Susan D. Fahringer, Bar No. 21567
SFahringer@perkinscoie.com
Nicola C. Menaldo, *pro hac vice*
NMenaldo@perkinscoie.com
Erin K. Earl, *pro hac vice*
EEarl@perkinscoie.com
Anna M. Thompson, *pro hac vice*
AnnaThompson@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Gabriella Gallego, Bar No. 324226
GGallego@perkinscoie.com
PERKINS COIE LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
Telephone: 650.838.4300
Facsimile: 650.838.4350

Hayden M. Schottlaender, *pro hac vice*
HSchottlaender@perkinscoie.com
PERKINS COIE LLP
500 N. Akard Street, Suite 3300
Dallas, TX 75201-3347
Telephone: 214.965.7700
Facsimile: 214.965.7799

Attorneys for Defendant
Thomson Reuters Corporation

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' REPLY BRIEF IN SUPPORT OF ITS MOTION TO EXCLUDE TESTIMONY OF FINANCE SCHOLARS GROUP, INC. (DR. TERRY LLOYD)

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 Reply Brief in Support of its Motion to Exclude Testimony of Finance Scholars Group, Inc. (Dr. Terry Lloyd) ("Reply"). This Sealing Motion is supported by 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, Doc. 150-3 ("Second 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 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").

The lesser, good cause standard applies here because the relevant materials are associated with Thomson Reuters' 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 Second Sealing Declaration.

ARGUMENT

Good cause and compelling reasons exist to seal the text from Thomson Reuters' Reply identified in Table 1 because the text reveals the identity of a third-party licensor of certain types of data accessible through CLEAR, the disclosure of which would cause harm to Thomson Reuters. *See* Doc 150-3 ¶ 11. For example, competitors might use information about the identity of this third-party licensor to target the same licensor for their own products. *See 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"). And the isolated fact that this third party licenses data accessible through CLEAR might be taken out of context and used to give a misimpression about CLEAR and associated business practices. *See Adtrader, Inc. v. Google LLC*, No. 17-cv-0782, 2020 WL 6389186, at *2 (N.D. Cal. Feb. 24, 2020) (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"). Finally, disclosure would unnecessarily disclose information about a third party that is not subject to this litigation. *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).

Table 1

Cite	Portion(s) to Seal
Reply (6:1-2)	Page 6, lines 1-2 (after "For example, TR has paid a flat-rate royalty to the" and before cite to footnote 1)

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 20, 2023

PERKINS COIE LLP

By: */s/ Anna Mouw Thompson*
Anna Mouw Thompson
AnnaThompson@perkinscoie.com

Attorneys for Defendant Thomson Reuters Corporation