

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

DAVID MUTNICK, for himself and others)	
similarly situated,)	Case No. 20 C 512
)	
Plaintiff,)	Judge Sharon Johnson Coleman
)	
v.)	Magistrate Judge Maria Valdez
)	
CLEARVIEW AI, INC.; HOAN TON-THAT;)	
RICHARD SCHWARTZ; and CDW)	
GOVERNMENT LLC)	
)	
Defendants.)	
)	

PLAINTIFF’S CLARIFIED MOTION FOR REASSIGNMENT

Plaintiff David Mutnick, by his attorneys, respectfully submits this Clarified Motion for Reassignment to make clear that Plaintiff only seeks to have the case captioned *Hall v. Clearview AI, Inc., et al.*, No. 20 C 846 (“*Hall*”) reassigned to this Court. Thus, pursuant to Local Rule 40.4, Plaintiff respectfully requests that the Court reassign *Hall* to the Honorable Sharon Johnson Coleman. Plaintiff Hall agrees to this clarified motion. In support of this motion, Plaintiff states as follows:

INTRODUCTION

On January 22, 2020, Plaintiff filed the present case (“*Mutnick*”), and it was assigned to the Honorable Sharon Johnson Coleman under case number 20 C 512. Dkt. 1. On January 29, 2020, Plaintiff Mutnick filed a First Amended Complaint (the “Amended Complaint”). Dkt. 6. In the Amended Complaint, Plaintiff Mutnick seeks compensatory, punitive, declaratory and injunctive relief against Defendants Clearview AI, Inc.; Hoan Ton-That; Richard Schwartz and CDW Government LLC (collectively, “Defendants”) for their alleged violations of the Illinois

Biometric Information Privacy Act (“BIPA”), 740 ILCS § 14/1, *et seq.*, and the constitutional rights of Plaintiff and members of putative nationwide and Illinois classes. Specifically, Plaintiff alleges that Defendants covertly scraped his and class members’ images from the internet and then used artificial intelligence algorithms to unlawfully scan the facial geometry of each individual depicted in the images in violation of privacy laws and citizens’ civil liberties. Dkt. 6, ¶¶ 2-9, 68-136. Counsel for each defendant has filed an appearance. Dkt. 10-12, 18, 22-23, 25.

On February 5, 2020, the complaint in *Hall* was filed. *Hall* Dkt. 1.¹ The *Hall* complaint is based on the same nucleus of operative facts as the *Mutnick* complaint and seeks compensatory, punitive, declaratory and injunctive relief against Clearview AI, Inc. and CDW Government LLC for their alleged violations of BIPA, among other claims. *See id.* The *Hall* case is now pending in the Northern District of Illinois under case number 20 C 846 before the Honorable John Z. Lee. Counsel for each defendant in the *Hall* case has filed an appearance. *Hall* Dkt. 8, 12-17.

On April 8, 2020, Plaintiff filed the erroneously titled “Plaintiff’s Motion for Reassignment and Consolidation” (Dkt. 34). Notwithstanding the title of the motion and citations to Fed. R. Civ. P. 42, the motion focused on reassignment pursuant to Local Rule 40.4 and sought reassignment of *Hall*. Dkt. 34. Upon inquiry by the Court as to the relief sought by Plaintiff, Plaintiff informed the Court that it sought reassignment of *Hall*, not consolidation. *See* Dkt. 38.

On April 14, 2020, the Court ordered Defendants to respond to Plaintiff’s motion on or before April 24, 2020, and Plaintiff’s to file any reply on or before May 1, 2020. *Id.* To assist Defendants in preparing their response, Plaintiff files this Clarified Motion for Reassignment to make clear the relief sought by Plaintiff.

¹ Pursuant to Local Rule 40.4(c), a copy of the complaint in *Hall* is attached hereto as Exhibit 1.

ARGUMENT

I. Legal Standards

Local Rule 40.4 addresses the reassignment of related cases. *See* L.R. 40.4. Pursuant to Local Rule 40.4(b), a “case may be reassigned to the calendar of another judge if it is found to be related to an earlier-numbered case assigned to that judge” L.R. 40.4(b). Cases are related if they: (a) involve the same property; (b) involve some of the same issues of fact or law; (c) grow out of the same transaction or occurrence; or (d) in class action suits, if one or more of the classes involved is the same. L.R. 40.4(a). Local Rule 40.4 only requires that two cases involve some of the same issues of fact or law, there need not be complete identity of issues. *Gautreaux v. Chicago Hous. Auth.*, No. 66-C-1459, 2013 WL 5567771, at *2 (N.D. Ill. Oct. 9, 2013).

