

No. 25-1673

**IN THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

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

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division,
District Judge Sharon Johnson Coleman
No. 1:21-cv-00135

**BRIEF FOR AMICI CURIAE VERMONT, ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAII, IOWA, KANSAS,
MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA,
NEBRASKA, NEVADA, NEW JERSEY, NEW YORK, NORTH
CAROLINA, OREGON, RHODE ISLAND, TENNESSEE, UTAH, WEST
VIRGINIA, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF
OBJECTORS-APPELLANTS ROBERT WEISSMAN AND RICK
CLAYPOOL**

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Appellate Court No: 25-1673

Short Caption: In re: Clearview AI, Inc. Consumer Privacy Litigation

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Amici States

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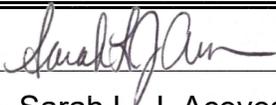
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INTERESTS OF AMICI

Amici States are a broad, bipartisan coalition of states consisting of the States of Vermont, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, Tennessee, Utah, West Virginia, and the District of Columbia. Through their respective Attorneys General, Amici States respectfully submit this brief in support of Objectors-Appellants Weissman and Claypool.

The Attorneys General are their respective states' chief law enforcement officers. They have two interests here. First, in their roles as chief law enforcement officers, the Attorneys General have a responsibility to protect consumers. Second, they have a responsibility to protect consumer class members under the Class Action Fairness Act ("CAFA"), which gives state Attorneys General a role in the class action settlement approval process. *See* 28 U.S.C. § 1715; *see also* S. REP. 109-14, 2005 U.S.C.C.A.N. 3, 6 (requirement "that notice of class action settlements be sent to appropriate state and federal officials" exists "so that they may voice concerns if they believe that the class action settlement is not in the best interest of their citizens."); *id.* at 34 ("notifying appropriate state and federal officials . . . will provide a check against inequitable settlements"; "[n]otice will also deter collusion between class counsel and defendants to craft settlements that do not benefit the

injured parties.”). Amici States submit this brief to further these interests.

SUMMARY OF THE ARGUMENT

The Amici States, and the millions of Americans they represent, strongly urge this Court to vacate or modify the District Court’s decision approving the settlement. Failure to do so will leave millions of Americans’ biometric data exposed, and fail to achieve the actual purpose of this litigation—to protect Americans’ privacy.

As facial recognition technology becomes increasingly embedded into everyday life, privacy concerns are compounded. The need to balance the benefits of such technology with its harms is vital. Unlike a driver’s license or a password, an individual’s biometrics cannot be changed. Once compromised, fingerprints, DNA, and facial maps are compromised forever. Amici States—and consumers within those states—are therefore deeply concerned that Clearview AI, Inc. (“Clearview”) has collected billions of images without their consent for use in a searchable facial recognition database. Yet, under the Settlement, many instances of a person’s appearance on the internet—be it in the audience of a rally, a mugshot, dining at an intimate restaurant, a reflection in a mirror, or cheering their child at a Little League game—will continue to be maintained, and potentially exploited, by Clearview without any additional protections. Worse, the approved settlement sanctions the unlawful conduct that gave rise to this lawsuit and requires class members to release all claims against Clearview nationwide (including in the Amici States) in exchange

for what amounts to an uncertain speculative monetary benefit.

Amici States have an interest in ensuring that consumer class-action settlements are fair to consumers. This settlement would profoundly impact nearly every American's ability to protect their privacy. This Court should vacate or modify the District Court's decision approving the settlement.

ARGUMENT

I. As approved by the District Court, the settlement agreement does not do enough to protect consumers' right to privacy in their biometric data.

The District Court did not impose injunctive relief for the nationwide class because, in its view, plaintiffs' unjust enrichment and declaratory judgment claims were "unbound by any state's law" and formed a weak "basis for relief, let alone nationwide relief." *In re Clearview AI, Inc., Consumer Priv. Litig.*, No. 21-CV-00135, 2025 WL 1371330, at *13 (N.D. Ill. May 12, 2025). Essentially, the District Court did not require nationwide class injunctive relief because it did not believe there was directly applicable state law under which to do so. But that is simply not the case.

Well-established common-law principles support an individual's right to privacy – including their right to privacy regarding their biometric identifiers. Those principles weigh strongly in favor of granting injunctive relief to the nationwide class as recourse for Clearview's unlawful conduct. Because the

settlement and release encompass all claims that were brought or could have been brought – including a claim for invasion of privacy –the District Court should have considered these well-established principles in determining whether the settlement is fair.

