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UNITED STATES DISTRICT COURT

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-01418-EMC

DEFENDANT THOMSON REUTERS' STATEMENT IN RESPONSE TO PLAINTIFFS' ADMINISTRATIVE MOTION TO CONSIDER WHETHER ANOTHER PARTY'S MATERIALS SHOULD BE SEALED

When Plaintiffs filed their class certification motion, they attached 74 exhibits, including dozens of Thomson Reuters' internal documents—most of which have little or nothing to do with whether a class should be certified in this case. Given the high level of generality at which Plaintiffs' motion is drafted and the tenuous connection between the motion and the documents they submitted, many of the redactions to Plaintiffs' motion and attachments are unnecessary, and several documents can be unsealed. There are also many documents, however, that could reveal trade secrets, harm Thomson Reuters' competitive standing, give a false and out-of-context impression of Thomson Reuters' business practices and unnecessarily implicate interests of third parties not involved with this case.

Thomson Reuters submits this Statement pursuant to Civil Local Rules 7-11 and 79-5 and in response to Plaintiffs' Administrative Motion to Consider Whether Another Party's Materials Should be Sealed ("Motion"). Dkt. 124. Through this Statement, Thomson Reuters seeks an order to file under seal a subset of the materials originally designated in Plaintiffs' Motion (the "Designated Materials"). This Statement and its exhibits are supported by the Declaration of Kevin Appold ("Appold Decl."), filed concurrently.

LEGAL STANDARD

There is a "strong presumption in favor of access" to court records, but "access to judicial records is not absolute." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation omitted). The legal standard applicable to whether a document should be sealed depends on whether the document is attached to a dispositive motion or a non-dispositive motion. *See id.* at 1179–80. Documents attached to dispositive motions—like motions for summary judgment—may be sealed only when the proponent establishes "compelling reasons" for doing so. *Id.* at 1179. But documents attached to non-dispositive motions that relate to the merits only tangentially—like motions for class certification—may be sealed upon a lesser showing of good cause. *Id.* at 1180; *see also In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509, 2013 WL 163779, at *2 n.1 (N.D. Cal. Jan. 15, 2013) (noting that the "vast majority" of the courts within this district generally treat class certification motions as non-dispositive); *see also Ehret v. Uber*

Techs., Inc., No. 14-cv-00113, 2015 WL 12977024, at *1 (N.D. Cal. Dec. 2, 2015) (Chen, J.) (applying good cause standard to documents attached to class certification motion).

The lesser, good cause standard applies here because the Designated Materials have been attached by Plaintiffs to their motion for class certification. But even if the higher, compelling reasons, standard applied, that standard is also met for the same reasons discussed below and in the exhibits and declaration supporting this statement.[1]

What reasons are sufficient to justify sealing documents is generally "left to the sound discretion of the trial court." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). Some commonly accepted examples of sealable materials, however, are "trade secrets," *Kamakana*, 447 F.3d at 1179, and "business information that might harm a litigant's competitive standing," *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). The Designated Materials that Thomson Reuters seeks to seal fall into those categories and others.

ARGUMENT

I. Documents to be fully or partially unsealed

Several of the documents that are provisionally under seal can be unsealed without harm to Thomson Reuters or third parties. Thomson Reuters therefore does not oppose the full unsealing of the documents listed in **Exhibit 1**. Thomson Reuters also views the vast majority of the redactions in Plaintiffs' motion for class certification as unnecessary. The only redactions that are necessary from Thomson Reuters' perspective are those described in **Exhibit 2**. Similarly, for the documents listed in **Exhibit 3**, Thomson Reuters does not seek to seal any information *except* for the redactions proposed. Those targeted redactions adequately protect the interests of Thomson Reuters and third parties, which are described in more detail in the exhibit and below.

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[1] One possible exception to the majority approach of applying the lesser, good cause standard to materials attached to a class certification motion is when "a denial of class status means that the stakes are too low for the named plaintiffs to continue the matter." *In re High-Tech Emp. Antitrust Litig.*, 2013 WL 163779, at *2 n.1 (noting exception but applying good cause standard); *see also Circle Click Media LLC v. Regus Mgmt. Grp. LLC*, No. 12-cv-04000, 2016 WL 8253802, at *1 (N.D. Cal. Mar. 14, 2016) (Chen, J.) (applying "compelling reasons" standard where "individual claims [were] expected to be less than $3,000 each"). But that exception does not apply here because Plaintiffs seek injunctive relief (even if class certification is denied) and do not merely seek nominal damages. *See, e.g.*, Am. Compl. ¶¶ 82, 92, 130.

