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Via Email to Comments.mailbox@njcourts.gov

Supreme Court of New Jersey
Attn: Honorable Michael J. Blee, J.A.D.
Acting Administrator Director of the Courts
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08601

**Re: In Re: Daniel's Law Compliance Litigations,
Opposition to Atlas' Application for Multi-County Litigation Designation or
Transfer to a Single Vicinage for Coordination**

**Atlas Data Privacy Corporation, et al. v. Skopenow, Inc., et al.
Docket No. MRS-L-241-24
Claim No. Y2K LP 44630
Our File No. 672.29109**

Dear Judge Blee:

This firm represents Defendant Skopenow, Inc. in the matter captioned Atlas Data Privacy Corporation, et al. v. Skopenow, Inc., bearing docket number MRS-L-0241-24. Skopenow respectfully submits this concise letter objecting to Atlas' application for Multicounty Litigation Designation and/or its alternative request to assign its 59 currently pending lawsuits in the Superior Courts of New Jersey to a single judge.

As more fully set forth below, the unique circumstances of Plaintiffs' speculative claims against Defendant Skopenow outweigh commonality, the cost and effort involved in multicounty litigation proceedings are excessive for the limited scope of this alleged violations in this case, and while consolidation may benefit some parties in different circumstances, it is believed that the existing case management in the Morris Vicinage is sufficient to fairly administer this claim.

A. Summary of Facts Relevant to Skopenow's Unique Circumstances

Skopenows is an internet data investigation platform (open source investigation tool) serving vetted and verified institutional clients including Fortune 500 companies, large government and law enforcement agencies, large insurance carriers, and media outlets. Skopenow does not maintain a database and its platform is not publicly available. Skopenow has at all times demonstrated its willingness to protect the privacy and security of public servants. Skopenow is compliant with Daniels Law and at all times has made good faith efforts to be in compliance.

Skopenow has demanded but not received discovery from Atlas to reveal the time, method and manner of its coordination of written notifications for thousands of Covered Persons. Atlas produced limited data purporting to show that it disseminated more than 40,000 emails beginning at 2:00 AM on Wednesday, December 27, 2023, continuously sending batches of emails every few seconds for three days uninterrupted. In Atlas' explanation of its role in this litigation, it represents that each Covered Person "sent separate written nondisclosure requests to each defendant data broker," which does not accurately represent that premeditated and coordinated effort by Atlas to bombard Skopenow without advanced notice. (Atlas' Letter, p.5). Surely other defendants have argued that this email bombing was orchestrated at year end to frustrate compliance and strategically shorten the statutory 10-day compliance period.

In the case of Skopenow, these emails were directed to its customer support email. Approximately 1,700 emails were sent to its support@skopenow.com within the first 90 minutes, overwhelming this system. Skopenow CEO Rob Douglas immediately addressed this spam event and promptly investigated the source of the emails. At approximately, 3:30 am, Mr. Douglas sent the following email to Atlas Legal, the only public facing contact available for Atlas. (Ex. A). This email affirmed Skopenow's commitment to helping the Law Enforcement community, explained that it does not control data, attempted to confirm the legitimacy of this suspicious spam event, requested that future emails be directed to an alternate address to ensure privacy, and warned that this unstructured and unencrypted nature of the email bombardment risks exposing the very personal information that is purportedly sought to be protected. It is alarming that Atlas Legal failed or refused to respond to Mr. Douglas' immediate response to this event. If protection of Covered Person's home address and unpublished home telephone numbers were the objective, this method was neither effective nor efficient. In fact, Atlas created the circumstances that delayed, complicated and frustrated compliance.

Another distinguishing aspect of this matter relates to Skopenow's exclusive and restricted service. Skopenow is an exclusive platform which allows contracted and vetted institutional customers to perform searches within Skopenow to perform investigations and process data on demand. When a search is initiated, Skopenow fetches data in real time from third parties that is then only accessible in a report to that customer. All data processed by the Skopenow platform is controlled by the end user. The only way to unwittingly come into possession of Covered Person's data, an authorized Skopenow user must search for the Covered Person's name, address or phone number on the Skopenow platform. This data is obtained from third party sources in real time.

