C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No : 500-06-

(Class Action)
S U P E R I O R   C O U R T

HA VI DOAN, ███████████████
████████████████████████
███████████████████

Applicant

v.

CLEARVIEW AI INC., a moral person incorporated under the laws of the State of Delaware, United States of America and having a registered office at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, New Castle, Delaware, USA, 19801

Defendant

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND OBTAIN THE STATUS OF REPRESENTATIVE
(Article 575 of the *Code of civil procedure*)

IN SUPPORT OF HER APPLICATION, THE PLAINTIFF RESPECTFULLY SUBMITS AS FOLLOWS :

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

1.1.   In the context of provision of facial recognition and identification services to various third parties, the Defendant, Clearview AI Inc. ("**Clearview**"), collects, copies, stores, uses, discloses and sells personal biometric information, including facial photographs, of residents and citizens of Canada, without their knowledge or consent.

1.2.   According to Clearview's claims, it has so far collected over three billion photographs of individual faces and its algorithm allows to instantly detect the unique "faceprint" of any individual.

1.3.   Clearview's actions amount to a blatant violation of the right to privacy on an unprecedented scale.

1.4.   As part of its illegal endeavor, Clearview collected, used and disclosed the photographs featuring the Applicant, Ms. Ha Vi Doan ("**Ms. Doan**"), along with her minor child, without their knowledge or consent, as appears from the report provided by Clearview further to an access to information request filed by Ms. Doan, **Exhibit P-1** (**under seal**).

1.5.   Clearview also collected, used, and disclosed the facial biometric information of Ms. Doan and of her child, without their knowledge or consent, as appears from the report provided

by Clearview further to an access to information request filed by Ms. Doan, Exhibit P-1 (<u>under seal</u>).

1.6. It is worth noting that 2 out of 12 results provided by Clearview are inaccurate and highlight the risk of misidentification generally and such risk for visible minorities in particular.

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 seeks 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 refers to the *Personal Information Protection and Electronic Documents Act,* S.C. 2000, c. 5 (Canada) and to provincial privacy legislation, including the *Québec Charter of Human Rights and Freedoms*, CQLR c C-12.

1.11. As of February 4, 2021, the Proposed Federal Class Action has not yet been certified since Clearview filed a preliminary objection with respect to the powers of the Federal Court regarding the Privacy Breach Class, as appears from Clearview's Motion Record (Motion to strike), **Exhibit P-3**.

1.12. As part of this objection, Clearview takes 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. Ms. Doan contests Clearview's objection regarding the powers of the Federal Court with respect to the Privacy Breach Class and the Federal Court has yet to rule on this issue.

1.14. However, in order to protect the rights of the Privacy Breach Class Members in the event the Federal Court does not entirely uphold its powers and jurisdiction with respect to the Privacy Breach Class, Ms. Doan files this application on a *de bene esse* basis.

2. THE NATURE OF THE ACTION AND THE PROPOSED CLASS

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

> *"All natural persons, who are either residents or citizens of Canada, whose faces appear in the photographs collected by Clearview AI Inc. (the "**Collected Photographs**") (the "**Privacy Breach Class**" or the "**Privacy Breach Class Members**")."*

3. DEFENDANT'S OPERATIONS AND FINDINGS OF THE INVESTIGATION LED BY THE CANADIAN PRIVACY COMMISSIONERS

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. Clouded in secrecy and misleading, the address provided by Clearview on its website, i.e. 214W. 29th Street, New York, NY, 10001, is in fact the address of a *WeWork* shared space and Clearview is nowhere to be found, as appears from a printout of Clearview's website, **Exhibit P-5**, and a negative service report, **Exhibit P-6**.

3.3. Clearview provides facial recognition and identification services to third parties located throughout the world. Until recently, Clearview identified Canada as one of its primary markets.

3.4. For that purpose, Clearview collects on the Internet, copies, stores, and uses photographs featuring human faces. Clearview also collects, stores and uses the information related to the source (website) from which its library of photographs have been copied.

3.5. Clearview is claiming that its database contains over three billion photographs of human faces.

3.6. In parallel, Clearview developed an algorithm allowing it to extract the biometric information contained in these copied photographs of human faces, effectively creating a unique "faceprint" for virtually every individual whose photograph(s) appears on the Internet.

3.7. Clearview's actions in relation to the biometric information of Canadian citizens and residents take place without the knowledge or consent of the individuals appearing in the photographs.

3.8. Coupling the powers of its gigantic database of photographs of human faces and of its facial recognition algorithm, Clearview provides facial recognition services to third parties.

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) Clearview's client 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 virtually all the photographs of the individual appearing in the Query Photo available or formerly available on the Internet, along with all the information accompanying these photographs, such as, often, the individual's name, location, circle of friends, family, etc.

3.10. In sum, Clearview sells most sensitive personal information which it illegally obtains and does so, on an unprecedented scale.

3.11. Faced with such operations, on February 21, 2020, the Office of the Privacy Commissioner of Canada and its counterparts in Quebec, British-Columbia and Alberta (the "**Privacy Commissioners**") launched a joint investigation with respect to Clearview, as appears form a press release, **Exhibit P-7**.

