1. As concerns Canadian federal law, Clearview's conduct constitutes a violation of Clearview's obligations under sections 5, 6, 6.1, 7, 8, and Schedule 1 of *PIPEDA*.

5.2.2. As concerns Québec law, Clearview's conduct constitutes a violation of its obligations and the Class Members' rights under:

a) Sections 3, 35-40, and 1457 of the *Civil Code of Québec*, CQLR c CCQ-1991 ("**CCQ**");

b) Sections 3.1, 3.5, 3.7, 3.8, 4-8, 10-14, 17, 27-29, and 32-36 of the *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1 ("**PPIPS**"); and

c) Sections 44 and 45 of *QC LFIT*.

5.2.3. Clearview also violated the Class Members' quasi-constitutional rights protected by sections 1, 4, 5, 8, 9, 9.1, 24, and 24.1 of the *Québec Charter*.

5.2.4. The facts as alleged, including notably Clearview's own public statements, indicate that this violation was both unlawful and intentional.

5.2.5. In this respect, the Investigation Report establishes Clearview's actual knowledge of the illegality of its activities as February 3, 2021, at the latest.

5.2.6. As concerns all Class Members, the wrongfulness of Clearview's conduct is aggravated by its commercial purposes and by the very personal and sensitive nature of the Class Members' Personal Information scraped and used by Clearview, including the emerging data created and used by Clearview.

5.3. As a foreseeable, direct, and immediate result of Clearview's intentional and unlawful violations of their privacy rights, [...] Ms. Doan and [...] the other Class Members have suffered the following harms: [...]

- a) The scraping and use of their Personal Information, without their knowledge or consent, by Clearview and its clients and other users;
- b) The loss of control, without their knowledge or consent, over the use and disclosure of their Personal Information;
- c) The creation, retention, and use, without their knowledge or consent, of emerging data concerning them;
- d) The disclosure of their Personal Information by Clearview to third parties in Canada and abroad;
- e) Ongoing mass surveillance by Clearview and its users in Canada and abroad, including notably by state law enforcement agencies;
- f) Distress, fear, anxiety, discomfort, concern, loss of propriety, and annoyance; and
- g) Deliberate and significant invasions of their private affairs by Clearview and its users.

5.4. Ms. Doan claims, on her own behalf and on behalf of the Class Members, [...] the remedies described in par. 9.1 below [...].

5.5. As concerns the Class Members' claim for punitive damages in particular:

- a) According to its December 2021 pitch deck, Clearview received revenue of \$1.5 million USD in 2020, and projected revenue of \$3.8 million USD for 2021, \$16 million USD for 2022, and \$34 million USD or 2023, as it appears from Exhibit P-19; and
- b) In summer 2021, Clearview raised 30 million USD in an investment round that valued the company at 130 million USD. In December 2021, Clearview sought to raise another \$50 million USD in a third round of investment, as it appears from Exhibit P-18.

5.6. The Superior Court of Québec, sitting in and for the district of Montréal, has jurisdiction to hear the present proposed class action against Clearview, given:

- a) Clearview committed a fault in Québec via its past and ongoing business decisions to scrape and use the Personal Information of the Class Members;
- b) Clearview committed a fault in Québec via its past and ongoing business decisions to give Clearview users access 1) to Clearview's database within the province of Québec and 2) to content from its database originating from the province of Québec; and
- c) The Petitioner and the other Class Members suffered injury in Québec as a result of Clearview's faults set out above.

6. IDENTICAL, SIMILAR OR RELATED QUESTIONS OF FACT OR LAW TO BE DECIDED BY THIS PROPOSED CLASS ACTION

6.1. Ms. Doan wishes to have the following identical, similar or related issues of law or fact shared by her claim and by the claims of the Class Members decided by this proposed class action:

- a) Do the Facial Photographs, Collected Data and other Personal Information of the Class Members constitute personal information of the Class Members?
- b) [...] Did the Respondent collect/create, include in its database, retain, use and and/or disclose for commercial purposes the Facial Photographs, Collected Data and other Personal Information of the Class Members [...]?
- c) If question b) is answered affirmatively, were these actions by the Respondent effected without sufficient knowledge and/or [...] consent of the [...] Class Members?
 - c.1) Did Clearview create a database of biometric characteristics and measurements that included the personal biometric information of the Class Members and fail to disclose same to the Commission d'accès à l'information du Québec prior to bringing the database into service?
- d) If questions c) and/or c.1) are answered affirmatively, do the Respondent's actions constitute a civil fault engaging its liability towards the [...] Class Members?