Prior to this lawsuit, Skopenow did not have a database with the Covered Persons' protected information. Therefore, for a Covered Person search to be restricted from a Skopenow user, Skopenow was (1) required to modify its products search function, and (2) must be provided or build a database of the very data sought to be protected to restrict the search from being made on its platform. Notwithstanding, Plaintiffs seek to hold Skopenow liable as a data broker accountable for unlawfully disclosing the home addresses and unpublished home telephone numbers of certain Covered Persons in violation of New Jersey's Daniel's Law, information that it does not control.

The complaint against Skopenow was filed on February 8, 2024, served on defendant on March 6, 2024, and assigned to counsel in early April 2024. Immediate efforts were made to confer with Plaintiffs' counsel to ensure compliance. It took Atlas approximately one month to provide and execute a non-disclosure agreement, which was executed on June 3, 2024. A month later, on July 1, 2024, Atlas produced a Confidential Covered Persons List, an encrypted Excel database with more than 40,000 lines of data listing Individual Plaintiffs' and Assignors' Protected Information. Within 24 hours of receiving the Confidential Covered Persons List from Atlas, Skopenow could ensure that all covered person's data was protected from being searched and disclosed on its platform. Based on these circumstances, Atlas has done more to risk the re-disclosure of Covered Person data and to delay and frustrate compliance with Daniel's Law than Skopenow.

Skopenow searched the list of all Confidential Covered Persons List to identify if any had been searched for in Skopenow. Only thirty-nine (39) Covered Persons had been searched on its platform before Skopenow's compliance measures were completed. This includes 21 searches performed by Plaintiffs' authorized agent, Jennifer McCormack, on January 23, 2024. All other searches were performed by vetted, institutional clients including insurance companies (15 searches), private investigators (2 searches), and a corporate human resources office (1 search). Assuming that in these reports some inadvertent disclosure was made using Skopenow's platform, this disclosure was to a potentially authorized agent of the Covered Person in connection with their public employment and/or insurance coverage. Moreover, such disclosure would have been made to a limited audience, who was a verified and vetted institutional actor. No disclosure was made on a public internet site or made available or viewable within a searchable list or database. Accordingly, Skopenow denies that it ever disclosed or re-disclosed protected information "on the Internet" nor has Skopenow "otherwise ma[de] available or viewable within a searchable list or database" as contemplated under N.J.S.A. 56:8-166.1(a)(1).

Given Skopenow's demonstrated good faith in compliance and relatively modest number of searches performed on its platform before compliance measures were completed, it opposes Atlas' effort to impose a one-size-fits-all approach to this litigation and to lump it into the 110 other litigations it filed.

B. Consolidation Benefits Atlas' Protracted Litigation and is Prejudicial to Skopenow

Applying Rule 4:38A and the Multicounty Litigation Guidelines to the known facts of this case, we offer the following additional arguments to oppose consolidation and encourage this Court to allow this matter to remain in the Morris Vicinage, its original venue.

