

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

*In re: Clearview AI, Inc. Consumer
Privacy Litigation*

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Case No. 1:21-cv-00135
Hon. Sharon Johnson Coleman

CLEARVIEW DEFENDANTS’ MOTION TO QUASH NONPARTY SUBPOENAS

Pursuant to Federal Rules of Civil Procedure 26(b)(2) and 45(d)(3), Defendants Clearview AI, Inc. (“Clearview”), Rocky Mountain Data Analytics LLC (“Rocky Mountain”), Hoan Ton-That, Richard Schwartz, and Thomas Mulcaire (collectively, the “Clearview Defendants”), by and through their counsel, respectfully move this Court for an order quashing the nonparty subpoenas issued by Plaintiffs to three financial institutions, JPMorgan Chase & Co., JPMorgan Chase Bank N.A., and The Bank of America Corporation (collectively, the “Banks”).

Plaintiffs have made vast, deeply personal and extremely intrusive document requests to the Banks regarding the financial histories of Mr. Ton-That (Clearview’s CEO), Mr. Schwartz (Clearview’s President), and Mr. Mulcaire (Clearview’s General Counsel) (collectively, the “Individual Defendants”) that serve no purpose related to this litigation, and will result only in harassment and annoyance to the Individual Defendants and their families. The fact that Plaintiffs have improperly named the CEO, President, and General Counsel of Clearview as defendants in this litigation does not mean that Plaintiffs are entitled to such highly confidential information such as individual tax returns and credit cards statements. The Individual Defendants’ credit card histories have nothing to do with this case, which centers on Clearview’s allegedly improper collection of biometric data. Plaintiffs’ abusive discovery tactics should not be tolerated.

Plaintiffs have also subpoenaed a sweeping array of financial documents related to Clearview and Rocky Mountain (collectively, the “Entity Defendants”) and various nonparties. These requests are overbroad and seek irrelevant documents, but regardless, the Clearview Defendants have already agreed to produce similar financial information in response to Plaintiffs’ discovery requests served through party discovery. For example, Clearview has agreed to produce tax returns, bank account statements, annual statements, business valuations, and other similar documents. There is no reason for expansive and unnecessary nonparty discovery of a wide variety of irrelevant documents, or duplicative productions of the same documents that will be produced in party discovery.

Accordingly, the Clearview Defendants respectfully request that Plaintiffs’ subpoenas to the Banks be quashed in full. In support of this motion, the Clearview Defendants state as follows:

FACTUAL BACKGROUND

1. On September 13, 2021, counsel for Plaintiffs informed the Clearview Defendants that Plaintiffs would serve nonparty subpoenas on the Banks with a return date of October 1, 2021,¹ seeking the production of financial documents related to the Clearview Defendants and nonparties affiliated with Clearview. *See* Exhibit 1 (subpoena to JPMorgan Chase & Co.), Exhibit 2 (subpoena to The Bank of America Corporation), and Exhibit 3 (subpoena to JPMorgan Chase Bank N.A.). Each subpoena demands the production of the following documents “related to” “any and all accounts” held by each of the Clearview Defendants and nonparties Smart Checker (and variant spellings), Insight Camera LLC, Standard International Technologies, S.A., and Standard International Technologies PLC (collectively, the “Nonparty Affiliates”):

- (a) All account opening documents;

¹ Clearview was notified of the subpoena to JP Morgan Chase N.A. on September 20, 2021, which has a return date of October 11, 2021.

- (b) All correspondence;
- (c) All signature cards;
- (d) All corporate resolutions;
- (e) All LLC, Partnership, Articles of Incorporation, or other business formation documents;
- (f) All deposit and withdrawal slips;
- (g) All tax returns;
- (h) All documents concerning loans, leases, and/or lines of credit, including but not limited; to loan and lease applications, loan and lease documents, and line of credit documents;
- (i) All credit card application and statements;
- (j) All cancelled checks; and
- (k) All account transfer requests.

See Exhibits 1, 2, and 3, Rider to Subpoena.

2. Plaintiffs have also propounded dozens of document requests on the Clearview Defendants in this proceeding. Among other things, Plaintiffs have sought—and the Clearview Defendants have agreed to produce—a wide assortment of corporate and financial documents concerning the Clearview Defendants and the Nonparty Affiliates. Even though much of the requested information has no relation to the claims or defenses in this litigation, the Clearview Defendants have agreed to produce documents in response to the following requests:

Request 33: All documents and communications related to the formation and organization of Clearview; Rocky Mountain; Smartcheckr; Insight Camera LLC; Standard International Technologies SA – Panama; Standard International Technologies PLC – Singapore or any other predecessor, successor, subsidiary or affiliate of any those entities, including documents and communications related to: (a) each entity’s purpose; (b) the officers of each entity; (c) the initial capitalization of each company; and (d) the bank accounts of each entity.

