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7 COUNTY OF ALAMEDA  
8 (erroneously sued as the ALAMEDA COUNTY DISTRICT ATTORNEY)

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF ILLINOIS

12 IN RE: CLEARVIEW AI, INC., CONSUMER  
13 PRIVACY LITIGATION

Case No. 1:21-cv-00135  
MDL No. 2967

14 **COUNTY OF ALAMEDA'S MOTION FOR**  
15 **JUDICIAL DETERMINATION OF**  
16 **FRAUDULENT JOINDER OR, IN THE**  
17 **ALTERNATIVE, REMAND TO STATE COURT**

**Hon. Sharon Johnson Coleman**

1 **I. INTRODUCTION**

2 Defendant COUNTY OF ALAMEDA (erroneously sued as the ALAMEDA COUNTY  
3 DISTRICT ATTORNEY) (the “COUNTY”) was fraudulently joined as a defendant along with  
4 defendants ANTIOCH POLICE DEPARTMENT, ALAMEDA POLICE DEPARTMENT, and EL  
5 SEGUNDO POLICE DEPARTMENT (“Municipal Defendants”) by Plaintiffs in order to destroy  
6 diversity jurisdiction with CLEARVIEW AI, INC. (“CLEARVIEW”) and prevent removal of this case to  
7 federal court. Alternatively, it is a non-consenting, non-diverse defendant and Plaintiff’s lawsuit should  
8 properly be remanded to California state court. The COUNTY therefore respectfully requests a  
9 determination from this Court that it was fraudulently joined, or, alternatively, that this case should be  
10 remanded accordingly. The COUNTY agrees with and joins in the arguments contained in co-defendant  
11 CLEARVIEW’s Notice of Removal (submitted herewith) that the COUNTY is a fraudulently joined  
12 defendant under 28 U.S.C. § 1447(e). In addition to those arguments, the COUNTY provides additional  
13 briefing regarding the lack of viability of Plaintiffs’ claims in light of the COUNTY’s status as a local  
14 public entity of California, which further supports a finding of fraudulent joinder. However, if this Court  
15 disagrees that the COUNTY was fraudulently joined, this case should be remanded pursuant to 28 U.S.C.  
16 § 1447(c).

17 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

18 For purposes of brevity and judicial economy, the COUNTY adopts and incorporates herein by  
19 reference the Factual Background and Procedural History stated in CLEARVIEW’s Notice of Removal,  
20 Document Number 1 filed in the Northern District Of California on June 14, 2021. (Notice of Removal  
21 attached as Ex. 1 to Declaration of Michael C. Wenzel (“Wenzel Decl.”), at pp. 2:23-4:18.)  
22 CLEARVIEW’s Notice of Removal succinctly recites the relevant factual and procedural history of  
23 litigation between the parties up until the date this matter was removed.<sup>1</sup> To briefly summarize, that  
24 history includes the following notable events:

- 25 • On March 9, 2021, the same Plaintiffs to this matter, represented by the same counsel, filed a  
26 complaint in Alameda Superior Court asserting substantially identical facts and claims as set forth

27 <sup>1</sup> In assessing a claim of fraudulent joinder, the court may “pierce” the pleadings and weigh evidence  
28 normally reserved for summary judgment and may even consider materials outside of the pleadings for  
the limited purpose of determining whether there are facts that support or negate the claim. (*Padilla v.*

1 in this action against Clearview only (“*Renderos I*”). No public entities were initially named.

- 2
- 3
- On or about April 8, 2021, Clearview filed a Notice of Removal under 28 U.S.C. § 1332(a), removing *Renderos I* to the U.S. District Court, Northern District of California.
  - On or about April 8, 2021, Plaintiffs filed an amended complaint in *Renderos I*, asserting new causes of action against Municipal Defendants who, like Plaintiffs, reside in California.
  - Following removal of *Renderos I*, CLEARVIEW filed a notice of Potential Tag-Along Action with the Clerk of the JPML on or about April 13, 2021.
  - On April 15, 2021, the Clerk of JPML entered a conditional transfer order to transfer *Renderos I* to MDL.
  - Rather than amend their Complaint after the transfer to MDL, Plaintiffs dismissed *Renderos I* and re-filed the present action in California state court, naming the Municipal Defendants.
- 10
- 11

12 As the Court is aware, the operative Complaint in this matter was filed by Plaintiffs in the  
13 Superior Court of California for the County of Alameda on April 22, 2021. (Dkt. Nos. 193-1, 193-2.) On  
14 June 14, 2021, Defendant CLEARVIEW removed this case to the United States District Court for the  
15 Northern District of California (without the consent of the COUNTY and other Municipal Defendants)  
16 based, in part, on the grounds that the Municipal Defendants were fraudulently joined to defeat federal  
17 diversity jurisdiction. (Dkt. Nos. 193-1, 193-3.) On October 5, 2021, this case was transferred to the  
18 United States District Court for the Northern District of Illinois for its inclusion in MDL No. 2967. (Dkt.  
19 No. 184). On October 20, 2021, Plaintiffs filed a motion to remand this case back to California Superior  
20 Court. (Dkt. Nos. 192, 193).

### 21 III. LEGAL ARGUMENT

#### 22 A. The COUNTY Is Fraudulently Joined as a Defendant and Should Be Dismissed

23 As set forth fully in CLEARVIEW’s Notice of Removal, the COUNTY is a California  
24 municipality belatedly added as a defendant after unexplained delay and suspect procedural tactics, and  
25 the claims against the COUNTY are meritless and subject to dismissal. The Complaint shows no  
26 common causes of action between CLEARVIEW and the COUNTY, and no facts sufficient to state a  
27 claim against the COUNTY. The COUNTY agrees with CLEARVIEW that by dismissing their original  
28 complaint after removal and conditional transfer to MDL and by re-filing a substantively identical

1 complaint with threadbare claims against non-diverse Municipal Defendants, Plaintiffs appear to have  
2 done so in an apparent attempt to circumvent the JPML's Conditional Transfer Order (issued April 15,  
3 2021) and to defeat diversity jurisdiction and ensure that this matter is litigated in state court.