- d.1) If question d) is answered affirmatively, have the Class Members suffered harm as a result?
- e) If question d) is answered affirmatively, are the [...] Class Members entitled to the payment of compensatory damages by [...] the Respondent and, in the affirmative, what is the amount of such damages?
- e.1) If questions c) and/or c.1) are answered affirmatively, are the Respondent's actions unlawful and intentional?
- f) If question e.1 is answered affirmatively, are the [...] Class Members entitled to the payment of punitive damages by [...] the Respondent and, in the affirmative, what is the amount of such damages?
- g) Are the [...] Class Members entitled to orders enjoining Clearview to [...]:
- i. Remove from its database and destroy all personal information, including all copies and any data created by Clearview, of the Class Members;
 - ii. Cease collecting, retaining, using, and/or disclosing the facial photographs and other personal information of the Class Members without their consent;
 - iii. Prevent the facial photographs and other personal information of the Class Members from appearing in Clearview's search results;
 - iv. Prevent Clearview's clients and other users from accessing its database while geographically within the province of Québec;
 - v. Prevent Clearview's clients and users from running searches in Clearview's database in connection with individuals residing in the province of Québec;
 - vi. Prevent Clearview's clients and other users from using facial photographs uploaded from or associated with the province of Québec as Query Photographs within Clearview's database; and
 - vii. Not market or provide its services in the province of Québec;

- g.1) Are the Class Members entitled to a declaration that Clearview violated their privacy and image rights by illegally collecting/creating, retaining, including in a database, disclosing, and/or using the Class Members' facial photographs and other personal information?
- h) Are the [...] Class Members entitled to the interest and additional indemnity provided for under the *Civil Code of Québec* on the [...] amounts set out in sub-sections e) and f) above from the date of filing of this application?
- i) Can the court order the collective recovery of the sums set out above?

7. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES FOR MANDATES TO TAKE PART IN JUDICIAL PROCEEDINGS ON BEHALF OF OTHERS OR FOR CONSOLIDATION OF PROCEEDINGS

7.1. Ms. Doan does not currently know the precise number of Class Members, but [...] estimates that the Class is composed of [...] several million persons spread across the province of Québec [...], as it appears from:

- a) the table entitled "Population of Québec, July 1, 1971-2022 (in French only) and from the table entitled "Population of Québec by age and sex, 1971-2022 (in French only), published by the Institut de la statistique du Québec, *en liasse*, **Exhibit P-37**;
- b) Statistics Canada publications on Canadian Internet use in 2020 and 2022, *en liasse*, **Exhibit P-38**;
- c) the report entitled "Canadians' assessments of social media in their lives" by Christoph Schimmele, Jonathan Fonberg and Grant Schelleberg, published by Statistics Canada, release date March 24, 2021, no. 36-28-0001, ISSN 2563,8955, **Exhibit P-39**;
- d) the report entitled "*NETendances 2018: L'usage des médias sociaux au Québec*" published by CEFRIO, **Exhibit P-40**;
- e) the report entitled "*NETendances 2021: Actualités en ligne, réseaux sociaux et balados*" published by the *Académie de la transformation numérique* under the auspices of the *Université Laval*, **Exhibit P-41**; and

- f) the report entitled “*NETendances 2022: Actualités en ligne, réseaux sociaux et balados*” published by the *Académie de la transformation numérique* under the auspices of the *Université Laval*, **Exhibit P-42**.

7.1.1. Clearview has spent the past several years amassing what it claims to be the largest global database of Facial Photographs, and which currently contains more than 30 billion photos as of the date of the present proceeding.

7.2. In that regard, the Investigation Report, Exhibit P-8, states as follows at par. 30 (iii):

“(...) a substantial amount of its content is sourced from Canada. (...) the indiscriminate nature of Clearview’s scraping renders it a relative certainty that it collected millions of images of individuals in Canada”

7.3. It would be difficult, if not impossible, for the Petitioner [...] to solicit mandates from all of the [...] Class Members nor would it be practicable for them to file individual claims, which [...] could not practically be consolidated. Even if individual claims could be filed, the judicial system would be overburdened.

7.4. In these circumstances, a class action is the only procedure which would allow the [...] Class Members to obtain access to justice.

