

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

In re: Clearview AI, Inc. Consumer Privacy
Litigation

Case No.: 1:21-cv-00135

Judge Sharon Johnson Coleman

Magistrate Judge Maria Valdez

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS STEVEN RENDEROS,
VALERIA THAIS SUÁREZ ROJAS, REYNA MALDONADO, LISA KNOX, MIJENTE
SUPPORT COMMITTEE, AND NORCAL RESIST FUND'S MOTION TO REMAND**

Plaintiffs Steven Renderos, Valeria Thais Suárez Rojas, Reyna Maldonado, Lisa Knox, Mijente Support Committee (“Mijente”), and NorCal Resist Fund (“NorCal Resist”) (collectively hereinafter, “Plaintiffs”) respectfully submit this memorandum in support of their Motion to Remand this action to Alameda County Superior Court.

INTRODUCTION

Clearview’s attempt to assert diversity jurisdiction fails on its face. Plaintiffs include individuals who are Alameda County residents and community-based organizations with hundreds of California members. They brought this state-law action to enjoin the Alameda Police Department and District Attorney, Antioch Police Department, El Segundo Police Department (collectively hereinafter, “California Defendants”), and Clearview AI, Inc. (“Clearview”) from deploying an illicit domestic surveillance database created by illegally acquiring, storing, and exploiting the likenesses of millions of Californians. This software places all California residents in a perpetual police lineup without their authorization, and subjects people of color to a substantially higher danger of being misidentified by law enforcement. For these reasons, several cities in Alameda County passed legislation banning Clearview’s facial recognition technology. The Alameda Police Department and District Attorney continued to use it anyway. Plaintiffs’ claims arise under California common law, California statutes, and the California Constitution and involve parties that do business, operate, and reside in California. Clearview’s removal of this case from state court was improper and undertaken in bad faith to delay and obstruct the prosecution of Plaintiffs’ claims.

Under longstanding law in both this Circuit and the Ninth Circuit, “any doubt” regarding federal jurisdiction should be resolved in favor of remand. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911 (7th Cir. 1993); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Here, complete diversity does not exist because citizens of California appear on both sides of the “v.” Clearview’s Notice of Removal also fails to establish any other legitimate grounds for removing this case to federal court:

First, Clearview argues that California Defendants—none of which consented to removal—were fraudulently joined. This assertion is baseless. All of these entities have deployed Clearview’s domestic surveillance technology and are accountable for aiding and abetting Clearview’s unlawful activities under basic common law principles. Under the guise of fraudulent joinder, Clearview seeks to litigate misguided state-law legal theories that should be tested by demurrer in state court, especially since they involve arguably novel applications of state law.

Second, Clearview ignores actual fraudulent joinder jurisprudence and, instead, curiously attempts to apply the standard for permissible joinder articulated in 28 U.S.C. § 1447(e), asserting that § 1447(e) provides the relevant test because Plaintiffs dismissed and re-filed their lawsuit. This ill-conceived theory has never been applied by any court and directly contravenes the plain text of § 1447(e).

Third, Clearview proposes that the efficient way to proceed would be to “sever” Plaintiffs’ claims for aiding and abetting Clearview’s illegal conduct and litigate them in state court in Clearview’s absence, while the claims against Clearview proceed in Illinois. This is legally and practically untenable. Further, the doctrine of “procedural misjoinder” is not a ground for removal, only fraudulent joinder is. *See, e.g., J.T. Assocs., LLC v. Fairfield Dev., L.P.*, No. 15-CV-04913-BLF, 2016 WL 1252612, at *3 (N.D. Cal. Mar. 31, 2016). In any event, there is no misjoinder here because it is routine and efficient to sue tortfeasors jointly with those who aid and abet them.

Because the Notice of Removal does not come close to overcoming the “strong presumption” against removal, this case should be remanded to Alameda County Superior Court.

FACTUAL BACKGROUND

A. The Parties

1. Plaintiffs

The four individual Plaintiffs are all activists who live in or have ties to Alameda County, California. Steven Renderos is the Executive Director of the Center for Media Justice.