4 Because Plaintiffs have constructively sought to join additional defendants after removal, the  
5 COUNTY agrees with CLEARVIEW that this matter should be analyzed under 28 U.S.C. § 1447 (e),  
6 and that the Court should deny joinder of the Municipal Defendants. The COUNTY adopts and  
7 incorporates herein the briefing on these issues as stated in CLEARVIEW's Notice of Removal including  
8 that: 1) the Municipal Defendants are not needed for just adjudication; 2) the statute of limitations does  
9 not preclude severance of claims; 3) there was an unexplained (or insufficiently explained) delay in  
10 Plaintiffs' joinder of the Municipal Defendants; 4) Plaintiffs' motive in joining the Municipal Defendants  
11 was to defeat federal jurisdiction; and 5) The strength of Plaintiffs' claims against Municipal Defendants  
12 is weak. (Wenzel Decl., Ex. 1 at p. 5:15-18:14.)

13 Even if *Renderos I* is disregarded and joinder analysis is limited to the current operative  
14 Complaint, Plaintiffs' inclusion of Municipal Defendants in this action is still improper. A plaintiff may  
15 not "fraudulently" join an in-state or non-diverse defendant solely for the purpose of defeating diversity  
16 jurisdiction. When non-diverse defendants are joined in state court (before removal), fraudulent joinder  
17 exists if: 1) there is no possibility that the plaintiff can state a cause of action against the non-diverse  
18 defendant in state court; or 2) the plaintiff commits outright fraud in pleading jurisdictional facts.  
19 (*Hoosier Energy Rural Elec. v. Amoco Tax Leasing IV Corp.*, 34 F.3d 1310, 1315 (7th Cir.1994), citing  
20 *Gottlieb v. Westin Hotel Co.*, 990 F.2d 323, 327 (7th Cir. 1993).)

21 The common element of both standards is the strength or viability of the claims asserted against  
22 the non-diverse defendant. Here, joinder is improper because Plaintiff cannot satisfy that element, which  
23 is required under either standard. In other words, because Plaintiffs' claims against the Municipal  
24 Defendants are weak *and* there is no possibility that Plaintiffs can state a cause of action against the  
25 COUNTY, joinder is improper and should be deemed fraudulent.<sup>2</sup>

26 ///

27 \_\_\_\_\_  
28 <sup>2</sup> As noted above, the COUNTY agrees with and incorporates herein the briefing on the remaining  
elements used to evaluate fraudulent joinder under 28 U.S.C. § 1407 (e) as stated in CLEARVIEW's

1 **B. Plaintiffs' Claims against the COUNTY are Not Viable**

2 As noted directly above, joinder of a non-diverse defendant will be deemed improper if there is  
3 no possibility that Plaintiffs can state a cause of action against the COUNTY. (See also *Steel v. Ford*  
4 *Motor Company*, No. 11–C00460, 2011 WL 1485380, at \*3 n. 2 (N.D. Ill. Apr.19, 2011).)<sup>3</sup> Plaintiffs'  
5 Complaint asserts five causes of action for: (1) common law appropriation of likeness; (2) invasion of  
6 Plaintiffs' rights to privacy in violation of California Constitution Article 1, § 1; (3) violation of  
7 California Business & Professions Code §§ 17200 *et seq*; (4) aiding and abetting a tort; and (5)  
8 infringement on Plaintiffs' liberty of speech in violation of California Constitution, Article 1, § 2. (Dkt.  
9 Nos. 193-1, 193-2.) Only the fourth cause of action for aiding and abetting a tort and fifth cause of  
10 action for infringement on Plaintiff's liberty of speech are directed against the COUNTY.

11 As a preliminary matter, Plaintiffs' claims against the COUNTY are unsupported by facts and  
12 amount to mere conclusory allegations tenuously derived from a BuzzFeed News article published on the  
13 World Wide Web. (Dkt. Nos. 193-1; 193-2 at ¶¶ 10, 73.) In this way, this case is not dissimilar from the  
14 case of *Lynch Ford, Inc. v. Ford Motor Co., Inc.*, which was previously decided by this Court. In *Lynch*,  
15 an automobile franchise dealership was found to be a fraudulently joined defendant, joined in an attempt  
16 to defeat diversity jurisdiction, in large part because the complaint alleged no wrongful conduct on the  
17 part of the Defendant. (*Lynch Ford, Inc. v. Ford Motor Co., Inc.*, 934 F.Supp. 1005 (N.D. Ill.1996).)

18 As expounded on below, Plaintiffs' claims against COUNTY are far weaker than in *Lynch*, are  
19 without merit, and would be subject to dismissal under established law.

20 **1. Aiding And Abetting A Tort**

21 Plaintiffs' fourth cause of action for aiding and abetting a tort fails for three reasons: (1) Plaintiffs  
22 fail to allege compliance with the pre-litigation claims requirement necessary to bring an action against  
23 Municipal Defendants; (2) Plaintiffs fail to identify a statutory basis for their "aiding and abetting" claim;  
24 and (3) Plaintiffs fail to identify a tort theory upon which the COUNTY may be held liable.

25 **a. Plaintiffs Fail to Allege Compliance with the California Tort Claims Act**

26 As discussed in detail below, tort liability of local public entities in California is governed by the  
27

28 <sup>3</sup> The COUNTY reserves its right to bring a motion to dismiss Plaintiffs' Complaint under FRCP Rule

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