8. **THE PETITIONER [...] IS IN A POSITION TO PROPERLY REPRESENT THE [...]** CLASS MEMBERS

8.1. Ms. Doan has the capacity and the interest to ensure an adequate representation of the Class Members and is in a position to properly represent the [...] Class Members as:

- a) she was proactive and took positive steps to ascertain whether Clearview scraped and used her Personal Information [...];
- b) she is determined to defend her own right to privacy as well as the right to privacy of all the [...] Class Members and her interests are aligned with the interest of all class members; [...]
- c) she understands the nature of the proposed class action, and has the capacity and the will to advance the litigation, to represent the interests of the [...] Class Members, and to instruct and collaborate with undersigned attorneys;
- d) she is a member of the Class as defined;

- e) she is prepared to devote the necessary time and resources to the advancement of this proposed class action, and is determined to bring the class action—if authorized—to completion, the whole for the benefit of all Class Members;
- f) she has retained competent legal counsel and has mandated them to obtain all relevant information concerning this matter and to keep her informed of all developments in this matter; and
- g) she is prepared to devote the necessary time and resources to collaborate with the Class Members and to keep them informed of the litigation, the whole in collaboration with her attorneys.

8.2. The Petitioner is acting in good faith and has instituted the present proceedings for the sole purpose of defending the Class Members' rights and bringing an end to the Respondent's illegal actions and practices.

9. THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT BY THE PETITIONER [...] ON THE MERITS OF THE CLASS ACTION

9.1. The Petitioner seeks [...] the following conclusions on the merits of the proposed class action:

- a) **GRANT** the class action of the Petitioner and the Class Members against the Respondent [...];
- b) **DECLARE** that the Respondent [...] violated the privacy and image rights [...] of the [...] Class Members by illegally collecting/creating, retaining, including in a database, disclosing and/or using the Class Members' facial photographs and related personal information;
- c) **CONDEMN** the Respondent [...] to pay compensatory damages in the amount of \$4,000 to each Class Member [...];
- d) **CONDEMN** the Respondent [...] to pay the sum of \$50,000,000 as punitive damages to the Class Members [...];
- e) **CONDEMN** the Respondent to reimburse the costs incurred for all steps necessary to establish its liability in this matter, including disbursements in connection with experts, notices, fees and expenses of the administrator of the plan of distribution of the recovery;

- f) **CONDEMN** the Respondent to pay on all of the amounts set out above legal interest and the additional indemnity provided for in the Civil Code of Québec calculated from the date of issuance of the *Originating Application for Authorization to Institute a Class Action and Obtain the Status of Representative*;
- g) **ORDER** the collective recovery of the above amounts;
- h) **ORDER** that the claim of each Class Member be liquidated individually;
- i) **ORDER** the Respondent [...] to [...]:
- i) Remove from its database and destroy all personal information, including all copies and any data created by Clearview, of the Class Members;
 - ii) Cease collecting, creating, retaining, using, and/or disclosing the facial photographs and other personal information of the Class Members without their consent;
 - iii) Prevent the facial photographs and other personal information of the Class Members from appearing in search results of Clearview's database;
 - iv) Prevent Clearview's users from accessing its database while geographically within the province of Québec;
 - v) Prevent Clearview's clients and users from running searches in Clearview's database in connection with individuals residing in the province of Québec;
 - vi) Prevent Clearview's clients and other users from using facial photographs uploaded from or associated with the province of Québec as Query Photographs within Clearview's database; and
 - vii) Not market or provide its services in the province of Québec;
- j) **THE WHOLE [...]** with costs [...].

9.2. All of the Class Members have a claim for some or all of these remedies.

10. JUDICIAL DISTRICT

10.1. The Petitioner [...] proposes that the class action be brought before the Superior Court, sitting in the district of Montréal, for the following reasons:

- a) The Petitioner [...] resides in the city of Montréal;
- b) In light of demographical data, the concentration of population in and near Montréal and the widespread access to Internet, a significant number of class members are likely to reside within or near the district of Montréal; and
- c) The Petitioner's [...] attorneys and the Respondent's attorneys have their respective offices and practices in the district of Montréal.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT this Modified Originating Application for authorization to institute a class action and obtain the status of representative;

AUTHORIZE a class action against the Respondent on behalf of the following class [...]:

All natural persons, who are residents of Québec and whose Facial Photographs have been [...] collected by Clearview AI Inc. since August 18, 2017.

