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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CAT BROOKS and RASHEED SHABAZZ,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THOMSON REUTERS CORPORATION,

Defendant.

Case No. 3:21-cv-1418-EMC

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Judge: Hon. Edward M. Chen
Date: August 17, 2021
Time: 9:30 a.m.
Courtroom: 5

The parties submit this joint statement in advance of the case management conference scheduled for August 17, 2021 pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, the Standing Order for All Judges of the Northern District of California, this Court's Standing Order for All Civil Cases, and this Court's March 18, 2021 Order. *See* ECF No. 26.

1. Jurisdiction and Service

This Court has jurisdiction under the Class Action Fairness Act of 2005, specifically 28 U.S.C. § 1332(d). *See* ECF No. 1 (Notice of Removal). There are no issues regarding personal jurisdiction or venue. All parties have been served.

2. Facts

a. Plaintiffs' Statement

Thomson Reuters procures detailed personal information on millions of California residents from a vast array of sources, uses that information to create dossiers about these individuals, and sells these dossiers to customers. All of these actions are performed without the individuals' knowledge or consent. Thomson Reuters purports that its dossiers define the individual for customers wanting this information.

Plaintiff Cat Brooks is a civil rights activist who has been targeted by white supremacists, so she tries to ensure that her personal information is not available for the public. Nonetheless, Thomson Reuters sells its customers a detailed dossier on Ms. Brooks and her family. Similarly, Plaintiff Rasheed Shabazz is also a civil rights activist who fears retaliation because of his work. Thomson Reuters sells Mr. Shabazz's information without his consent, including his address, phone number, and partial social security number. Thomson Reuters even sells inaccurate information about him, including that he is divorced when he is married, and that he has been sued for failing to pay child support when he has not.

Based upon Thomson Reuters' sale and collection of data through the CLEAR platform, Plaintiffs seek to certify a class of California residents who claim that Thomson Reuters violates California law by profiting from the non-consensual sale of personal identifying information and data. Plaintiffs seek both monetary compensation to remedy these violations, as well as injunctive relief in a

representative capacity to enjoin Thomson Reuters' continued violation of California's Unfair Competition Law.

b. Thomson Reuters' Statement

Thomson Reuters is a leading provider of worldwide news and business information services, delivering highly specialized information-enabled software and tools for legal, tax, accounting, and compliance professionals. This case targets "CLEAR," an online search platform that helps streamline investigative research by collecting and organizing information from third party sources. The content made available through CLEAR is not created by Thomson Reuters; rather, it is obtained from other sources, such as public records, government sources, and the Internet. Thomson Reuters offers credentialed, authorized customers subscription plans that allow them to use CLEAR for lawful purposes, including to prevent money laundering, to verify and "know your vendor," to facilitate commercial lending, to prevent healthcare and insurance fraud, to find absent parents, and to protect victims of human trafficking and sexual exploitation.

Plaintiffs do not allege that any Thomson Reuters obtained information unlawfully or that any customer used CLEAR in an unlawful or unauthorized manner; rather, Plaintiffs target Thomson Reuters for including their information in CLEAR without paying them or seeking their advance consent.

3. Legal Issues

- a. Plaintiffs' Statement:** The legal issues include, but are not limited to, the following:
- Whether Thomson Reuters' collection and sale of personal data through the CLEAR platform violates California's common law right of publicity.
 - Whether Thomson Reuters' collection and sale of personal data through the CLEAR platform violates California's Unfair Competition Law, Cal. Bus. & Prof. § 17200, et seq.
 - Whether Thomson Reuters has a process for obtaining consent before collecting, aggregating, and selling individuals' personal data in the CLEAR database.
 - Whether Thomson Reuters' sale of personal data through the CLEAR platform constitutes a misappropriation for commercial advantage under California law.

