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Case No. 2023-0307-JTL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HOLLYWOOD POLICE OFFICERS')	
RETIREMENT SYSTEM,)	
)	
Plaintiff,)	
)	C.A. No. 2023 - _____
v.)	
)	Unredacted Public Version
VISA INC.,)	Filed March 16, 2023
)	
Defendant.)	
)	

**VERIFIED COMPLAINT TO COMPEL
INSPECTION OF BOOKS AND RECORDS**

Plaintiff Hollywood Police Officers' Retirement System ("Plaintiff"), by and through its undersigned counsel, respectfully submits this Verified Complaint to Compel Inspection of Books and Records under 8 *Del. C.* § 220 ("Section 220") against defendant Visa Inc. ("Visa" or the "Company"), and upon knowledge as to itself and its own actions and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. This is an action (the "Action") by a stockholder of Visa seeking to enforce its Section 220 statutory rights. Plaintiff seeks books and records in order to determine whether breaches of fiduciary duties occurred in connection with Visa's

processing of payments for MindGeek, which runs numerous websites that include substantial amounts of: (i) child pornography in violation of the Trafficking Victims Protection Reauthorization Act (“TVPRA”); (ii) rape, violent, forced, and non-consensual sexual acts; and (iii) sexual videos made and/or posted without the consent of persons in the videos. Plaintiff also seeks to investigate the independence and disinterestedness of the Company’s board of directors.

2. Plaintiff has a credible basis to suspect wrongdoing based on, among other things, the following: (i) PayPal, one of Visa’s main competitors, stopped processing payments for MindGeek websites after an exposé in *The Sunday Times* found the websites were hosting illegal content including child abuse videos; (ii) letters written directly to Visa by advocacy groups calling on the Company to stop processing payments for these websites as they stream content that features child sexual abuse and sex trafficking; (iii) United States Senators and parliamentarians in Canada writing public letters calling for action due to these websites featuring victims of sex trafficking and rape; and (iv) a *New York Times* exposé entitled “The Children of PornHub.”

3. One particularly disturbing incident involved a 13-year-old girl who was videotaped by her boyfriend, who then posted sexually explicit videos of the girl on Pornhub without her knowledge or consent. The video, titled “13-Year Old

Brunette Shows Off For the Camera,” was quickly viewed over 400,000 times before she learned of it, with MindGeek earning revenues from advertisements appearing alongside the video. The girl repeatedly demanded that MindGeek remove this illegal content from its website, but to no avail. MindGeek was slow and ineffective in removing it, and the video would then quickly reappear. The victim’s life was devastated by this, and the victim sued Visa for its role in monetizing the video for MindGeek. In an opinion dated July 29, 2022, U.S. District Court Judge Cormac Carney of the Central District of California denied Visa’s motion to dismiss the victim’s lawsuit against Visa. Judge Carney wrote, among other things:

Plaintiff alleges that Visa pushed the first domino when it continued to recognize MindGeek as a merchant with knowledge of its illicit nature. ***With that decision—which Visa and Visa alone controlled—in place, the means to profit from child porn was ensured,*** and MindGeek filled in the gaps to seize the opportunity, promulgating the profit-maximizing policies and practices described above that so damaged Plaintiff’s life. ***Visa lent to MindGeek a much-needed tool—its payment network—with the alleged knowledge that there was a wealth of monetized child porn on MindGeek’s websites. . . .***

It is simple: Visa made the decision to continue to recognize MindGeek as a merchant, despite its alleged knowledge that MindGeek monetized child porn,...

Visa is being sued[] for knowingly providing the means through which MindGeek monetizes child porn once such content is already produced and posted. . . .

(emphasis added).

4. Plaintiff served its books and records demand on September 1, 2022 (the “Demand Letter” or the “Demand”) more than six months ago.¹ Plaintiff has tried to work with Visa to obtain the documents that Visa is obligated to produce. Unfortunately, Visa has continuously delayed, failed to produce responsive documents, failed to explain the categories of documents that it is searching or will produce, and even failed to state if it will produce documents responsive to the specific allegations in the Demand Letter.