ASCRIBE to Ms. Ha Vi Doan the status of representative so that she may advance the present class action on behalf of the Class [...];

IDENTIFY as follows the main questions of fact and law to be determined collectively:

- a) Do the Facial Photographs, Collected Data and other Personal Information of the Class Members constitute personal information of the Class Members?
- b) [...] Did the Respondent collect/create, include in its database, retain, use and and/or disclose for commercial purposes the Facial Photographs, Collected Data and other Personal Information of the Class Members [...]?
- c) If question b) is answered affirmatively, were these actions by the Respondent effected without sufficient knowledge and/or [...] consent of the [...] Class Members?

- c.1) Did Clearview create a database of biometric characteristics and measurements that included the personal information of the Class Members and fail to disclose same to the Commission d'accès à l'information du Québec prior to bringing the database into service?
- d) If questions c) and/or c.1) are answered affirmatively, do the Respondent's actions constitute a civil fault engaging its liability towards the [...] Class Members?
- d.1) If question d) is answered affirmatively, have the Class Members suffered harm as a result?
- e) If question d) is answered affirmatively, are the [...] Class Members entitled to the payment of compensatory damages by [...] the Respondent and, in the affirmative, what is the amount of such damages?
- e.1) If questions c) and/or c.1) are answered affirmatively, are the Respondent's actions unlawful and intentional?
- f) If question e.1 is answered affirmatively, are the [...] Class Members entitled to the payment of punitive damages by [...] the Respondent and, in the affirmative, what is the amount of such damages?
- g) Are the [...] Class Members entitled to orders enjoining Clearview to: [...]
- i. Remove from its database and destroy all personal information, including all copies and any data created by Clearview, of the Class Members;
 - ii. Cease collecting, creating, retaining, using, and/or disclosing the facial photographs and other personal information of the Class Members without their consent;
 - iii. Prevent the facial photographs and other personal information of the Class Members from appearing in search results of Clearview's database;
 - iv. Prevent Clearview's users from accessing its database while geographically within the province of Québec;

- v. Prevent Clearview's clients and users from running searches in Clearview's database in connection with individuals residing in the province of Québec;
 - vi. Prevent Clearview's clients and other users from using facial photographs uploaded from or associated with the province of Québec as Query Photographs within Clearview's database; and
 - vii. Not market or provide its services in the province of Québec;
- g.1) Are the Class Members entitled to a declaration that Clearview violated their privacy and image rights by illegally collecting/creating, retaining, disclosing, and/or using the Class Members' facial photographs and other personal information?
 - h) Are the [...] Class Members entitled to the interest and additional indemnity provided for under the *Civil Code of Québec* on the [...] amounts set out in sub-sections e) and f) above from the date of filing of this application?
 - i) Can the court order the collective recovery of the sums set out above?

IDENTIFY as follows the conclusions sought in relation thereof:

GRANT the class action of the Petitioner and the Class Members against the Respondent [...];

DECLARE that the Respondent violated the privacy and image rights of the [...] Class Members by illegally collecting/creating, retaining, disclosing and/or using the Class Members' facial photographs and other personal information;

CONDEMN the Respondent [...] to pay compensatory damages in the amount of \$4,000 to each Class Member [...];

CONDEMN the Respondent [...] to pay the sum of \$50,000,000 as punitive damages to the Class Members [...];

CONDEMN the Respondent to reimburse the costs incurred for all steps necessary to establish its liability in this matter, including disbursements in connection with experts, notices, fees and expenses of the administrator of the plan of distribution of the recovery;

CONDEMN the Respondent to pay on all of the amounts set out above legal interest and the additional indemnity provided for in the *Civil Code of Québec* calculated from the date of issuance of the *Originating Application for Authorization to Institute a Class Action and Obtain the Status of Representative*;

ORDER the collective recovery of the above amounts;

ORDER that the claim of each Class Member be liquidated individually;

ORDER the Respondent to [...]:

- i. Remove from its database and destroy all personal information, including all copies and any data created by Clearview, of the Class Members;
- ii. Cease collecting, creating, retaining, using, and/or disclosing the facial photographs and other personal information of the Class Members without their consent;
- iii. Prevent the facial photographs and other personal information of the Class Members from appearing in search results of Clearview's database;
- iv. Prevent Clearview's users from accessing its database while geographically within the province of Québec;
- v. Prevent Clearview's clients and users from running searches in Clearview's database in connection with individuals residing in the province of Québec;
- vi. Prevent Clearview's clients and other users from using facial photographs uploaded from or associated with the province of Québec as Query Photographs within Clearview's database; and
- vii. Not market or provide its services in the province of Québec;

THE WHOLE with costs [...].