3.12. On July 6, 2020, in response to this joint investigation into its activities, Clearview announced that it will cease offering its facial recognition services in Canada and indefinitely suspend its contract with the RCMP.

3.13. On February 3, 2021, the Privacy Commissioners issued a joint Report of Findings # 2021-001with respect to Clearview's activities (the "**Investigation Report**"), **Exhibit P-8**.

3.14. The Investigation Report concludes that Clearview engages in illegal mass surveillance and blatantly violates the right to privacy of Canadians on a massive scale.

3.15. At the issuance of the Investigation Report, the Privacy Commissioners 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 Quebec'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.

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"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 form the Investigation Report, Exhibit P-8, par. 111.

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

4. FACTS GIVING RISE TO THE APPLICANT'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.

4.3. From time to time, Ms. Doan also takes self-portraits (the "**Doan Photographs**").

4.4. The Doan Photographs appear on the Internet, including on Ms. Doan's own website as well as on platforms such as Facebook and Instagram.

4.5. Ms. Doan's personal biometric information and the Doan Photographs have been collected, stored and used by Clearview, without her knowledge or consent, as appears from Exhibit P-1 (under seal).

4.6. Clearview also obtained, stored, and used Ms. Doan's facial biometric information, without her knowledge or consent, as appears from Exhibit P-1 (under seal).

4.7. By its actions, Clearview blatantly violated Ms. Doan's right to privacy and made her one of the subjects of a mass surveillance operation.

4.8. In addition, Clearview set up a massive database of unique and permanent facial biometric characteristics, which could be used by unauthorized third parties.

4.9. In fact, Clearview has already been targeted by at least two successful attacks on its infrastructure: the first attack resulted in the leak of the list of Clearview's clients and the

second attack resulted in the leak of Clearview's source code, as appears from the Investigative Report, Exhibit P-8, par. 101.

4.10. As a result, Ms. Doan felt violated and suffered a serious prejudice stemming from fear, stress, and inconvenience.

4.11. The damages suffered by Ms. Doan are compounded by the risk of misidentification, as highlighted by the inaccurate results provided by Clearview, Exhibit P-1(under seal).

4.12. In addition to compensatory damages, Ms. Doan is also entitled to punitive damages given Clearview's intentional, complete, and widespread disregard for one of her most fundamental rights.

4.13. Ms. Doan is also entitled to injunctive relief by way of an order directing Clearview to destroy the Doan Photographs and her facial biometrical information.

5. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH MEMBER OF THE PRIVACY BREACH CLASS

5.1. Every Privacy Breach Class Member's photographs and personal biometric information have been (and continue to be) illegally collected, stored, used, and then sold to third parties by Clearview.

5.2. Thus, the facts giving rise to an individual action by each member of the Privacy Breach Class are identical to the facts giving rise to Ms. Doan's claim.

5.3. The harm suffered by Ms. Doan and all the Privacy Breach Class Members is further acknowledged as an

> "*affront to individuals' privacy rights and broad-based harm inflicted in all members of society, who find themselves under continual mass surveillance by Clearview based on its indiscriminate scraping and processing of facial images*"

as appears from the Investigation Report, Exhibit P-8, par. 89.

5.4. The Privacy Breach Class Members are also entitled to the remedies described in par. 4.11 to 4.13 above, including an order directing Clearview to destroy the Collected Photographs and all facial biometrical information of the Privacy Breach Class Members.

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

6.1. Ms. Doan wishes the following common questions to be decided by this class action:

    a)   Do the Collected Photographs constitute personal information ?

    b)   Does the facial biometrical information constitute personal information ?

    c)   Was the consent of the Privacy Breach Class Members required for Clearview to collect, copy, store, use and disclose the Collected

Photographs? In the affirmative, did Clearview obtain such consent from the Privacy Breach Class Members ?

d) Did Clearview violate the right to privacy of the Privacy Breach Class Members ?

e) Are the Privacy Breach Class Members entitled to the payment of compensatory damages by Clearview and, in the affirmative, what is the amount of such damages ?

f) Are the Privacy Breach Class Members entitled to the payment of punitive damages by Clearview and, in the affirmative, what is the amount of such damages ?

g) Are the Privacy Breach Class Members entitled to injunctive relief by way of an order directing Clearview to destroy the Collected Photographs and all facial biometrical information of the Privacy Breach Class Members ?

h) Are the Privacy Breach Class Members entitled to the interest and additional indemnity provided for under the *Civil Code of Québec* on the above amounts from the date of filing of this application ?

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. Considering the widespread access to the internet, the popularity of various social media platforms in Canada, the practice of posting photographs thereon and the staggering number of photographs and personal biometrical facial information illegally collected, stored, used and then sold to third parties by Clearview, the number of Privacy Breach Class Members is estimated to be several millions and spread across Canada.

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 scarping renders it a relative certainty that it collected millions of images of individuals in Canada"

7.3. It would be impossible for Ms. Doan to solicit mandates from all the Privacy Breach Class Members nor would it be practicable for them to file individual claims, which would then 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 Privacy Breach Class Members to obtain access to justice.