5. Plaintiff respectfully requests that the Court enter a summary order directing the Company to produce the requested books and records for inspection and grant such other and further relief as the Court deems just and proper.

THE PARTIES

6. Plaintiff is and has been, at all relevant times, a beneficial owner of Visa common stock.

7. Defendant Visa is a Delaware corporation headquartered in San Francisco, California. Visa is a payment network system. It describes itself as “one of the world’s leaders in digital payments. Our mission is to connect the world

¹ Letter from David Wales to Visa Inc. (September 1, 2022), attached as Exhibit 1 hereto.

through the most innovative, reliable and secure payments network—enabling individuals, businesses and economies to thrive. . . .” Consumers are most familiar with its business of “facilitating payments between consumers and businesses.” Visa trades on the New York Stock Exchange under the ticker symbol “V.”

FACTUAL BACKGROUND

(i) MindGeek and Its Websites

8. MindGeek owns and operates pornographic internet platforms including Pornhub, RedTube, YouPorn and Brazzers. MindGeek reported that its sites received approximately 4.5 billion visits each month in 2020. Its websites are the dominant websites for online pornography.

9. It has been widely reported for years that MindGeek’s websites, including Pornhub, have large numbers of videos of child pornography, rape, sexual violence and non-consensual sexual activity. The labels on many of these videos make it clear that the video is of children, rape, violence, or drugged or non-consensual sex.

10. MindGeek has a subsidiary named TrafficJunky which processes the revenue on MindGeek’s various websites. MindGeek makes money from, *inter alia*, advertising its paid sites and products, advertising from third parties, and selling data on its users (persons who visit their websites). MindGeek has made enormous

amounts of money from its websites, including from these illegal and illicit videos. It is reported that MindGeek's business model is designed to drive web traffic to these illegal and illicit videos, and to profit from them.

(ii) Visa's Role

11. In order for MindGeek to collect payments from its websites, payments must go through a payment service like Visa. Much of MindGeek's revenue, including for monetizing child pornography and other illegal and illicit videos, purportedly were and are processed through Visa.

12. Visa was well aware of its responsibility to not process payments for clients that were seeking to monetize child pornography, rape and other illegal and illicit videos. For example, its 2019 Corporate Responsibility & Sustainability Report provides that Visa manages situations where its brand is associated with illegal activity, including "Child abuse images" and supports the U.S. Financial Coalition Against Child Exploitation.

(iii) Visa Is Put On Notice That MindGeek Monetizes Child Pornography and Other Illegal and Illicit Videos

13. The serious problem of illegal and illicit videos on Pornhub and other MindGeek websites was highly visible to anyone that checked, and was widely

reported in the press, scrutinized by politicians and reported to Visa by activists. For example:

- i. In November 2019, PayPal stopped processing payments for Pornhub after an investigative report by *The Sunday Times* that “found Pornhub to be hosting illegal content including child abuse videos.” See “PayPal cuts off porn site that ran child abuse videos,” *Times of London*, November 17, 2019.
- ii. On March 9, 2020, United States Senator Ben Sasse issued a public letter to the Attorney General of the United States to investigate Pornhub for its illegal conduct of posting videos of women who were victims of sex trafficking and sexual assault. The letter provides in relevant part, “. . . Pornhub made content available worldwide showing women and girls that are victims of trafficking and being raped and exploited. In October, police in Florida arrested a man trafficking a fifteen-year-old girl, missing from her family for nearly a year, who had been subjected to horrific abuse that included repeated rape and a forced abortion. In the course of her abuse, her trafficker uploaded more than sixty videos depicting her sexual exploitation to websites including Pornhub.” The Senator’s letter and the cases he discusses in his letter garnered extensive media coverage.
- iii. Similarly, in March 2020, a group of parliamentarians wrote a public letter to Prime Minister Justin Trudeau of Canada calling for an investigation of Pornhub.
- iv. In May 2020, a number of activist groups wrote to credit card companies, including Visa, calling on them to stop processing payments for pornographic websites, including Pornhub, as the websites “eroticize sexual violence, incest, and racism” and stream content that features child sexual abuse and sex trafficking. This letter also garnered widespread media coverage. See, e.g. “Call for credit card freeze on porn sites,” BBC, May 8, 2020.

