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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

THOMSON REUTERS' STATEMENT IN RESPONSE TO PLAINTIFFS' ADMINISTRATIVE MOTION TO CONSIDER WHETHER ANOTHER PARTY'S MATERIALS SHOULD BE SEALED (DOC. 169)

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") (Doc. 169). 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 contemporaneously filed Third Sealing Declaration of Kevin Appold ("Third Sealing Declaration), the Stipulated Protective Order entered in this action, Doc. 70, 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 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 relevant materials are associated with Plaintiffs' reply brief in support of 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 Third Sealing Declaration.[1]

[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.*

ARGUMENT

Thomson Reuters does not seek to seal any information provisionally filed under seal by Plaintiffs *except* for the information described in Tables 1 and 2 below.

The redactions proposed in Table 1 are narrowly tailored to target text in Plaintiffs' reply to their motion for class certification that discusses a type of data that Plaintiffs *falsely* contend was available through CLEAR "for at least a limited time." Doc. 169-3 at 1. In reality, "Thomson Reuters briefly explored adding that type of data to CLEAR, [but] that data was never integrated into CLEAR or made available to CLEAR customers." Third Sealing Decl. ¶ 2.

Table 1

Cite	Portion(s) to Seal
Doc. 169-3 Pls. Reply (1:12)	Page 1, line 12 (after "CLEAR had" and before "—which")
Doc. 169-3 Pls. Reply (1:12)	Page 1, line 12 (after "potentially" and before "and")
Doc. 169-3 Pls. Reply (1:13)	Page 1, line 13 (beginning of line and before "information that")

The redactions proposed in Table 2 are narrowly tailored to target text in transcript excerpts from the deposition of Eric Gerhard on February 22, 2023. Specifically, these excerpts include dialogue between Mr. Gerhard and Plaintiffs' counsel about the type of data discussed above, as well as quotes from and discussions about internal communications among Thomson Reuters employees that were presented with little or no context by Plaintiffs' counsel during the deposition.

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.

Table 2

Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 255:6 (after "Subject is" to end of line 6)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 255:8-10 (after "The attachment, which is forwarded," to end of line 10)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 255:13-17 (after "Okay. And it reads," to end of line 17)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 257:5-7 (after "So he forwards you this" to end of line 7)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 257:9-10 (after "Do you have an understanding of what a" and before "based on this communication from")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 257:13-16 (after "this is regarding a" to end of line 16)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 257:18-19 (after "How often does Thomson Reuters" to end of line 19)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 257:24-25 (entire lines)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 258:2 (after "particular vendor," to end of line 2)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 258:14 (beginning of line and before "considered to be proprietary?")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 258:24 (after "Is data from a" and before "proprietary?")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 261:25 (after "Subject is" and before "is that right?")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 262:2-18 (after "And it reads," to end of line 18)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 263:11-12 (after "And it says here," to end of line 12)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 263:13-15 (after "What is" to end of line 15)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 263:18-22 (after "we did meet with" to end of line 22)

Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 263:23-24 (after "The email states that" and before "correct?")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 263:25–264:1 (after "Yeah. I guess with" to end of line 1)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 264:18 (after "The subject is" to end of line 18)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 264:20 (after "What is" to end of line 20)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 264:21-22 (after "That would be a meeting to discuss" to end of line 22)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 265:4-7 (entire lines)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 265:9-10 (after "And how would" to end of line 10)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 265:18-22 (after "would be around" to end of line 22)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 266:18 (after "The subject is" to end of line 18)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 266:20 (after "So you attended the" and before "webinar that's")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 266:23 (after "attend the" and before "webinar. I -- like I don't have a")
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 267:2-10 (after "The email reads," to end of line 10)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 267:12 (entire line)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 267:15-16 (after "And the first key takeaway is," to end of line 16)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 267:25–268:1 (entire lines)
Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 268:6-8 (entire lines)

Doc. 169-4 Mura Decl. Ex. 1	Gerhard Dep. at 269:2-22 (entire lines)

Good cause and compelling reasons exist to seal the text identified in Tables 1 and 2 above because the text "reveals the type of data that Plaintiffs falsely claim to have been available through CLEAR; reveals non-public information about strategic development and positioning of CLEAR as Thomson Reuters considered whether to make that type of data available through CLEAR; and because it gives an incomplete and misleading picture of Thomson Reuters business practices related to CLEAR." Third Sealing Decl. ¶ 4; *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (recognizing that it is proper to seal business information that might harm a litigant's competitive standing"); *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").

CONCLUSION

Thomson Reuters respectfully requests that the Court issue an order authorizing the materials described in Tables 1 and 2 above to remain under seal.

Dated: March 16, 2023

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