- Whether class members' names, photographs, and other identifying information are directly connected to the commercial purpose of selling access to that information.
- The extent to which Thomson Reuters has profited from the non-consensual sale of personal identifying information and data.
- Whether this case is suitable for class treatment under Federal Rule of Civil Procedure 23.

b. Defendants' Statement: The legal issues include the following, many of which are discussed in Thomson Reuters' pending Motion to Dismiss and Motion to Strike (ECF No. 28) and Reply in support thereof (ECF No. 35):

- Whether California's common law or statutory rights of publicity cover conduct that does not involve any use of Plaintiffs' images, names, or likenesses to draw attention in order to secure a future advantage;
- Whether California's common law or statutory rights of publicity are so broad as to prohibit a company from charging a fee to provide factual information about another.
- Whether California's statutory right of publicity under California Civil Code Section 3344 requires a plaintiff to establish all elements of California's common law Right of Publicity (among others).
- Whether Thomson Reuters' actions are neither an "unlawful" nor an "unfair" practice under California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
- Whether Plaintiffs' claim for unjust enrichment should be dismissed because it is not a valid claim under California law.
- Whether Plaintiffs must show they lack an adequate remedy at law before they may recover equitable relief.
- Whether the relief Plaintiffs seek would be a content-based restriction, subject to strict scrutiny, that would contravene free speech protections enshrined by the First Amendment. *See Sarver v. Chartier*, 813 F.3d 891, 903 (9th Cir. 2016) ("California's right of publicity law clearly restricts speech based upon its content.").
- Whether the Communications Decency Act ("CDA"), 28 U.S.C. § 230, bars Plaintiffs'

claims because they seek to hold Thomson Reuters, the provider of an interactive computer service, liable as a publisher or speaker of third-party content. *See, e.g., Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003) (section 230 barred misappropriation of right of publicity claim).

- Whether the Complaint should be stricken and attorneys' fees and costs awarded under California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, because Plaintiffs' claims arise from Thomson Reuters' exercise of free speech and Plaintiffs cannot show the claims are legally sufficient and factually substantiated.
- Whether Plaintiffs can establish any entitlement to injunctive relief.
- Whether this case is unsuitable for class treatment under Federal Rule of Civil Procedure 23.

4. Motions

Thomson Reuters' Motion to Stay Discovery, *see* ECF No. 34, is fully briefed and the Court will rule on the motion on the papers, *see* ECF No. 49. Thomson Reuters' Motion to Dismiss Pursuant to FRCP 12(b)(6), and Motion to Strike Pursuant to California Code of Civil Procedure § 425.16(b), *see* ECF Nos. 28, 34, 35, were heard on June 24, 2021.

Plaintiffs intend to file a motion for class certification once discovery is substantially underway and may file a motion for summary judgment once discovery has closed.

Should the Court grant Thomson Reuters' Motion to Dismiss but dismiss the Complaint without prejudice, Thomson Reuters anticipates filing a motion to dismiss any amended complaint. As to any claims that survive, Thomson Reuters may file a motion for summary judgment at the appropriate time and will oppose any motion for class certification.

5. Amendment of Pleadings

a. Plaintiffs' Statement: Plaintiffs may decide to amend their complaint depending on this Court's ruling on Thomson Reuters' motions to dismiss and strike, and they may also decide to amend as discovery moves forward. Plaintiffs propose a deadline for amended pleadings of 270 days after discovery begins. Plaintiffs' proposed schedule is otherwise keyed to the start of discovery or this Court's entry of an order on class certification.

b. Defendant's Statement: Thomson Reuters believes that the Court should defer setting a case schedule, including a deadline for amendment of pleadings, until the pleadings are set (i.e., a Complaint and an Answer are filed).

6. Evidence Preservation

The parties reviewed the District's ESI Guidelines. They are taking steps to ensure all potentially relevant evidence is preserved.

a. Plaintiffs' Statement: In connection with the parties' Rule 26(f) conference, Plaintiffs asked Thomson Reuters to provide additional preservation information in line with the Northern District's ESI Checklist. Thomson Reuters declined to provide any details concerning the scope or nature of its litigation hold. Plaintiffs have been instructed to preserve all potentially relevant evidence.

b. Defendant's Statement: During the parties' Rule 26(f) conference, Thomson Reuters informed Plaintiffs of steps it has taken to preserve potentially relevant information. Thomson Reuters expects that the parties will continue to have discussions regarding their ESI obligations and believes that both discovery and detailed discussions regarding its scope should be deferred until after the pleadings are set.