Request 34: All documents and communications related to the assets, debts and expenses of Clearview; Rocky Mountain; Smartcheckr; Insight Camera; Standard International Technologies SA – Panama; Standard International Technologies

PLC – Singapore or any other predecessor, successor, subsidiary or affiliate of any those entities, including: (a) loan documents; (b) each company’s financial transactions, including bank statements, wire or electronic transfers, deposit tickets and withdrawal slips; (c) money or other consideration provided to any of the above-described entities by Hoan Ton-That and/or Richard Schwartz; (d) leases and/or mortgages; (e) accounts payable documents and documents showing how the payments were made; (f) accounts receivable documents; (g) any intellectual property owned the entity; (h) documents showing capital contributions by Hoan Ton-That or Richard Schwartz; and (i) financial statements.

Request 35: All corporate meeting minutes, annual statements, corporate minute books and other documents related to the corporate formalities of Clearview; Rocky Mountain; Smartcheckr; Insight Camera; Standard International Technologies SA – Panama; Standard International Technologies PLC – Singapore or any other predecessor, successor, subsidiary or affiliate of any those entities.

Request 36: All federal and state income tax returns (and accompanying forms and schedules) for Hoan Ton-That and Richard Schwartz, as well as Clearview; Rocky Mountain; Smartcheckr; Insight Camera; Standard International Technologies SA – Panama; Standard International Technologies PLC – Singapore or any other predecessor, successor, subsidiary or affiliate of any those entities.²

Request 37. All documents and communications relating to any past, current or prospective value, profit, loss, financial metric or business valuation or service offering derived from or otherwise related to Biometric Data, Biometric Identifiers, Biometric Information or Face Templates collected, generated or extracted from photographs, images, and/or facial scans.

Request 13: All documents and communications concerning your past, current or prospective monetization or other financial impact of: (a) your Face Template Database; (b) the Clearview Facial Recognition App or Software; and/or (c) the Rocky Mountain Facial Recognition App or Software. This request includes contracts or other documents governing your relationship with any user of the Clearview and/or Rocky Mountain Facial Recognition App or Software.

See Exhibit 4 (Clearview Defendants’ Responses and Objections to Plaintiffs’ First Set of Requests for Production of Documents); Exhibit 5 (August 10, 2021 email memorializing the Clearview Defendants’ agreement to produce documents in response to Requests 33-35); Exhibit 6 (August

² The Clearview Defendants agreed to produce tax returns for Clearview and advised Plaintiffs that Rocky Mountain does not have any tax returns. The Clearview Defendants objected to the production of the Individual Defendants’ tax returns. Exhibit 6.

19, 2021 letter memorializing the Clearview Defendants' agreement to produce documents in response to Requests 13, 36, and 37).

3. Thus, the documents Plaintiffs seek from the Banks that are even arguably relevant to this case are ones that the Clearview Defendants have already agreed to produce. Among other things, the Clearview Defendants have agreed to produce documents related to any capital contributions made by Mr. Ton-That and Mr. Schwartz, and any transfers between the Individual Defendants and the Entity Defendants will be apparent in the Entity Defendants' account statements. In short, transactions involving the Individual Defendants and the Entity Defendants will be apparent from the Entity Defendants' financial records, which the Clearview Defendants have agreed to produce.

4. Notwithstanding Clearview's agreement to produce these documents, Plaintiffs have embarked on a campaign to extract various financial records from the Banks, including the personal financial information of the Individual Defendants. The Banks are nonparties that have financial relationships with the Clearview Defendants, but have no other involvement in the case. The subpoenas sweep far beyond potentially relevant documents to ones relating to personal information about each of the Individual Defendants as well as Nonparty Affiliates that include almost the entirety of the Individual Defendants' financial records from credit card statements to cancelled checks from January 1, 2015 (years before Clearview was founded) to the present. This is a clear abuse of the discovery rules.

ARGUMENT

I. THE CLEARVIEW DEFENDANTS HAVE STANDING TO BRING THIS MOTION TO QUASH.

5. As a threshold matter, the Clearview Defendants have standing to object to the subpoenas issued to the Banks because they have personal rights related to the documents sought

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