(iv) The *New York Times* Exposé

14. On December 4, 2020, the *New York Times* published an exposé entitled “The Children of Pornhub.” The article describes the rampant amount of illegal and illicit videos on PornHub and concluded:

. . . I don’t see why search engines, banks or credit card companies should bolster a company that monetizes sexual assaults on children or unconscious women. If PayPal can suspend cooperation with Pornhub, so can American Express, Mastercard and Visa.

15. The backlash against Visa from this exposé was loud and swift. Days later, Visa suspended processing payments for MindGeek, as did MasterCard. In response, MindGeek removed an estimated 10 million videos from its websites, or an estimated 80 percent of its content. This was apparently an attempt by MindGeek to have Visa and MasterCard process their payments again, as MindGeek needed the payment networks to monetize the videos they posted.

(v) Visa Quietly Resumes Processing Certain Payments for MindGeek

16. While stating that it would investigate, Visa quickly resumed processing certain payments for MindGeek. Visa does not appear to have announced that it had resumed processing payments for MindGeek. Meanwhile, victims, victims’ advocates, politicians, and others continued the drumbeat of warnings about MindGeek and its contents. For example, an April 2021 letter to Visa CEO Alfred

Kelly from a group of survivors and advocates stated, “By processing payments for this entity, your corporation is enabling this abuse to continue.”

17. On January 25, 2022, The National Center On Sexual Exploitation issued a public statement entitled “Visa Must Cut Ties With Pornography Companies That Facilitate Child Sex Abuse, Trafficking, Assault.” The public statement explained in relevant part, “Visa has processed financial transactions for institutions facilitating sex trafficking and child sexual abuse material, such as Pornhub (and other MindGeek-owned entities) . . . It’s time for Visa to take a meaningful stand instead of piecemeal solutions, pausing and re-starting financial partnerships, with no measurable improvements. If Visa wants to be out of the business of sexual exploitation it should stop processing payments for these, and similar platforms[.]”

18. On June 13, 2022, *The New Yorker* published an article titled “The Fight To Hold PornHub Accountable.” The article repeated the well-known abuse of children and women in videos on PornHub, detailed the secrecy of the owners and executives of MindGeek, and described investigations being conducted and efforts by advocates to protect children from this abuse. The article describes that while Visa’s logo had been removed from the TrafficJunky website, a representative of TrafficJunky said that they still accepted ad purchases using all major credit cards.

19. As described in paragraph 3 above, in June 2021, a child victim sued Visa for its role in monetizing for MindGeek the video that exploited her.

20. The Federal Court in denying Visa's motion to dismiss made clear the basis of his ruling:

. . . Visa is being kept in this case because it is alleged to have continued to recognize as a merchant an immense, well known, and highly visible business that it knew used its websites to host and monetize child porn. Moreover, Visa allegedly had considerable sway over that business's decision-making, a conclusion amply supported by the allegation that MindGeek removed 80% of its content when Visa suspended its business with MindGeek. Visa is not being asked to police "the billions of individual transactions it processes each year." (Mem. at 9.) It is simply being asked to refrain from offering the tool with which a known alleged criminal entity performs its crimes. That is not a tall order and does not spell out an existential threat to the financial industry. . . .

When MindGeek decides to monetize child porn, and Visa decides to continue to allow its payment network to be used for that goal despite knowledge of MindGeek's monetization of child porn, it is entirely foreseeable that victims of child porn like Plaintiff will suffer the harms that Plaintiff alleges.