Related cases may be reassigned to the judge overseeing the lowest-numbered case where the following criteria is met:

(1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding.

L.R. 40.4(b).

II. *Mutnick and Hall Are Related and Should Be Reassigned to This Court.*

Mutnick and Hall are related because they involve some of the same issues of fact and law and have overlapping classes. *See* L.R. 40.4(a). Accordingly, the Court should reassign the cases before the Honorable Sharon Johnson Coleman. *See* L.R. 40.4.

Regarding fact issues, Plaintiff *Mutnick* and Plaintiff *Hall* each seeks relief from Clearview AI, Inc. and CDW Government LLC in connection with the covert scraping of images from the internet, and the subsequent unlawful scanning of their facial geometries, as well as the facial

geometries of class members. Dkt. 6, ¶¶ 2-9, 13, 15, 42-47, 50-56; *Hall* Dkt. 1, ¶¶ 1-3, 9-14, 17, 24-36. Moreover, both cases involve identical legal issues – e.g.: (a) whether Clearview AI, Inc. and CDW Government LLC violated BIPA; (b) whether declaratory and injunctive relief is proper; and (c) whether plaintiffs are entitled to punitive damages and attorneys’ fees and costs. Dkt. 6, ¶¶ 21-26, 31-35, 42-47, 50-56, 93-120, 131-36, Prayer for Relief; *Hall* Dkt. 1, ¶¶ 20-36, 62, 71-80, Prayer for Relief.

Regarding the classes, the putative Illinois classes alleged in each case are substantively identical. In *Mutnick*, the Illinois class is defined as: “All persons who reside or resided in Illinois whose biometric identifier or information is or was contained in the Clearview database” Dkt. 6 at 58. In *Hall*, the Illinois class is defined as: “All persons who reside or resided in Illinois whose biometric identifier or information is or was contained in the Clearview database at any time.” *Hall* Dkt. 1, ¶ 64. While *Mutnick* also seeks certification of a nationwide class, Rule 40.4, only requires one class to be the same. L.R. 40.4(a).

III. *Hall* Should Be Reassigned to the Honorable Sharon Johnson Coleman.

An examination of the criteria set forth in Local Rule 40.4(b) shows that *Hall* should be reassigned to the Honorable Sharon Johnson Coleman. First, both of the cases are pending in the Northern District of Illinois, Eastern Division. Second, because of the overlapping factual and legal issues, as well as the identical Illinois classes, reassigning *Hall* will likely result in a substantial saving of judicial time and effort. Third, both cases are in their early stages, and no answers are due until July 2, 2020. Dkt. 25, 28, 29; *Hall* Dkt. 14, 24, 25; *see also* 2d Am. Gen. Order 20-0012. As such, reassignment will not substantially delay the progress of either case. Finally, given the overlapping legal and factual issues, the cases are susceptible of disposition in a single proceeding.

CONCLUSION

For the foregoing reasons, the Court should enter a finding that: (a) *Mutnick* and *Hall* are related within the meaning of Local Rule 40.4; and (b) *Hall* should be reassigned to this Court with *Mutnick*. Moreover, Plaintiff Mutnick respectfully requests that the Court's finding be forwarded to the Executive Committee together with a request that the Executive Committee reassign the *Hall* case.

WHEREFORE, Plaintiff David Mutnick respectfully requests that the Court should enter a finding that: (a) *Mutnick* and *Hall* are related within the meaning of Local Rule 40.4; and (b) *Hall* should be reassigned to this. Moreover, Plaintiff Mutnick respectfully requests that the Court's finding be forwarded to the Executive Committee together with a request that the Executive Committee reassign *Hall*.

Dated: April 17, 2020

Respectfully submitted,

/s/ Scott R. Drury
SCOTT R. DRURY

Arthur Loevy
Michael Kanovitz
Jon Loevy
Scott R. Drury
LOEVY & LOEVY
311 N. Aberdeen, 3rd Floor
Chicago, Illinois 60607
312.243.5900
arthur@loevy.com
mike@loevy.com
jon@loevy.com
drury@loevy.com

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