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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

ADMINISTRATIVE MOTION TO FILE UNDER SEAL CONFIDENTIAL INFORMATION REGARDING DEFENDANT THOMSON REUTERS' MOTION TO EXCLUDE TESTIMONY OF FINANCE SCHOLARS GROUP, INC. (DR. TERRY LLOYD) (CIV. L.R. 7-11 AND 79-5)

Judge: Hon. Edward M. Chen

I. ADMINISTRATIVE MOTION TO FILE UNDER SEAL

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Thomson Reuters Corporation ("TR") submits this administrative motion ("Sealing Motion") for leave to file under seal certain information related to its Motion to Exclude Testimony of Finance Scholars Group, Inc (Dr. Terry Lloyd) ("Motion to Exclude Dr. Lloyd's Testimony").

This Sealing Motion is supported by the below Memorandum of Points and Authorities; the Omnibus Declaration of Hayden M. Schottlaender in Support of TR's (1) Motion to Exclude Testimony of Plaintiffs' Expert Professor Joseph Turow and (2) Motion to Exclude Testimony of Plaintiffs' Expert Finance Scholars Group, Inc. (Dr. Terry Lloyd) ("Schottlaender Declaration"); the previously filed Declaration of Kevin Appold in Support of TR's Administrative Motion to File Under Seal Confidential Information related to its Opposition to Plaintiffs' Motion for Class Certification ("Appold Sealing Declaration") (Doc. 150-3); the Stipulated Protective Order entered in this action (Doc. 70); and all pleadings and papers on file.

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. Legal Standard

There is a "strong presumption in favor of access" to court records, but "access to judicial records is not absolute." *Kamanaka v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Ins.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). 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.* But documents attached to non-dispositive motions that relate to the merits only tangentially—like motions to exclude expert testimony consistent with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)—may be sealed upon a lesser showing of good cause. *See, e.g.*, *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG, 2020 WL 2838812, at *2 (N.D. Cal. June 1, 2020) (applying compelling reasons standard to materials attached to summary judgment motion and "the lower

good cause standard for those documents related to the parties' *Daubert* motions"). 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) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978)).

The lesser, good cause standard applies here because the information that TR seeks leave to file under seal relates to TR's Motion to Exclude Dr. Lloyd's Testimony. But even if the higher, compelling reasons, standard applied, that standard is also met for the same reasons discussed below and in the previously filed Appold Sealing Declaration (Doc. 150-3).

B. Good cause and compelling reasons exist to partially seal (i.e., redact) certain information related to TR's Motion to Exclude Dr. Lloyd's Testimony.

Table 1 describes the information that TR seeks leave to file under seal with respect to its Motion to Exclude Dr. Lloyd's Testimony and with respect to Exhibit 1 to the Schottlaender Declaration, which consists of excerpts of Dr. Lloyd's deposition transcript. Most of the redactions proposed in Table 1 target financial information related to the CLEAR platform that is not already public, such that disclosure would harm TR "because CLEAR competitors could leverage the detailed information for their own competitive purposes." Appold Sealing Decl. ¶ 8. Good cause and compelling reasons exist to seal this information. *See, e.g.*, *Prescott v. Reckitt Benckiser LLC*, No. 20-CV-02101-BLF, 2022 WL 847309, at *2 (N.D. Cal. Mar. 22, 2022) (collecting cases and noting that when it comes to "confidential financial information . . . [c]ourts within the Ninth Circuit commonly grant sealing requests to protect exactly this type of information"); *Brown v. Brown*, No. CV 13-03318 SI, 2013 WL 12400041, at *1 (N.D. Cal. Dec. 30, 2013) (finding compelling reasons to seal "information about . . . profits, losses, income, investments, and expenses" where "the public disclosure of this information could harm these companies if the information was used by its competitors"); *Exeltis USA Inc.*, 2020 WL 2838812, at *2 (finding good cause to seal documents concerning "Defendant's financial performance and company strategy" because "public release of these documents could give non-party competitors an unfair advantage in the development or marketing of rival products"); *Linex Techs., Inc. v.*

Hewlett-Packard Co., No. C 13-159 CW, 2014 WL 6901744, at *1 (N.D. Cal. Dec. 8, 2014) (finding good cause to seal material with "sensitive financial information"). For similar reasons, good cause and compelling reasons exist to seal Dr. Lloyd's estimates regarding CLEAR's revenue, profits, and costs, which directly or indirectly reveal confidential information about CLEAR finances, and which "are inaccurate, or at least grossly misleading, and could therefore result in a misleading or inaccurate picture of CLEAR and related business practices." Appold Sealing Decl. ¶ 10.

TABLE 1

Cite	Portion(s) to Seal	Basis to Seal
Motion (2:7)	After "Over the period Dr. Lloyd analyzed, recurring revenue made up more than" and before "of TR's revenue"	Reveals non-public information about the revenue earned through CLEAR, specifically, the proportion of recurring versus transactional revenue. Public disclosure would harm TR. *See* Appold Sealing Decl. ¶ 10.
Motion (2:8)	After "from CLEAR, while transactional revenue accounted for just under" and before "*See id.* at 3."	*Same as row above*.
Motion (3:2)	Table excerpted from FSG / Dr. Lloyd Expert Report, first row titled: "Revenues" (all data/information contained under columns 2017-2021)	Reveals non-public information about the revenue earned through CLEAR. Public disclosure would harm TR. *See* Appold Sealing Decl. ¶ 10.
Motion (3:4)	Table excerpted from FSG / Dr. Lloyd Expert Report, third row titled: "CLEAR US Revenues" (all data/information contained under columns 2017-2021)	*Same as row above.*

Cite	Portion(s) to Seal	Basis to Seal
Motion (3:7)	Table excerpted from FSG / Dr. Lloyd Expert Report, fifth row titled: "CLEAR California Revenues" (all data/information contained under columns 2017-2021)	*Same as rows above*.
Motion (3:8)	Table excerpted from FSG / Dr. Lloyd Expert Report, sixth row titled: "California Natural Persons" (all data/information contained under columns 2017-2021)	Reveals non-public information about Plaintiffs' expert's inaccurate and misleading estimate of the percentage of "natural persons" about whom information is available in CLEAR (versus information about businesses and other entities). Public disclosure would harm Thomson Reuters. *See* Appold Sealing Dec. ¶ 10.
Motion (3:10)	Table excerpted from FSG / Dr. Lloyd Expert Report, seventh row titled: "CLEAR California Revenues / Persons" (all data/information contained under columns 2017-2021)	Reveals non-public information about the revenue earned through CLEAR. Public disclosure would harm TR. *See* Appold Sealing Decl. ¶ 10.
Motion (5:7)	After "Dr. Lloyd therefore concluded that plaintiffs are entitled to" and before "of his calculated revenue"	Reveals non-public information about Plaintiffs' expert's inaccurate and misleading estimate of transactional royalties and CLEAR profit margins. Public disclosure would harm Thomson Reuters. *See* Appold Sealing Dec. ¶ 10.
Motion (10:17)	After "TR realizes a" and before "profit margin from operating CLEAR."	*Same as row above*.
Schottlaender Decl. Ex. 1	Lloyd Dep. at 61:18 (beginning of line and before "million.")	Reveals non-public information about the revenue earned through CLEAR. Public disclosure would harm TR. *See* Appold Sealing Decl. ¶ 10.

III. CONCLUSION

TR respectfully requests that the Court issue an order allowing TR to file its Motion to Exclude Dr. Lloyd's Testimony and Exhibit 1 to the Schottlaender Declaration partially under seal by applying the redactions described above in Table 1.

Dated: February 6, 2023

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