THE DEMAND FOR INSPECTION

21. On September 1, 2022, Plaintiff, through its counsel, made a written Demand on Visa to inspect and copy certain books and records of the Company pursuant to Section 220. The Demand meets all requirements of Section 220 and is targeted to seek the information necessary for Plaintiff to investigate whether the Board and/or senior officers breached its fiduciary duties and/or committed other

misconduct, as well as to investigate the independence and disinterestedness of the Company's directors.

22. The Demand requested inspection of the following categories of documents:

(1) All Board Materials and Senior Management Materials relating to:

(a) Internal controls, policies, procedures, handbooks, instruction manuals, white papers, policy statements or others guides provided to directors, officers, employees or agents related to Visa's compliance with laws, regulations and rules, including the TVPRA, concerning the matters in this Demand;

(b) The compliance of Visa with laws, regulations and rules, including the TVPRA, concerning the matters in this Demand;

(c) Any violation or potential violation by Visa, or any of its directors, officers, employees or agents, of laws, regulations and rules, including the TVPRA, concerning the matters in this Demand;

(d) Any investigations, subpoenas, demands, inquiries, or other regulatory or investigative request for information from the government concerning the grounds supporting this Demand, and the responses to the same;

(e) Any letters, notices, reports, presentations or information from victims or advocates; media reports; government investigations; and lawsuits from victims concerning the grounds supporting this Demand, and the responses to the same;

(f) Any monitoring or reporting system, and any formal or informal investigations (whether undertaken by or on behalf of the Company or the Board), discussions, communications, reviews, and/or approvals concerning the grounds supporting this Demand;

(g) The decision to conduct business with MindGeek, the review and onboarding of MindGeek, continuing to conduct business with MindGeek, including but not limited to any due diligence, "know your customer" review, review or notice

of illegal conduct, as well as any actions taken in response, concerning the grounds supporting this Demand; and

(h) The decision to suspend payment processing for MindGeek in December 2020, the decision to resume payment processing for MindGeek including any investigation conducted at that time, and the decision to suspend payment processing for MindGeek in August 2022.

- (2) All documents and communications concerning the matters described in this Demand, by or among any Board member.
- (3) The director questionnaires completed by the members of the Visa Board.
- (4) Any documents that have already been produced or that the Company is planning or intending to produce or that the Company does produce to any other stockholders making demands for inspection of books and records under Section 220 or any analogous statute concerning any of the conduct or issues described herein.

23. Plaintiff's purpose for the Demand was and is proper. Plaintiff seeks to investigate: (i) potential breaches of fiduciary duty and/or other misconduct by the directors and/or senior officers of the Company; (ii) whether to bring a lawsuit for breach of fiduciary duty or take other appropriate action, including communicating with the Board and/or the Company's other stockholders; and (iii) the independence and disinterestedness of the Board.

24. On September 23, 2022, the Company responded to the Demand.² The Company contended that (a) the Demand Letter did not state a proper purpose, and (b) the requests were overbroad. Nevertheless, the letter stated that without waiving any objections “Visa is willing to discuss potentially producing to your client a targeted set of materials” responsive to the Demand, subject to entry of an appropriate confidentiality agreement.

25. After executing a confidentiality agreement, Visa advised Plaintiff that it would be producing documents. Visa did not discuss with Plaintiff where it would be searching for documents, the scope of the search, nor the scope of the documents it expected to produce. To date, Visa has produced documents that purport to cover the time period from October 2018 to October 2021.

26. After reviewing the 220 production, Plaintiff was deeply concerned about the scope of the production as it failed to include any responsive documents concerning the specific allegations and topics of the Demand Letter, except for one brief footnote. On February 8, 2023, counsel for Plaintiff had a call with counsel for Visa to express the concern about the production.

² Letter from William D. Savitt, Esq. to David Wales, Esq. (September 23, 2022), attached as Exhibit 2 hereto.