Patel v. Facebook illustrates how violations of the right to privacy have long been actionable at common law. In *Patel*, Illinois Facebook users brought a class-action lawsuit against Facebook alleging that Facebook’s use of facial recognition technology through its Tag Suggestions feature violated Illinois’ Biometric Information Privacy Act (“BIPA”). *Patel v. Facebook Inc.*, 290 F. Supp. 3d 948 (N.D. Cal. 2018). Facebook argued that the plaintiffs lacked standing under Article III of the United States Constitution because their claims were based solely on Facebook’s failure to comply with BIPA and therefore, they did not suffer actual damages sufficient to confer standing.

The District Court rejected Facebook’s argument and found that the class had alleged a concrete and actual injury in fact sufficient to confer Article III standing and certified the class pursuant to F.R.C.P. 23(b)(3). The District Court observed:

The Illinois legislature’s considered judgments in enacting BIPA are also well grounded in a long tradition of claims actionable in privacy law. The common law and the literal understanding of privacy encompass the individual’s control of information concerning his or her person. Violations of the right to privacy have long been actionable at common law. Actions to remedy defendants’ invasions of privacy,

intrusion upon seclusion, and nuisance have long been heard by American courts, and the right of privacy is recognized by most states.

Id. at 954 (citation and quotation omitted).

Facebook appealed, arguing that its failure to comply with Illinois statutory requirements with respect to the collection of biometric identifiers is merely a “procedural violation of BIPA rather than injury to a concrete interest, and therefore plaintiffs failed to allege that they suffered an injury-in-fact that is sufficiently concrete for purposes of standing.” *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1271 (9th Cir. 2019).

The Ninth Circuit rejected that argument, finding that violations of BIPA cause a concrete injury to individuals’ privacy interests as recognized under common law, as opposed to a mere procedural statutory violation. *Id.* at 1274. More importantly, the Ninth Circuit recognized that individuals have a right of privacy with respect to their biometric identifiers, and as such, “the capture and use of a person’s biometric information invades concrete [privacy] interests.” *Id.* at 1273.

The Court further explained that in enacting BIPA, the Illinois General Assembly wished to “enhance Illinois’s limited State law regulating the collection, use, safeguarding, and storage of biometrics.” *Id.* at 1269. In other words, the Illinois General Assembly, recognizing the privacy risks associated with facial recognition technology, enacted BIPA to strengthen the protection of biometric

information – a protection that already exists under the common law right to privacy.

The parties settled the case before trial, where Facebook agreed and the court approved to pay \$650 million to the class, implementation of meaningful changes to the company’s use of facial recognition technology, and deleting the face templates of any class members who had not been active on Facebook for three years.¹

Courts, including this one, have adopted *Patel’s* holding that BIPA was passed to strengthen the protections that already exist under the common law right to privacy. *See, e.g., Bryant v. Compass Grp. USA, Inc.*, 958 F.3d 617, 622 (7th Cir. 2020), as amended on denial of reh’g and reh’g en banc (June 30, 2020) (recognizing the *Patel* court’s finding that the BIPA provisions at issue were intended to protect an individual’s concrete interests in privacy, not merely procedural rights) (internal quotations and citations omitted); *Sherman v. Brandt Indus. USA Ltd.*, 500 F. Supp. 3d 728, 734 (C.D. Ill. 2020) (explaining that the *Patel* court “found that an invasion of an individual’s biometric privacy rights has a close relationship to the basis for privacy lawsuits in American or English courts”

¹ A copy of the settlement agreement entitled “Amended Stipulation of Class Action Settlement” is available at https://www.facebookbipaaction.com/media/2963194/2020-0722_d468_notice_of_amended_stip_of_class_action_settlement.pdf (last visited on July 25, 2023).

and that the “improper collection and retention of biometric data implicates an individual’s control of information concerning his or her person” (internal citations omitted)).

These cases illustrate that a company’s utilization of biometric identifiers without consent implicate longstanding and well-recognized privacy interests for which individuals have had a cause of action under common law. *Patel*, 932 F.3d at 1273 (“we conclude that the development of a face template using facial-recognition technology without consent (as alleged here) invades an individual’s private affairs and concrete interests. *Similar conduct is actionable at common law*”) (emphasis added).