(Declaration of Ellen V. Leonida (“Leonida Decl.”), Ex. 1 (“Compl.”) ¶ 12.) Plaintiff Valeria Thais Suárez Rojas has worked as an advocate for immigrants’ rights at the California Immigrant Youth Justice Alliance. (*Id.* ¶ 13.) Plaintiff Lisa Knox is the Legal Director of the California Collaborative for Immigrant Justice. (*Id.* ¶ 14.) And Plaintiff Reyna Maldonado is an immigrant, business owner, and former immigrants’ rights community organizer. (*Id.* ¶ 15.)

Plaintiff NorCal Resist is a California organization that advocates for immigration reform and immigrants’ rights. It has 7,000 members in Northern California. (*Id.* ¶ 16.) Plaintiff Mijente is a corporation that organizes around surveillance issues in the immigrant community and has more than 300 California members, including 50 members in Alameda County. (*Id.* ¶ 17)

2. Defendants

Defendant Clearview is a Delaware corporation with its principal place of business in New York, New York. Clearview is registered as a data broker in, and conducts business throughout, California. (Compl. ¶¶ 19, 21.) Multiple people associated with Clearview, including co-founder Hoan Ton-That, have longstanding ties to the alt-right, a far-right ideology espousing the belief that white identity is under attack. (*Id.* ¶ 20.) People associated with Clearview have expressed animosity toward immigrants and endorsed racism and violence. (*Id.*)

Defendants El Segundo and Antioch Police Departments have purchased licenses from Clearview and have run searches on its database in California, targeting California residents. (*Id.* ¶¶ 21, 24-25.) Defendants Alameda County District Attorney and Alameda Police Department have also run hundreds of searches on Clearview, despite the City of Alameda’s ban on facial recognition technology. (*Id.* ¶¶ 22-23, 73.) Each time these agencies upload an image to Clearview’s database to run a search, Clearview retains the images and corresponding biometric information in its database for future searches. (*Id.* ¶¶ 37, 73.)

B. Plaintiffs’ Claims

Clearview engages in the widespread collection of California residents’ images and biometric information (including Plaintiffs’), without notice or consent, by illicitly scraping images from websites and platforms owned and operated by California companies, such as

Facebook. (Compl. ¶ 21.) It continues to do so despite numerous cease and desist letters from those companies. (*Id.* ¶ 32.) Clearview has promoted and sold licenses for its faceprint database throughout the State, in part by offering trial uses to government entities (including California Defendants). (*Id.* ¶¶ 21-25.)

Plaintiffs have posted pictures of themselves on social media and frequently express views critical of police and ICE practices. (*Id.* ¶¶ 12-17.) As a result of Defendants' unlawful actions, Plaintiffs have suffered multiple injuries, including, at least: expenditure of resources to understand the extent of Clearview's misappropriation of their and their members' identities, images, likenesses, and biometric data; loss of their property rights in their own identities, images, likenesses, and biometric data; mental anguish as a result of the invasions of their privacy; and fear that they and their communities and families will be targeted for their political speech, associations, affiliations, and/or immigration status. (*Id.* ¶ 70.) Further, when Plaintiffs learned that the Alameda County District Attorney and Alameda City Police Department have used Clearview in violation of Alameda's ban on use of facial recognition technology, Plaintiffs were distressed, anxious about their ability to speak out about social issues, and concerned about their increased risk of being targeted, harassed, and surveilled as a result of their advocacy efforts. (Declaration of Reyna Maldonado ¶¶ 6-7; Declaration of Lisa Knox ¶¶ 7-8.)

Plaintiffs bring three causes of action against Clearview: (1) common law appropriation of likeness, for collecting, using, and selling Plaintiffs' identities without their knowledge or consent; (2) violation of Plaintiffs' right to privacy under California Constitution art. 1, section 1; and (3) unfair and unlawful business practices, in violation of California Business & Professions Code §§ 17200 et seq. Plaintiffs bring two causes of action against California Defendants: (1) aiding and abetting Clearview's tortious conduct; and (2) violating the liberty of speech guaranteed to Plaintiffs by Article I, section 2(a) of the California Constitution.

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