27. On February 9, 2023, Plaintiff sent a letter to Visa detailing the substantial deficiencies in the 220 production.³ The February 9, 2023 deficiency letter provides in relevant part as follows:

I am sending this letter in connection with the pending 220 demand to Visa Inc. (“Visa”) on behalf of the Hollywood Police Officers' Retirement System (the “Demand”). We are concerned about the 220 documents produced to date, as they do not appear to include almost any documents on the issues in the Demand nor many documents that we would expect to see given the factual record we are aware of, some of which is discussed in the Demand. The documents that have not been produced should be board level and/or senior management level documents.

While not a comprehensive list, below are some of the key events for which documents have not been produced:

- i. In November 2019, PayPal stopped processing payments for Pornhub after an investigative report by *The Sunday Times* that “found Pornhub to be hosting illegal content including child abuse videos.” See “PayPal cuts off porn site that ran child abuse videos,” *Times of London*, November 17, 2019. As you are aware, PayPal is described in Visa’s public filing as a direct competitor.
- ii. On March 9, 2020, United States Senator Ben Sasse issued a public letter to the Attorney General of the United States to investigate Pornhub for its illegal conduct of posting videos of women who were victims of sex trafficking and sexual assault. The letter provides in relevant part, “. . . Pornhub made content available worldwide showing women and girls that are victims of trafficking and being raped and exploited. In October, police in Florida arrested a man trafficking a fifteen-year-old girl, missing from her family for nearly a year, who had been subjected to horrific abuse that included repeated rape and a forced

³ Letter from David Wales to William D. Savitt and Anitha Reddy (February 9, 2023), attached as Exhibit 3 hereto.

abortion. In the course of her abuse, her trafficker uploaded more than sixty videos depicting her sexual exploitation to websites including Pornhub.” The Senator’s letter and the cases he discusses in his letter garnered extensive media coverage.

- iii. Similarly, in March 2020, a group of more than 70 Canadian parliamentarians wrote a public letter to Prime Minister Justin Trudeau of Canada calling for an investigation of Pornhub, citing recent evidence that MindGeek regularly shared child pornography and sexual assault videos. This letter garnered extensive media coverage.
- iv. In May 2020, a number of activist groups wrote to credit card companies, including Visa, calling on them to stop processing payments for pornographic websites, including Pornhub, as the websites “eroticize sexual violence, incest, and racism” and stream content that features child sexual abuse and sex trafficking. This letter also garnered widespread media coverage. *See, e.g.* “Call for credit card freeze on porn sites,” BBC, May 8, 2020.
- v. On December 4, 2020, the *New York Times* published an exposé entitled “The Children of Pornhub.” The article describes the rampant amount of illegal and illicit videos on PornHub, as well as discussing Visa’s role. Days later, Visa temporarily suspended processing payments for MindGeek and said it was conducting an investigation. A few weeks later, Visa quietly resumed processing certain payments for MindGeek.⁴
- vi. A March 2021 letter to Visa’s Chairman and CEO Alfred F. Kelly, Jr. (“Mr. Kelly”) from the International Centre on Sexual Exploitation, along with survivors and advocates from eleven countries, calling on Visa to cut ties with sex trafficking profiteer MindGeek.
- vii. In June 2021, Serena Fleites filed suit against MindGeek and Visa in the United States District Court for the Central District of California.

⁴ The sole reference to this in the 220 production is a single footnote on a single page bates numbered VISA0001041.

