EXHIBIT A-14

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PURSUANT TO COURT ORDER,
DATED MARCH 21, 2023 (DOC. 178)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAT BROOKS and RASHEED SHABAZZ, individually and on behalf of all others similarly situated, Plaintiffs, v. THOMSON REUTERS CORPORATION, Defendants.	Case No. 3:21-cv-01418-EMC Honorable Edward M. Chen

REBUTTAL EXPERT REPORT OF DR. RAN KIVETZ

CONFIDENTIAL

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A. ASSIGNMENT AND QUALIFICATIONS

1. My name is Dr. Ran Kivetz. I have been asked by counsel for Thomson Reuters Corporation (hereinafter, "Thomson Reuters") to evaluate the report of Dr. Joseph Turow (hereinafter, the "Turow Report"),[1] which was submitted in this matter[2] on behalf of the Plaintiffs. I was also asked to evaluate whether the report of Mr. Terry Lloyd on behalf of the Finance Scholars Group, Inc. (hereinafter, "FSG" and the "FSG Report")[3]: (*i*) relates to the opinions set forth in the Turow Report; and (*ii*) proposes any methodology that could be used to apportion monetary relief across the putative class.

2. I have personal knowledge of the matters set forth in this report and, if called to testify at a hearing or trial in this matter, would so state.

3. I am the Philip H. Geier, Jr., Professor of Marketing at Columbia University Business School. A copy of my curriculum vitae, which includes a complete list of my publications, is attached as Exhibit A.

4. I earned a Ph.D. in Business from Stanford University, Graduate School of Business; a Master's degree in Psychology from the Stanford University Psychology Department; and a Bachelor's degree from Tel Aviv University with majors in Economics and Psychology.

5. My field of expertise encompasses consumer psychology and behavior; survey methods; marketing management; behavioral economics; human judgment, perception, and decision making; consumer and sales incentives; and branding. Most of my research has focused on buyers' purchase behavior; survey design; and the effect of product characteristics (*e.g.*, brand, features, quality, price), the competitive context, and marketing activities (*e.g.*, promotions, incentives, loyalty programs, advertising, branding) on purchase decisions and perceptions.

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[1] "Report of Professor Joseph Turow," signed June 1, 2022 (hereinafter, the "Turow Report").
[2] "Class Action Complaint," in the matter of *Cat Brooks and Rasheed Shabazz v. Thomson Reuters Corporation*, Case No. 3:21-cv-01418-EMC (hereinafter, "*Complaint*").
[3] "Report of Finance Scholars Groups, Inc.," signed June 1, 2022 (hereinafter, the "FSG Report").

6. I have received multiple research awards and nominations, including: (*i*) the "*Ferber Award*" from the Association for Consumer Research, which is the largest association of consumer researchers in the world; (*ii*) the "*Best Competitive Paper Award*" from the Society of Consumer Psychology, which is the premier association of consumer psychologists in the world; (*iii*) the "*Early Contribution Award*" from the Society of Consumer Psychology; (*iv*) five finalist nominations, for the 2016, 2011, 2009, 2007, and 2005 "*O'Dell Award*," given to the article in the *Journal of Marketing Research* (the major journal on marketing research issues) that has had the greatest impact on the marketing field in the previous five years; (*v*) two finalist nominations for the 2007 and the 2005 "*Green Award*," given to the *Journal of Marketing Research* article published in the prior year that "demonstrates the most potential to contribute significantly to the practice of marketing research and research in marketing"; (*vi*) three finalist nominations for the awards for the "*Best Article*" published in the *Journal of Consumer Research* between 2002 and 2005, between 2006 and 2009, and between 2011 and 2014; (*vii*) having my research selected by *The New York Times* in its *Annual Year in Ideas* as one of the "Best Ideas in 2006"; (*viii*) being rated as the third most prolific scholar in the leading marketing journals during 1982 – 2006;[4] and (*ix*) being ranked by the American Marketing Association as one of the Top 50 most productive scholars in the premier marketing journals during 2009 – 2013 and during 2010 – 2014.