ORDER that the Class Members, excepting those Class Members who have excluded themselves, will be bound by all judgments to be rendered in the present class action in the manner provided by law;

ORDER the publication of a notice to the Class Members no later than thirty (30) days after the date of the judgment authorizing the class proceedings, and in conformity with the terms and content to be determined by the Court;

[...]

ORDER that the deadline for a Class Member to exclude herself from the class action proceedings shall be sixty (60) days from the publication of the notice to the Class Members, after which point the Class Members who have not excluded themselves will be bound by all judgments to be rendered in the present class action;

ORDER the setting up of a bilingual website to be administered by the representative plaintiff and her attorneys for the benefit of Class Members;

ORDER the Respondent to [...] pay the costs associated with the setting up and the maintenance of the website until the conclusion of the proceedings in the present class action;

ORDER that this class action proceeds before the Superior Court of Québec sitting in the district of Montréal;

THE WHOLE with costs, including the cost of all notices.

Montréal, September 14, 2023

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Lawyers for the Petitioner Ha Vi Doan

NOTICE OF PRESENTATION

TAKE NOTICE that this *Modified Originating Application for Authorization to Institute a Class Action and Obtain the Status of Representative* dated September 14, 2023 will be presented before the Superior Court of Québec at the Montréal Courthouse situated at 1 Notre-Dame Street East, Montréal, on a day and time to be determined by the coordinating judge of the Class Action Division.

Montréal, September 14, 2023

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C A N A D A

PROVINCE OF QUEBEC
District of Montréal

(Class Action)
SUPERIOR COURT

N°: 500-06-001129-218

HA VI DOAN

Petitioner

v.

CLEARVIEW AI INC.

Respondent

LIST OF EXHIBITS

(In support of the *Modified Originating Application for Authorization to Institute a Class Action and Obtain the Status of Representative dated September 14, 2023*)

- EXHIBIT P-1:** Report containing the photographs featuring Ms. Ha Vi Doan and her minor child, collected by Clearview AI Inc.
- EXHIBIT P-2:** Statement of Claim (class proceeding) filed by Ms. Ha Vi Doan before the Federal Court of Canada (T-713-20).
- EXHIBIT P-3:** Clearview AI Inc.'s Motion Record (Motion to Strike) (T-713-20).
- EXHIBIT P-4:** Print-out of the information provided by Delaware Division of Corporations.
- EXHIBIT P-5:** Print-out of Clearview AI Inc.'s website.
- EXHIBIT P-6:** Negative service report issued by a process server.
- EXHIBIT P-7:** Press release dated February 21, 2020.
- EXHIBIT P-8:** Report of Findings # 2021-001.
- EXHIBIT P-9:** Press release dated February 3, 2021.
- EXHIBIT P-10:** Judgment in Federal Court matter T-713-20 dated May 6, 2021.

- EXHIBIT P-11:** Re-Amended Notice of Application dated October 24, 2022, in Federal Court matter T-1410-21.
- EXHIBIT P-12:** Judgment dated March 17, 2023, in Federal Court matter T-1410-21.
- EXHIBIT P-13:** Clearview's Service Agreement, from an archived version of Clearview's website current as of July 21, 2020.
- EXHIBIT P-14:** Marketing emails sent out to multiple distribution lists via Crimedex, *en liasse*.
- EXHIBIT P-15:** Patent application #20210042527 filed with the United States Patent and Trademark Office on February 11, 2021, and Patent application #202103017 published with the World Intellectual Property Association on February 18, 2021, *en liasse*.
- EXHIBIT P-16:** News article entitled "Clearview AI Has New Tools to Identify You in Photos," by Will Knight, published in WIRED on October 4, 2021.
- EXHIBIT P-17:** News article entitled "Clearview AI used nearly 1m times by US police, it tells the BBC" published by BBC News on March 27, 2023.
- EXHIBIT P-18:** News article entitled "Facial recognition firm Clearview AI tells investors it's seeking massive expansion beyond law enforcement" by Drew Harwell, published by the Washington Post on February 16, 2022.
- EXHIBIT P-19:** Fifty-five-page pitch deck prepared by Clearview in December 2021 and referred to in Exhibit P-18.
- EXHIBIT P-20:** News article entitled "Before Clearview Became a Police Tool, It Was a Secret Plaything of the Rich," by Kashmir Hill, published in The New York Times on March 5, 2020.
- EXHIBIT P-21:** News article entitled "This man says he's stockpiling billions of our photos" by Donie O'Sullivan, published by CNN Business on February 10, 2020.
- EXHIBIT P-22:** News article entitled "Google, YouTube, Venmo and LinkedIn send cease-and-desist letters to facial recognition app that helps law enforcement" updated version published by CBS News on February 5, 2020.
- EXHIBIT P-23:** News article entitled "Clearview's Facial Recognition App Has Been used by the Justice Department, ICE, Macy's, Walmart, and the NBA" by Ryan Mac, Caroline Haskins and Logan McDonald and published by BuzzFeed News on February 27, 2020.

