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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
THOMSON REUTERS' OBJECTION TO
NEW REPLY EVIDENCE**

Judge: Hon. Edward M. Chen

Pursuant to Civil Local Rules 7-11 and 79-5, Thomson Reuters submits this administrative motion (“Sealing Motion”) for leave to file under seal certain information related to its Objection to New Reply Evidence (“Objection”). This Sealing Motion is supported by the Third Sealing Declaration of Kevin Appold, Doc. 173-2 (“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 (via Thomson Reuters’ Objection). 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. 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

ARGUMENT

Good cause and compelling reasons exist to seal the text from Thomson Reuters’ Objection identified in Table 1 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”).

Table 1

Cite	Portion(s) to Seal
Objection to Reply (1:6)	Page 1, line 6 (after “includes allegations about CLEAR having” and before cite to footnote 3)
Objection to Reply (1:9)	Page 1, line 9 (after “TR objects to Plaintiffs’ new argument and evidence about” and before “under Local”)
Objection to Reply (1:11)	Page 1, line 11 (after “further objects that” and before “is irrelevant to Plaintiffs’ case or to class certification and is”)
Objection to Reply (1:14)	Page 1, line 14 (beginning of line and before “or anything of the sort.”)

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.

Cite	Portion(s) to Seal
Objection to Reply (1:18)	Page 1, line 18 (after “had “no knowledge one way or the other” whether” and before “was ever indexed in CLEAR.”)
Objection to Reply (1:19)	Page 1, line 19 (after “And, in fact,” and before “was never made available to any CLEAR”)
Objection to Reply (2:7)	Page 2, line 7 (after “for at least a limited time, CLEAR had” and before “–which includes potentially”)
Objection to Reply (2:7)	Page 2, line 7 (after “–which includes potentially” to end of line 7)
Objection to Reply (2:8)	Page 2, line 8 (after “and” and before “information that cannot be accessed through normal internet channels.”)
Objection to Reply (2:11)	Page 2, line 11 (after “The phrase” and before “does not appear once in either Plaintiffs’ Complaint or their”)
Objection to Reply (2:23-24)	Page 2, lines 23-24 (FN 5: after “TR never discusses” and before “in its opposition because”)
Objection to Reply (2:24)	Page 2, line 24 (FN 5: after “in its opposition because” and before “was never offered through CLEAR and has never”)
Objection to Reply (2:24.5 - 25)	Page 2, lines 24.5-25 (after “Nor can Plaintiffs claim that the concept of” and before “is new to them and that they could not have discovered the issue sooner.”)
Objection to Reply (2:25.5)	Page 2, line 25.5 (after “to TR’s consideration of” and before “functionality (including those that were presented to Mr.”)
Objection to Reply (3:3)	Page 3, line 3 (after “references to and arguments about” and before “under Local Rule 7-3(d)(1).”)
Objection to Reply (3:7)	Page 3, line 7 (after “Because anything regarding” and before “is new”)
Objection to Reply (3:9)	Page 3, line 9 (after “TR also objects that the new evidence regarding” and before “is irrelevant.”)
Objection to Reply (3:19)	Page 3, line 19 (beginning of line and before “has no connection to this litigation.”)
Objection to Reply (3:21)	Page 3, line 21 (after “what types of” and before “may be at issue, what”)
Objection to Reply (3:21)	Page 3, line 21 (after “may be at issue, what” and before “even is, why TR explored”)

Cite	Portion(s) to Seal
Objection to Reply (4:6)	Page 4, line 6 (after “customers” and before “ <i>See, e.g.</i> , Doc. 169-4, 258:4-13.”)
Objection to Reply (4:7)	Page 4, line 7 (after “CLEAR does not include” and before “currently, Doc 169-4, 268:17-23;”)
Objection to Reply (4:9)	Page 4, line 9 (after “CLEAR, id. at 262:5-263:8; and he had “no knowledge” whether” and before “was ever made”)
Objection to Reply (4:12)	Page 4, line 12 (after “never made” and before “available to customers.”)

CONCLUSION

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

Dated: March 16, 2023

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