7. Disclosures

a. Plaintiff's Statement: Plaintiff proposes that the parties exchange Initial Disclosures on August 24, 2021, two weeks from the date of the submission of this Joint Statement.

b. Defendant's Statement: During the parties' Rule 26(f) conference, pursuant to Federal Rule of Civil Procedure 26(a)(1)(C), Thomson Reuters objected that initial disclosures are not appropriate at this time in light of Thomson Reuters' pending Motion to Dismiss and Motion to Stay Discovery. Thomson Reuters proposes that the parties exchange Rule 26(a) disclosures 14 days after there is no longer a pleading challenge that would result in the Court dismissing the case.

8. Discovery

- Discovery taken to date: No discovery has been taken to date.
- Scope of anticipated discovery: Each of the parties anticipates taking discovery concerning, at a minimum, the factual and legal issues they identified in sections 2 and 3, above. In addition,

Thomson Reuters anticipates that it will seek discovery regarding its defenses, including Plaintiffs' allegations of damage, their consent to the sharing of their personal information, the extent to which Plaintiffs' information is available through other sources, whether anyone other than Plaintiffs and their representatives accessed Plaintiffs' information, and the extent to which Plaintiffs have placed themselves in the public eye.

- Proposed limitations or modifications of the discovery rules: The parties do not propose limitations or modifications of the discovery rules at this time but will continue to meet and confer on these issues as appropriate.
- Brief report on stipulated e-discovery order: The parties anticipate moving this Court to enter an ESI stipulation and protective order, based on this Court's model orders and stipulations. The parties disagree on whether this process should begin now or wait until such time that there is no longer a pleading challenge that would result in the Court dismissing the case.
- Date for completion of discovery: The parties' respective positions regarding a schedule for discovery are set forth in the scheduling table in Section 17.
- Preservation of ESI: The parties are not currently aware of any issues regarding disclosure, discovery, or preservation of ESI, including the form or forms in which it should be produced, and the parties will cooperate to attempt to resolve any such issues that may arise. During the parties' meet and confer on this CMC Statement, Thomson Reuters declined to provide specific details about preservation efforts. Consequently, Plaintiffs reserve the right to raise concerns once more is disclosed about Thomson Reuters' preservation efforts.
- Privilege or work product protection: The parties are not currently aware of any issues regarding claims of privilege or of protection as trial-preparation materials, and the parties will cooperate to attempt to resolve any such issues that may arise.
- Changes or limitations on discovery: The parties do not currently propose any changes in the limitations on discovery imposed under these rules or by local rule, but the parties reserve the right to propose additional changes following resolution of Thomson Reuters' pleadings-based challenges (e.g., in response to any amended complaint).

- Discovery disputes: As noted above, Thomson Reuters has moved for a protective order pursuant to Federal Rule of Civil Procedure 26(c) staying discovery pending resolution of its Motion to Dismiss or until there is no longer a pleading challenge that would result in the Court dismissing the case.

There are no other issues under Rules 26(c) or 16(b) or 16(c) at this time.

9. Class Actions

All attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.

a. Plaintiffs' Statement: Plaintiffs propose filing a motion for class certification 270 days after discovery begins. Plaintiffs anticipate certifying a California class of all persons residing in the state of California whose name, photographs, personal identifying information, or other personal data is or was included in the CLEAR database during the limitations period. Plaintiffs may seek certification under Federal Rules of Civil Procedure 23(b)(2), 23(b)(3), and/or 23(c)(4).

b. Defendant's Statement: Thomson Reuters does not believe this case is suitable for class treatment and intends to oppose any motion seeking class certification. Thomson Reuters believes that the Court should defer setting a deadline for class certification until after the pleadings are set.

10. Related Cases

To the parties' knowledge, there are no related cases pending in this District or another court or administrative body.

11. Relief

a. Plaintiff's Statement: Plaintiffs seek damages, restitution, and disgorgement in an amount yet to be determined; declaratory and injunctive relief, including public injunctive relief; costs and attorneys' fees; and such other relief as the Court may deem necessary and proper.

b. Defendant's Statement: Plaintiffs are not entitled to relief in any form, and Thomson Reuters opposes Plaintiffs' prayer for relief.

12. Settlement and ADR

The parties have filed an ADR Certification as required by ADR Local Rule 3-5(b).

13. Consent to Magistrate Judge

The parties do not consent to having a magistrate judge conduct all further proceedings.

14. Other References

The parties do not anticipate needing to consult a special master or the Judicial Panel on Multidistrict Litigation and do not believe that this case is suitable for reference to binding arbitration.