- EXHIBIT P-24:** A selection of news articles, *en liasse*.
- EXHIBIT P-25:** Judgment of the Commission d'accès à l'information du Québec dated December 14, 2021, in file n. 1023158-S
- EXHIBIT P-26:** Court dockets as of August 26, 2023, in file n. 500-80-042393-224 and in file n. 500-17-119872-227, *en liasse*
- EXHIBIT P-27:** Clearview's Privacy Policy as of March 10, 2022, and as of August 25, 2023, *en liasse*.
- EXHIBIT P-28:** Clearview's "Privacy & Requests" webpage as of August 25, 2023.
- EXHIBIT P-29:** *Declaration of Thomas Mulcaire* dated May 6, 2020, in Case No. 20 C 512, *David Mutnick v. Clearview AI, Inc. et al*, in the United States District Court for the Northern District of Illinois, Eastern Division.
- EXHIBIT P-30:** Online article entitled "Photographer's Guide to Photo Metadata," published by Format Magazine.
- EXHIBIT P-31:** Clearview's Illinois Resident Opt-Out Form.
- EXHIBIT P-32:** News article entitled "Canadians can now opt out of Clearview AI facial recognition, with a catch" by Thomas Daigle, published by CBC News on July 10, 2020.
- EXHIBIT P-33:** Email exchange between Ms. Doan and Clearview beginning on July 6, 2020.
- EXHIBIT P-34:** Screenshots of the Google image search for the same Doan Photograph previously submitted to Clearview.
- EXHIBIT P-35:** News article "Les pratiques de la GRC comportent des « lacunes graves et systémiques »" by Tristan Péloquin, updated version published by La Presse on June 10, 2021.
- EXHIBIT P-36:** Face search report provided by Clearview further to an access to information request filed by Ms. Louise Campbell.
- EXHIBIT P-37:** Table entitled "Population of Québec, July 1, 1971-2022 (in French only) and table entitled "Population of Québec by age and sex, 1971-2022 (in French only), published by the Institut de la statistique du Québec, *en liasse*.
- EXHIBIT P-38:** Statistics Canada publications on Canadian Internet use in 2020 and 2022, *en liasse*.

- EXHIBIT P-39:** Report entitled “Canadians’ assessments of social media in their lives” by Christoph Schimmele, Jonathan Fonberg and Grant Schelleberg, published by Statistics Canada, release date March 24, 2021, no. 36-28-0001, ISSN 2563,8955.
- EXHIBIT P-40:** Report entitled “*NETendances 2018: L’usage des médias sociaux au Québec*” published by CEFRIO.
- EXHIBIT P-41:** Report entitled “*NETendances 2021: Actualités en ligne, réseaux sociaux et balados*” published by the *Académie de la transformation numérique* under the auspices of the *Université Laval*.
- EXHIBIT P-42:** Report entitled “*NETendances 2022: Actualités en ligne, réseaux sociaux et balados*” published by the *Académie de la transformation numérique* under the auspices of the *Université Laval*.

Montréal, September 14, 2023

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C A N A D A
(Class Action)
SUPERIOR COURT
DISTRICT OF MONTRÉAL

HA VI DOAN

Petitioner

v.

CLEARVIEW AI INC.

Respondent

**MODIFIED ORIGINATING APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND OBTAIN THE STATUS OF
REPRESENTATIVE DATED SEPTEMBER 14, 2023**
(Article 575 of the Code of Civil Procedure)

ORIGINAL



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CANADA
(Class Action)
SUPERIOR COURT
DISTRICT OF MONTRÉAL

HA VI DOAN

Petitioner

v.

CLEARVIEW AI INC.

Respondent

**APPLICATION FOR PERMISSION TO AMEND THE
APPLICATION FOR AUTHORIZATION TO INSTITUTE A
CLASS ACTION AND TO OBTAIN THE STATUS OF
REPRESENTATIVE, AND EXHIBIT R-1
(Arts. 206, 585 C.C.P.)**

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