7. At Columbia University, I have taught MBA and Executive MBA courses on Marketing Strategy and Management, Customer Centricity and Innovation, High-Technology Marketing and Entrepreneurship, and Marketing of a Nation, covering such topics as developing marketing strategies, buyer behavior, customer segmentation, customer acquisition and retention, competitive strategies, branding, pricing, advertising,

[4] Seggie, Steven H. and David A. Griffith (2009), "What Does It Take to Get Promoted in Marketing Academia? Understanding Exceptional Publication Productivity in the Leading Marketing Journals," *Journal of Marketing,* 73(1), 122 – 132.

sales promotions, and behavioral economics. In addition to teaching MBA and Executive MBA courses, I have guided and supervised numerous MBA student teams in their work on company and industry projects dealing with a variety of markets. I also have taught in various executive education programs, including programs for senior executives, programs for marketing managers in high-technology companies, programs for marketing managers in pharmaceuticals, programs in entrepreneurship, programs on marketing and innovation, and programs on customer centricity.

8. I have taught several doctoral courses at Columbia University. One doctoral course, titled "Bridging Behavioral Economics and Marketing Science," examines human judgment and decision-making and its application to marketing science. The course focuses on understanding, predicting, and quantitatively modeling (including by employing conjoint analysis models) different phenomena and biases in judgment and decision making. A second doctoral course deals with consumer behavior, covering such topics as the processes underlying choices and judgments, and their influence on purchase decisions, attitudes, and persuasion. Both of these courses focus on modeling the various stages involved in a research project, including defining the problem to be investigated, selecting and developing the research approach, data collection and analysis, and deriving conclusions. I have guided and supervised numerous Ph.D. students in their research. I have also served as the advisor for multiple Ph.D. students who are or were professors at such institutions as University of Chicago Booth School of Business, Harvard Business School, National University of Singapore (NUS), Tsinghua University, and The Wharton School at the University of Pennsylvania.

9. I have conducted, supervised, and evaluated well over 1,000 marketing research surveys, including many related to consumer behavior and decision making, likelihood of confusion, sales promotions, marketing strategies, branding, trademark, and advertising-related issues.

10. I serve on three editorial boards and as a frequent reviewer, including for leading journals in our field, such as the *Journal of Marketing Research*. I have served as a Guest Editor for the *Journal of Marketing Research* and as a Guest Associate Editor for *Marketing Science* and *Management Science*. I have served on the editorial board of, and received the "*Outstanding Reviewer Award*" from, the *Journal of Consumer Research*. I have also served on the editorial boards of the *Journal of Consumer Psychology* and the *International Journal of Research in Marketing*. I am a frequent reviewer of articles submitted to journals in other fields, such as psychology, decision making, and economics. As a reviewer, I am asked to evaluate the research of scholars wishing to publish their articles in leading scholarly journals.

11. I have served as an expert witness for the Federal Trade Commission.

12. I have worked as a consultant for companies and organizations on a variety of topics, including strategy, marketing, consumer behavior and perception, promotions, branding, advertising, and incentives. Additionally, I have served as an expert in litigation and adversarial proceedings, including in front of the National Advertising Division of the Better Business Bureau National Programs ("NAD"), involving various marketing and buyer behavior issues, false advertising, market surveys, patent infringement, trademark and trade dress related matters, branding, retailing, promotions, and other areas. I have also been invited to present at the annual NAD Law Conference.

13. My opinions and testimony have been favorably cited and relied upon by courts across the U.S.[5]

[5] *See, e.g., The People of the State of California v. Kohl's Department Stores, Inc. et al.*, Case No. BC643037 (Superior Court of the State of California, County of Los Angeles 2021) (noting, *e.g.*, that: "As carefully reviewed by Kohl's rebuttal expert, Ran Kivetz, Ph.D., who the Court found highly competent and entirely credible based on his outstanding academic credentials, his thorough research into Dr. Compeau's reports and his appearance and candor while testifying […]"; and "[t]he Court accepts as entirely credible and supported by sound scientific analysis, the conclusion of Dr. Kivetz, that none of the articles referenced in Dr. Compeau's reports provide valid scientific evidence for [Dr. Compeau's] opinion […]"); *Dyson, Inc. v. Bissell Homecare, Inc.*, 951 F.Supp.2d 1009, 1019 (N.D. Illinois, 2013) (upholding the methodology, questions, and coding of my survey and denying Bissell's motion to exclude my expert report).