15. Narrowing of Issues

Apart from the pending motions, the parties have identified no issues that can be narrowed by agreement or motion at this time. To date, the parties have not requested to bifurcate issues, claims, or defenses. The parties agree that they will work together to narrow the issues in this case by stipulating to undisputed facts and exploring ways to expedite the presentation of evidence at trial. Claims and issues for trial may also be narrowed by pretrial motion practice, including motions for summary judgment and motions *in limine*.

16. Expedited Trial Procedure

The parties believe this is not the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A.

17. Scheduling

The parties' respective proposals for a case schedule are set forth in the table below.

a. Plaintiffs' Statement: Plaintiffs believes that the parties should begin discovery at this time to prevent further delay in the case. Plaintiffs' proposed schedule is below.

b. Defendant's Statement: Thomson Reuters believes it will be most efficient to defer setting a case schedule until the pleadings are set. Should the Court wish to set a schedule at this time, however, Thomson Reuters' proposal is set forth below.

Event	Plaintiffs' Proposal	Defendant's Proposal
Exchange of Initial Disclosures	August 24, 2021	14 days after there is no longer a pleading challenge that would result in the Court dismissing the case.
Disclosure of Primary	180 days after discovery begins	9 months after discovery begins.

Class Certification Experts		
Disclosure of Class Certification Rebuttal Experts	225 days after discovery begins	12 months after discovery begins.
Close of Class Certification Expert Discovery	255 days after discovery begins	13 months after discovery begins.
Deadline to Amend Pleadings	270 days after discovery begins	6 months after discovery begins.
Motion for Class Certification	270 days after discovery begins	14 months after discovery begins.
Opposition to Class Certification	312 days after discovery begins	8 weeks after motion for class certification filed.
Reply Supporting Class Certification	354 days after discovery begins	4 weeks after opposition to class certification filed.
Deadline to Pursue Private Mediation	368 days after discovery begins	Thomson Reuters disagrees that this deadline should be included in the case schedule
Close of Fact Discovery	75 days after class certification order	2 months after a ruling on class certification.
Disclosure of Trial Experts	85 days after class certification order	The parties shall meet and confer within 14 days of a ruling on the motion for class certification to set deadlines for trial expert disclosures and discovery, pre-trial deadlines, and a trial date.
Disclosure of Rebuttal Trial Experts	110 days after class certification order	Defer setting this deadline until after a ruling on class certification.
Close of Expert Discovery	130 days after class certification order	Defer setting this deadline until after a ruling on class certification.
Dispositive Motion Deadline	140 days after class certification order	Defer setting this deadline until after a ruling on class certification.
Pretrial conference	4 Tuesdays prior to trial.	4 Tuesdays prior to trial.
Trial	230 days after class certification order	Defer setting this deadline until after a ruling on class certification.

18. Trial

Plaintiffs requested a jury trial on all issues so triable. Plaintiffs anticipate a class trial would take approximately ten days. Thomson Reuters believes the length of trial will depend on what claims, if any, survive the pending motion to dismiss, but expects that a trial based on the current Complaint would take five to eight trial days.

19. Disclosure of Non-Party Interested Entities or Persons

a. Plaintiffs' Statement: Plaintiffs know of no persons or entities that have a financial interest in the subject matter in controversy or in a party to the proceeding, or any other kind of interest that could be substantially affected by the outcome of the proceeding. *See* ECF No. 45.

b. Defendant's Statement: Thomson Reuters filed its Corporate Disclosure Statement and Certificate of Interested Entities or Persons on February 26, 2021. *See* ECF No. 26. Thomson Reuters has no parent corporation. Westlaw and CLEAR, products referenced in the Complaint, are products offered by Thomson Reuters' subsidiary, West Publishing Corporation. *See* ECF No. 28 n.1. As of this date, Thomson Reuters is unaware of any other person or entity, other than West Publishing Corporation and the named parties, with a financial or other interest that could be substantially affected by the outcome of this proceeding.

20. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other Matters

The parties are not presently aware of any other matters that may facilitate the just, speedy, and inexpensive disposition of this action.

Dated: August 10, 2021

Respectfully submitted,

/s/ Andre M. Mura

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DATED: August 10, 2021

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ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the other signatory.

/s/ Andre M. Mura