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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 (DKT. 167)

Judge: Hon. Edward M. Chen

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. 167). Through this Statement, Thomson Reuters seeks an order to file under seal a subset of the materials originally designated in Plaintiffs' Motion. This Statement is supported by the previously filed Declaration of Kevin Appold in Support of Thomson Reuters' Administrative Motion to File Under Seal Confidential Information (Dkt. 150-3); the Stipulated Protective Order (Dkt. 70) entered in this action; and all pleadings and papers on file.

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 at issue relates to Thomson Reuters' Motion to Exclude the Testimony of Finance Scholars Group, Inc. (Dr. Terry

Lloyd) (Dkt. 157-2). But even if the higher, compelling reasons, standard applied, that standard is also met for the same reasons discussed below and in the Appold Declaration (Dkt. 150-3).

ARGUMENT

Thomson Reuters does not seek to seal any information provisionally filed under seal by Plaintiffs *except* for the information described in Table 1 below. The redactions proposed in Table 1 are narrowly tailored to target non-public, sensitive information about the composition of the CLEAR customer base; CLEAR's technical processes; and figures related to CLEAR searches and Plaintiffs' expert's estimates regarding revenue attributable to "Californians." As further explained in the justification table of Table 1 and in the previously filed Appold Declaration (Dkt. 150-3) cited therein, sealing is justified because the redacted text reveals non-public, sensitive "business information that might harm a litigant's competitive standing," *Nixon*, 435 U.S. at 598.

Table 1

Cite	Portion(s) to Seal	Justification
Dkt. 167-3 Pls. Opp. (2:14)	Page 2, line 14 (between "there was a" and "between")	The redacted text reveals non-public information about the proportion of government versus non-government CLEAR customers, which is not publicly known, and which could harm Thomson Reuters if publicly disclosed, including because competitors could "learn about how Thomson Reuters has positioned CLEAR in the marketplace." *See* Dkt. 150-3 ¶ 2.
Dkt. 167-3 Pls. Opp. (2:17)	Page 2, line 17 (between "that if" and "of CLEAR's")	*Same as row above.*
Dkt. 167-3 Pls. Opp. (2:18)	Page 2, line 18 (between "and" and "were")	*Same as rows above.*
Dkt. 167-3 Pls. Opp. (2:22)	Page 2, line 22 (between "were" and "then")	*Same as rows above.*

Cite	Portion(s) to Seal	Justification
Dkt. 167-3 Pls. Opp. (8:10)	Page 8, line 10 (between "about" and "of CLEAR's")	*Same as rows above.*
Dkt. 167-3 Pls. Opp. (8:11)	Page 8, line 11 (between "and" and "are")	*Same as rows above.*
Dkt. 167-3 Pls. Opp. (8:13)	Page 8, line 13 (between "them" and "to account")	*Same as rows above.*
Dkt. 167-3 Pls. Opp. (8:22)	Page 8, line 22 (between "to be" and "TR")	The redacted text, alone or in combination with other text, reveals detailed information about the proportion of CLEAR searches run with a "state" and/or "California" input. This information was cited in Plaintiffs' brief to justify their expert's estimates of revenue attributable to "Californians." Public disclosure of this information would harm Thomson Reuters, including because it could reveal "confidential information about CLEAR finances and the makeup of CLEAR data," and because the estimates of Plaintiffs' experts "are inaccurate, or at least grossly misleading, and could therefore result in a misleading or inaccurate picture of CLEAR and related business practices." Dkt. 150-3 ¶ 10.
Dkt. 167-3 Pls. Opp. (8:22.5)	Page 8, line 22.5 (between "field" and "percent")	*Same as row above.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 2, lines 9-11 (after "information requested by Plaintiffs by determining the total number of" and before "and used to help facilitate person searches run through")	The redacted text reveals "information regarding the technical processes of CLEAR, such as the function and names of internal databases" and components thereof. Public disclosure of this information would harm Thomson Reuters, including "because competitors may . . . be able to leverage technical information for their own competitive purposes." Dkt. 150-3 ¶ 9.
Dkt. 167-5 Mura Decl. Ex. 2	Page 2, line 13 (after "determine the subset of	*Same as row above.*

Cite	Portion(s) to Seal	Justification
	those" and before "a current or past California address.")	
Dkt. 167-5 Mura Decl. Ex. 2	Page 2, line 16 (after "Note that a single natural person may be associated with several different" and before "such that")	*Same as rows above.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 2, line 18 (after "The fact that" and before "a current or past California address does not")	*Same as rows above.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 2, line 26 through page 3, line 1 (after "2." entire sentence)	*Same as rows above.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 3, line 2 (after "The totals include" and before "which relate to persons who are deceased and/or who")	*Same as rows above.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 3, lines 4-5 (after "As of January 9, 2023," and before "of these contained a current or past California address.")	*Same as rows above.* In addition, the redacted text reveals "confidential information about . . . the makeup of CLEAR data," Dkt. 150-3 ¶ 10, and was relied upon in Plaintiffs' brief to justify their expert's estimates of revenue attributable to "Californians." Public disclosure would harm Thomson Reuters by revealing "information regarding the technical processes of CLEAR," *id.* ¶ 9, and "confidential information about . . . the makeup of CLEAR data," *id.* ¶ 10, and because the estimates of Plaintiffs' experts "are inaccurate, or at least grossly misleading, and could therefore result in a misleading or inaccurate picture of CLEAR and related business practices," *id.*
Dkt. 167-5 Mura Decl. Ex. 2	Page 5, lines 4.5-8.5 (all eight rows of data/information underneath the table column headers)	The redacted text reveals detailed information about the proportion of CLEAR searches run with a "state" and/or "California" input. This information was relied upon in Plaintiffs' brief to justify their

Cite	Portion(s) to Seal	Justification
		expert's estimates of revenue attributable to "Californians." Public disclosure of this information would harm Thomson Reuters, including because it could reveal "confidential information about CLEAR finances and the makeup of CLEAR data," and because the estimates of Plaintiffs' experts "are inaccurate, or at least grossly misleading, and could therefore result in a misleading or inaccurate picture of CLEAR and related business practices." Dkt. 150-3 ¶ 10.

CONCLUSION

For the reasons discussed above and in the previously filed declaration of Kevin Appold, Thomson Reuters respectfully requests that the Court issue an order authorizing the materials described in Table 1 above to remain under seal.

Dated: March 10, 2023

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