14. A list of cases in which I provided sworn testimony at trial and/or by deposition during the past four years is included in Exhibit B. I am being compensated in this matter at a rate of $1,000 an hour. My compensation does not depend in any way on my opinion or the outcome of this matter.

15. My analyses are based on, inter alia, the brands, products, advertising, and websites relevant to the data aggregation and online investigation software market; existing scientific research and treatises regarding survey design, consumer behavior, and decision making; general principles of marketing and psychology; deposition testimony; industry research; and materials produced by the parties in this litigation. In conducting my analysis, I, or support staff at my direction, reviewed certain documents, including, but not limited to, documents that were made available to me in connection with the preparation of this *Rebuttal Expert Report*. Those documents are referenced herein and/or listed in Exhibit C. I also held a conference call with Kevin Appold, Vice President of Investigations and Public Records at Thomson Reuters.[6]

16. Any, and all, of the opinions expressed herein are held to a reasonable degree of professional certainty. The information on which I relied consists of the type of information that is reasonably relied upon in my field of expertise.

B. INTRODUCTION AND SUMMARY OF CONCLUSIONS

17. I understand that the Plaintiffs allege that Thomson Reuters's CLEAR product, an online investigation software platform, violates Californians' privacy by collecting, disseminating, and/or selling individuals' "personal information" without their consent and without compensating them. For example, the *Complaint* states:[7]

> Thomson Reuters' appropriation and sale of the plaintiffs' and class members' names, photographs, likenesses, and personal information without seeking permission or consent injured the class members by violating their right to exercise control over the commercial use of their identities.

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[6] Interview held on September 1, 2022, with outside counsel (Susan Fahringer and Nicola Menaldo) also present on the call (hereinafter, "September 1, 2022 Interview").
[7] *Complaint*, ¶ 101.

And:[8]

> Thomson Reuters' appropriation of the class members' names, photographs, and other identifying information was to the company's economic and commercial advantage. […]
>
> At no time has Thomson Reuters affirmatively sought consent from class members before appropriating and selling their personal data, nor does it have a process for doing so.
>
> The class members received no compensation for Thomson Reuters' use of their names, images, likenesses, and other personal identifying information.

18. According to the *Complaint*, the Plaintiffs seek to certify a class consisting of (hereinafter, the "putative class"):[9]

> All persons residing in the state of California whose name, photographs, personal identifying information, or other personal data **is or was included** in the CLEAR database during the limitations period [emphasis added].

19. This report discusses that putative class. To the extent that the Plaintiffs may subsequently seek certification of a subset of that class, such as a class consisting of Californians whose personal data is or was *disseminated* through CLEAR during the limitations period, my analyses of the Turow Report's opinions set forth herein also apply to such a potential narrower putative class.

20. I understand that CLEAR is a search platform offered by Thomson Reuters that provides access to data from "records that have been licensed or otherwise acquired from third-party sources"[10] (and accompanying data analytics capabilities) to facilitate authorized customers' investigative research for their "own internal business or government purpose."[11] According to documents produced in this litigation, "authorized customers" refers to credentialed government organizations and businesses who must (for each search) certify that they are using CLEAR for a "permissible" use[12] and who must

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[8] *Id.*, ¶¶ 97 – 99; *see also id.*, ¶ 106 ("Thomson Reuters has wrongfully and unlawfully sold the named plaintiffs' and the class members' names, photographs, personal identifying information, and other personal data without their consent for substantial profits.").
[9] *Id.*, ¶ 70.
[10] April 4, 2022 "Defendant Thomson Reuters Corporation's Responses and Objections to Plaintiffs' First Set of Interrogatories to Defendant" (hereinafter, "Thomson Reuters's Responses to First Set of Interrogatories"), Attachment A, p. 1.
[11] *Ibid.*; September 1, 2022 Interview.
[12] *See, e.g.*, Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 1 – 2; TR-BROOKS001363; May 16, 2022 Deposition of Steven Fox (Director of Product Management at Thomson Reuters; hereinafter, "Fox Deposition"), pp. 159 – 160.