1. Factors to be considered

- a. *Large Number of Parties.* While it is acknowledged that the 111 lawsuits involve a large numbers of parties, Atlas continues to enlarge the number of Covered Persons. The Atlas letter references 19,000 Covered Persons, but the number of purportedly assigned Covered Persons alleged in this Skopenow matter is approximately 16,000. Similarly, only four of the six named Individual Plaintiffs are parties in the Skopenow litigation.
- b. *Common, recurrent issues of law and fact.* There is a lack of sufficient common issues due to the distinguishing facts set forth above.
- c. *Geographical dispersement of parties.* In this case, there is no geographical dispersement. Skopenow has only one decision maker, the Skopenow CEO Rob Douglas. Skopenow is represented by one firm, the undersigned attorney.
- d. *High degree of commonality of injury or damages among plaintiffs.* Skopenow disagrees with any alleged commonality of damages. While it has no first-hand knowledge of the factual events related to other defendants, Skopenow maintains that under the facts of this case, Atlas' claims for actual or liquidated damages, punitive damages, attorneys' fees and injunctive relief are unwarranted and inappropriate.
- e. *Value interdependence between claims.* The perceived strength or weakness of the causation and liability aspects of the case(s) are NOT dependent upon the success or failure of similar lawsuits in other jurisdictions.
- f. *Remoteness between the court and actual decision-makers in the litigation.* There is no remoteness between the court and the actual decision-makers. While Plaintiffs and certain Defendants may have national counsel and other decision-makers, that is not the case for Skopenow which is located in the NY Metro area and defense counsel in Bernardsville.

2. *Risk that centralization may unreasonably delay the progress, increase the expense, or prejudice a party.*

Skopenow has a legitimate concern that centralization will unreasonably delay the progress, increase the expense, and/or prejudice its pursuit of meritorious defenses in this action.

For example, in written discovery, we experienced the delay and expense caused by Atlas' one-size-fits-all approach to discovery where approximately half of documents demanded do not apply to the facts or circumstances of the Skopenow litigation. Candidly, this application is simply geared to ease plaintiff counsels' burden pursuing more than 100 lawsuits Atlas initiated.

This matter has been in litigation for approximately eighteen (18) months. Despite the modest volume of alleged searches performed of Covered Persons on Skopenow's platform, Atlas has not engaged Skopenow in any meaningful settlement discussions or extended any invitation to participate in mediation with Hon. Douglas J. Arpert, U.S.M.J.

Additional, we are not aware of who are Defendants' "coordinating counsel in the Superior Court matters" (referenced at page 2), and Atlas' counsel has not responded to requests for those coordinating defense attorneys to be identified. The undersigned has never been asked or consented to being represented by a coordinating counsel for defendants. Evidently, Skopenow does not fall within the broadly categorized defendant groups listed in the Atlas letter.

3. *Fairness and Convenience.* The arguments advanced in Atlas' application are for the benefit and convenience of Atlas and perhaps some defense counsel who represent multiple defendants, but they come at the expense and exclusion of other parties who have legitimate interests in defending this case. We do not envision that fact or expert witness testimony to be common as to any other defendant.

Atlas brought this matter against Skopenow in Morris, and there are currently 9 other litigations in this vicinage, second only to Essex. Moreover, there are currently only three multicounty jurisdictions in New Jersey – Bergen, Middlesex and Atlantic.

4. *Risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion.* Given the unique factual circumstances involving the Skopenow litigation, it is not anticipated that there is a risk of inconsistent rulings.
5. *Whether coordinated discovery would be advantageous.* While the undersigned recognizes some benefits to coordinated discovery, Atlas has already offered examples of how consolidation for discovery at the Vicinage level has led to efficiencies. Defendant maintains that allowing the parties to continue to litigate in their present Vicinage (the venues where Atlas had originally filed its many lawsuits) would be allow each defendant to have the necessary and appropriate opportunity to litigate their respective cases.
6. *Whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court.* Given the current success and efficiency of consolidating for discovery purposes at the Vicinage level, the benefits of centralization do not outweigh the potential prejudice and an undue burden on Skopenow and similarly situated defendants.

CONCLUSION

For the foregoing reasons, Defendant Skopenow respectfully requests that the Court determine that this suit is not appropriate for designation as Multicounty Litigation and deny the alternative relief for this matter to be transferred to a single venue.

Respectfully submitted,

s/ Alexander L. D'Jamoos

ALEXANDER L. D'JAMOOS

ALD/lp

Cc: Plaintiffs' Counsel of Record (via email)