8. THE APPLICANT IS IN A POSITION TO PROPERLY REPRESENT THE PRIVACY BREACH CLASS MEMBERS

8.1. Ms. Doan is in a position to properly represent the Privacy Breach Class Members as:

a) she was proactive and took positive steps to ascertain whether Clearview collected, stored and used the Doan Photographs and her facial biometrical information;

b) she is determined to defend her own right to privacy as well as the right to privacy of all the Privacy Breach Class Members and her interests are aligned with the interest of all class members; and

c) she understands the nature of the proposed class action and has the capacity and the will to well represent the interests of the Privacy Breach Class Members and to instruct and collaborate with undersigned attorneys.

9. CONCLUSIONS SOUGHT BY THE APPLICANT ON THE MERITS OF THE CLASS ACTION

9.1. Ms. Doan is seeking the following conclusions on the merits of the class action:

GRANT the class action of the Applicant and each Privacy Breach Class Member;

DECLARE that the Defendant violated the right to privacy of the Privacy Breach Class Members;

CONDEMN the Defendant to pay compensatory damages, in an amount to be determined by the Court;

CONDEMN the Defendant to pay punitive damages, in an amount to be determined by the Court;

ORDER the collective recovery of the above amounts;

ORDER the Defendant to destroy the Collected Photographs and the facial biometrical information of the Privacy Breach Class Members;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* calculated from the date of the issuance of the *Application for authorization to institute a class action and obtain the status of representative,* and with costs, including costs of all experts, notices, fees and expenses of the administrator of the plan of distribution of the recovery in this action.

10. JUDICIAL DISTRICT

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

a) The Applicant 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;

c) The Applicant's attorneys have their office and practice in the district of Montréal.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

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

AUTHORIZE the class action hereinafter described as:

an action in compensatory and punitive damages;

ASCRIBE to Ms. Ha Vi Doan the status of representative of the persons included in the following class:

All natural persons, who are either residents or citizens of Canada, whose faces appear in the photographs collected by Clearview AI Inc.

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

a) Do the Collected Photographs constitute personal information ?

b) Does the facial biometrical information constitute personal information ?

c) Was the consent of the Privacy Breach Class Members required for Clearview to collect, copy, store, use and disclose the Collected Photographs? In the affirmative, did Clearview obtain such consent from the Privacy Breach Class Members ?

d) Did Clearview violate the right to privacy of the Privacy Breach Class Members ?

e) Are the Privacy Breach Class Members entitled to the payment of compensatory damages by Clearview and, in the affirmative, what is the amount of such damages ?

f) Are the Privacy Breach Class Members entitled to the payment of punitive damages by Clearview and, in the affirmative, what is the amount of such damages ?

g) Are the Privacy Breach Class Members entitled to injunctive relief by way of an order directing Clearview to destroy the Collected Photographs and all facial biometrical information of the Privacy Breach Class Members ?

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h)   Are the Privacy Breach Class Members entitled to the interest and additional indemnity provided for under the *Civil Code of Québec* on the above amounts from the date of filing of this application?

IDENTIFY as follows the conclusions sought in relation thereto:

GRANT the class action of the Applicant and each Privacy Breach Class Member;

DECLARE that the Defendant violated the right to privacy of the Privacy Breach Class Members;

CONDEMN the Defendant to pay compensatory damages, in an amount to be determined by the Court;

CONDEMN the Defendant to pay punitive damages, in an amount to be determined by the Court;

ORDER the collective recovery of the above amounts;

ORDER the Defendant to destroy the Collected Photographs and the facial biometrical information of the Privacy Breach Class Members;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* calculated from the date of the issuance of the *Application for authorization to institute a class action and obtain the status of representative*, and with costs, including costs of all experts, notices, fees and expenses of the administrator of the plan of distribution of the recovery in this action.

ORDER the publication of a notice to the Class Members according to the terms to be determined by the Court;

ORDER the publication of the notice to the Class Members no later than thirty (30) days after the date of the judgment authorizing the class proceedings;

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;

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 Defendant for pay the costs associated with the setting up and the maintenance of the website until the conclusion of the proceedings;

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

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

MONTRÉAL, February 5th, 2021

NOVAlex Law Firm Inc.

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Montréal, QC H3C 1W1
O/File: 1860-00912

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: **CLEARVIEW AI INC.**
c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, New Castle, Delaware, USA, 19801

TAKE NOTICE that the Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Québec, H2Y 1B6, on the date set by the judge coordinating the Class Action Division.

MONTRÉAL, February 5th, 2021

NOVAlex Law Firm Inc.

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SUMMONS
(Articles 145 and following C.C.P.)

TAKE NOTICE that the Plaintiff has filed this **APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND OBTAIN THE STATUS OF REPRESENTATIVE** in the office of the Superior Court (Class Action Division) in the judicial district of Montréal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, Notre-Dame E. Street within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days.

The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff. If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs. In your answer, you must state your intention to:

- negotiate a settlement;

- propose mediation to resolve the dispute;

- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;

- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed

according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted. In support of the application, the plaintiff intends to use the following exhibits:

EXHIBIT P-1 (under seal): 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;

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.