II. Documents to be sealed

The public disclosure of other documents that Plaintiffs (often unnecessarily) attached to their motion would harm Thomson Reuters and its competitive business interests. And, in many cases, public disclosure would also unnecessarily disclose information about third parties not involved with this litigation. Finally, because the sensitive information is woven throughout these documents, redactions are either impossible or at least impractical. There are thus compelling reasons (and good cause) to seal the Designated Materials listed and described in **Exhibit 4.**

There are compelling reasons to seal many documents because they contain trade secrets. The Ninth Circuit has held that a trade secret may "relate to the sale of goods or to other operations in the business" and "may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972) (quoting RESTATEMENT (FIRST) OF TORTS § 757 cmt. b (AM. L. INST. 1939)). Many of the Designated Materials contain lists of customers and third-party business partners, which are regularly sealed as trade secrets. *See, e.g.*, *Snapkeys, Ltd. v. Google LLC*, No. 19-cv-02658, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021) ("[T]his Court has found compelling reasons to seal confidential information regarding a party's business partners where the disclosure of that information would harm the party's competitive standing."); *True Health Chiropractic Inc. v. McKesson Corp.*, No. 13-cv-02219, 2019 WL 11743580, at *2 (N.D. Cal. Aug. 13, 2019) ("[C]ustomer lists generally constitute trade secrets [and are] sealable under the heightened 'compelling reasons' standard."); *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1522 (1997) ("[A] customer list can be found to have economic value because its disclosure would allow a competitor to direct its sales efforts to those customers who have already shown a willingness to use a unique type of service or product as opposed to a list of people who only might be interested.").

Other documents in the Designated Materials reveal either trade secrets or, at a minimum, "business information that might harm [Thomson Reuters'] competitive standing." *Nixon*, 435 U.S. at 598. This includes, for example, powerpoints and training materials that address the confidential processes that Thomson Reuters has put in place to prevent misuse and ensure security of CLEAR; confidential information regarding the technical processes and capabilities for importing, organizing, updating, and revising information in CLEAR; and confidential internal strategic discussion and decisions regarding, for instance, internal business proposals, steps taken to improve CLEAR and better position it in the marketplace, and steps to distinguish CLEAR from competing products. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617, 2018 WL 3092256, at *2 (N.D. Cal. Mar. 16, 2018) (sealing "descriptions of cybersecurity practices and protocols" and "funding levels" because "disclosing specific funding levels could allow Anthem's competitors to have an advantage over Anthem in providing cybersecurity services"); *Opperman v. Path, Inc.*, No. 13-cv-00453, 2017 WL 1036652, at *7 (N.D. Cal. Mar. 17, 2017) (sealing "internal discussions among Apple personnel concerning software engineering and technical design issues that, if disclosed to the public, could make it easier to compromise the security of Apple's products"); *Adtrader, Inc. v. Google LLC*, No. 17-cv-0782, 2020 WL 6389186, at *2 (N.D. Cal. Feb. 24, 2020) (sealing information that "could cause competitive harm to Google by providing insight into Google's strategic business and financial decisions, and the capabilities of Google's systems related to invalid activity and associated advertiser payments").

Plaintiffs also attached numerous internal emails to their motion. Most of these emails should be sealed for similar reasons as the documents above—they contain sensitive business information. In addition, many of the emails have been presented out of context, such that public disclosure of these emails in the marketplace would create a false impression about CLEAR or Thomson Reuters' business practices. *See Adtrader, Inc.*, 2020 WL 6389186, at *2 (sealing portions of documents that present "information without context [because it could] harm Google by providing an incomplete and misleading picture of its crediting practices and capabilities"); *Aleksandr Urakhchin v. Allianz Asset Mgmt. of Am.*, No. 15-cv-1614, 2017 WL 11643350, at *4 (C.D. Cal. Apr. 21, 2017) (sealing portions of emails that competitors could present "to the marketplace out-of-context and place the investment option in a negative light"). Further, several of these emails contain information related to third parties, such as Thomson Reuters' business partners. And the fact that most of these documents have little or nothing to do with the class certification motion at hand makes the case for sealing them at this time even more compelling. *See, e.g.*, *O'Connor v. Uber Techs., Inc.*, No. C-13-3826, 2015 WL 355496, at *2 (N.D. Cal. Jan. 27, 2015) (Chen, J.) (recognizing that a non-party's privacy interest in information with 'little or no relevance to the issues raised by [the] summary judgment motions' is sufficient to satisfy the compelling reasons standard") (citation omitted).

CONCLUSION

For the reasons discussed above and in the exhibits and declaration supporting this Statement, Thomson Reuters respectfully asks the Court to issue an order to seal the Designated Materials.

Dated: December 7, 2022

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