- viii. On January 25, 2022, The National Center On Sexual Exploitation issued a public statement entitled “Visa Must Cut Ties With Pornography Companies That Facilitate Child Sex Abuse, Trafficking, Assault.” The public statement stated in relevant part, “Visa has processed financial transactions for institutions facilitating sex trafficking and child sexual abuse material, such as Pornhub (and other MindGeek-owned entities) . . . It’s time for Visa to take a meaningful stand instead of piecemeal solutions, pausing and re-starting financial partnerships, with no measurable improvements. If Visa wants to be out of the business of sexual exploitation it should stop processing payments for these, and similar platforms[.]”
- ix. On June 13, 2022, *The New Yorker* published an article titled “The Fight To Hold PornHub Accountable.” The article repeated the well-known abuse of children and woman in videos on PornHub, detailed the secrecy of the owners and executives of MindGeek, and described investigations being conducted and efforts by advocates to protect children from this abuse. The article states in relevant part about Visa:
- In January, she [anti-sex-trafficking activist Laila Mickelwait] said she received a call from a former MindGeek employee who told her that Visa and Mastercard were still processing payments from advertisers. Mickelwait went on the Web site for TrafficJunky, MindGeek’s online advertising business, and noticed that the Visa and Mastercard logos had been removed from the site. But when she initiated a chat with a sales representative, posing as a prospective advertiser, the representative told her that TrafficJunky could still accept ad purchases using all major credit cards.
- x. On July 29, 2022, U.S. District Court Judge Cormac Carney of the Central District of California denied Visa’s motion to dismiss Serena Fleites’ lawsuit against Visa for its role in facilitating MindGeek’s illicit distribution of the child pornography in which she was depicted.

In response, Visa stopped processing payments for MindGeek and its related entities, such as TraffickJunky.

- xi. On August 4, 2022, Visa issued a statement from Mr. Kelly concerning the motion to dismiss ruling in the Fleites case and Visa's standards regarding its process of payments.
- xii. The August 4, 2022 publicly issued statement by the National Center on Sexual Exploitation concerning the ruling in the Fleites case, the statement by Mr. Kelly, and similar issues of violations of law by MindGeek's competitors, including XVideos and XHamster, which Visa processes payments for both.

In addition, the 220 production contains no documents or references to any letters, communications or lawsuits from or on behalf of victims, including victims' family members or representatives, nor any response thereto.

Many of these events occurred during the time period for which Visa has already produced 220 documents. As such, we are concerned about the adequacy and completeness of the 220 production. . . .

28. Since the parties' meet-and-confer on February 8th, and the deficiency letter of February 9th, there have been a few emails between counsel for Plaintiff and counsel for Visa. Visa's counsel have, however, failed to produce any additional documents, failed to substantively respond to the February 9th deficiency letter, and failed to say where they are searching, whether they will produce responsive documents, or why more than six months after the Demand was served Visa cannot say whether they have or will produce documents responsive to the factual allegations in the Demand.

29. While Plaintiff has tried to obtain the appropriate Section 220 document production without judicial intervention, the extended period of time for what should be a summary proceeding and the lack of transparency from Visa compels this action.

CAUSE OF ACTION

(Inspection of Books and Records Under Section 220)

30. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

31. Plaintiff made a written demand upon the Company for the inspection of the books, records and documents identified in Plaintiff's Demand.

32. Plaintiff has fully complied with all requirements of Section 220 with respect to the form and manner of making a demand for the inspection of the Company's books and records.

33. Plaintiff's Demand for inspection is made for a proper purpose, which includes investigating: (i) potential breaches of fiduciary duty and other misconduct; and (ii) the independence and disinterestedness of the Company's directors.

34. To date, Plaintiff has not been given access to many of the books and records requested in the Demand.

35. By reason of the foregoing and pursuant to Section 220, Plaintiff requests a summary order permitting it to inspect and make copies of the books and records identified in Plaintiff's Demand.

36. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court summarily enter judgment in favor of Plaintiff and against the Company:

(i) Ordering the Company to permit the immediate inspection of the books and records identified in Plaintiff's Demand;

(ii) Awarding Plaintiff the costs and expenses incurred in this action, including reasonable attorneys' fees; and

(iii) Granting any and all further relief as the Court deems just and proper.

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March 13, 2023

SAXENA WHITE P.A.

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