Here, there is no question that consumers have an actionable privacy right implicated by Clearview’s conduct. Notably, the Third Amended Complaint repeatedly alleges that monetary damages would be inadequate and demands permanent injunctive relief to restrain ongoing violations of the laws of several states and prevent future viewing and use of class members’ biometric information. *See* Compl. at ¶¶ 64(h), 81, 89, 96, 103, 110, 117, 125, 155, 176, 185, 190-192, 199; *see also* Prayer for Relief at ¶ d. Therefore, the nationwide class is entitled receive recourse for Clearview’s unlawful invasion of their right to privacy. The District Court’s failure to impose any meaningful injunctive relief for the nationwide class renders the Settlement unfair. *See In re Subway Footlong Sandwich Mktg. & Sales*

Pracs. Litig., 869 F.3d 551 (7th Cir. 2017) (finding injunctive relief “utterly worthless” where Subway consumers were in the same position after settlement that they were in before regarding the varying length of Subway subs); *In re Walgreen Co. S'holder Litig.*, 832 F.3d 718, 724 (7th Cir. 2016) (finding settlement agreement’s merger disclosures to be of little value to class members); *Remijas v. Neiman Marcus Grp., LLC*, 341 F. Supp. 3d 823, 828–29 (N.D. Ill. 2018) (finding that Neuman Marcus’ changed business practices couldn’t be characterized as injunctive relief because they didn’t provide any new benefit to the class). Amici States therefore recommend that if the Court does not enjoin Clearview from engaging in its current business practices, the Court at a minimum modify the settlement so that Clearview must implement a universal opt-out portal for the nationwide class.

II. The highly speculative nature of the monetary relief under the settlement renders it unfair as a matter of law.

The District Court approved the monetary component of the settlement but recognized that equity- or security-based relief is “novel in the context of past BIPA settlements.” *In re Clearview AI, Inc.*, 2025 WL 1371330, at *14. It also explained that “the decision to premise monetary relief on a 23% equity stake in Clearview was driven by the practical realities of the case” or in other words, Clearview’s “precarious financial position” as described in the third-party mediator report. *Id.* Finally, the District Court stated that establishment of a settlement

master will somehow ensure adequate monetary relief for the settlement class. *Id.* at *15.

As Amici States explained to the District Court, such a highly speculative settlement is not fair, reasonable, or adequate relief for class members. Not only does it require class members to have a stake in the very company that harmed them, but it also amounts to unfairness as a matter of law when compared to similar Seventh Circuit BIPA cases. *See, e.g., In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 918 (N.D. Ill. 2022), *appeal dismissed sub nom; In re Tiktok Inc., Consumer Priv. Litig.*, No. 22-2682, 2022 WL 19079999 (7th Cir. Oct. 12, 2022) (\$27.19 for nationwide class members and \$163.13 for Illinois subclass members); *In re Facebook Biometric Info. Priv. Litig.*, No. 3:15-cv-03747, No. 468 (9th Cir.), available at https://www.facebookbipaaction.com/media/2963194/2020-07-22_d468_notice_of_amended_stip_of_class_action_settlement.pdf (\$93.14 per class member); *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 944 (N.D. Cal. 2013) (\$15 per claim in case alleging misappropriation of users' likenesses), *aff'd sub nom. Fraley v. Batman*, 638 F. App'x 594 (9th Cir. 2016); *In re Vizio, Inc., Consumer Priv. Litig.*, No. 8:16-ml-02693-JLS, 2019 WL 12966638, at *4 (C.D. Cal. July 31, 2019) (Video Privacy Protection Act settlement providing \$16.50 per claim).

The District Court's approval of the settlement stands in stark contrast to the meaningful monetary relief provided in these similar class action settlements in privacy cases, all of which guaranteed a defined monetary amount for class members. Here, class members might receive no compensation at all in exchange for releasing all claims against Clearview. Amici States are not aware of another class action settlement like this where the monetary relief is completely unknown, may or may not subsequently be worth something, and gives class members an interest in the very company that harmed them. This is the height of unfairness under Seventh Circuit law.

In addition, given the highly speculative nature of the monetary relief, Plaintiffs should have provided greater evidence of why this structure, without any guaranteed relief, was necessary. The mediator's report did not suggest that Clearview is unable to pay *any* guaranteed monetary compensation to class members. Rather, the parties and the mediator "considered the inability of Clearview . . . to pay any judgment in the tens, never mind the hundreds of millions of dollars." (Dkt. 578, Ex. B.) Given that the District Court acknowledged Clearview was valued at approximately \$225 million in early 2024 (*In re Clearview AI, Inc.*, 2025 WL 1371330, at *15), the company may have been able to pay some guaranteed compensation to class members. Yet, the District Court approved the settlement without Clearview providing evidence to support the

absence of any guaranteed compensation. No financial statements or other documents showing Clearview's current or predicted financial position are included; neither are declarations by relevant witnesses such as an independent accountant. Class members are entitled to fair, guaranteed monetary compensation separate from the future success of any IPO or other triggering event. The District Court's approval of the monetary component of the settlement should therefore be vacated.

CONCLUSION

This Court should vacate or modify the order of the District Court as explained herein.

Respectfully submitted,

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