undergo continuous, routine audit and compliance requirements.[13] I further understand that CLEAR's "use cases" (*i.e.*, purposes for which CLEAR is utilized)[14] include: preventing fraud (*e.g.*, identify theft, healthcare fraud, financial fraud); finding missing persons (*e.g.*, kidnapped children, absentee parents); assisting law enforcement with criminal investigations (*e.g.*, homicides, rape, drug trafficking, human/sex trafficking, child exploitation and abuse); supporting compliance with anti-money laundering regulations; verifying the identity of vendors; and assisting vulnerable individuals (*e.g.*, locating relatives of children who would otherwise go to foster care, providing benefits to veterans).[15]

21. It is also my understanding that *no* data made available to customers through CLEAR is collected directly from consumers; that nearly all data accessible through CLEAR was licensed or acquired from a third party (*e.g.*, a government or commercial entity); and that Thomson Reuters has a licensing agreement with every third-party vendor from whom it obtains data.[16] Throughout this *Rebuttal Expert Report*, I use the terms "consumers" to refer to "individuals" and to "the public" (including Californians). In the context of Thomson Reuters's CLEAR product, I use "customers" to refer to users of the CLEAR platform. Further, I use "collected" to refer to a

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[13] *See, e.g.*, Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 2 & 5.

[14] *See, e.g.*, May 6, 2022 Deposition of Paul Godlewski (Senior Director of Outbound Product Marketing at Thomson Reuters; hereinafter, "Godlewski Deposition"), p. 24; May 18, 2022 Deposition of Dori Buckethal (Vice President of Inbound Product Marketing, Risk and Fraud, at Thomson Reuters; hereinafter, "Buckethal Deposition"), p. 63.

[15] *See, e.g.*, https://legal.thomsonreuters.com/en/products/clear-investigation-software; Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 2 – 5. I understand that at a higher level, the CLEAR platform is intended to help customers "prevent" (ex-ante), "detect" (in real time), and "investigate" (after the fact) crime and fraud, frequently in the context of financial fraud or risk management; September 1, 2022 Interview. *See also* https://legal.thomsonreuters.com/en/products/clear-investigation-software.

[16] *See, e.g.*, September 1, 2022 Interview; TR-BROOKS001363; TR-BROOKS035826; TR-BROOKS037031; TR-BROOKS037466; TR-BROOKS037609; TR-BROOKS038817; TR-BROOKS039253. I also understand that Thomson Reuters has certain standards with respect to licensing contracts with third parties (*e.g.*, such that the terms provide reasonable confidence that a vendor has a right to license its data and is complying with all applicable rules or regulations); September 1, 2022 Interview.

consumer's information being made available through the CLEAR platform (which the Plaintiffs have described as the "CLEAR database"[17]) and "disseminated" to refer to a consumer's information being accessed by customers based on the searches they conduct on the CLEAR platform.

22. Based on my review and analysis of Dr. Turow's report and source materials, as well as the other materials and analyses on which I have relied, along with my background and expertise, I have reached the following conclusions:

23. ***The Turow Report fails to provide any empirical or scientific evidence of common injury allegedly suffered by the putative class members due to CLEAR, and Dr. Turow's cited research and analyses do <u>not</u> substantiate his conclusions.*** Dr. Turow argues that all Californians were harmed by CLEAR in the same way because their "fundamental privacy right"[18]—which he conceptualizes as "the right to control one's information"[19] and "the right to be let alone"[20]—was violated. However, to evaluate whether consumers derive harm or utility[21] from a product at issue, it is necessary to *empirically* assess *consumers' perceptions and preferences* regarding the challenged product (in its relevant context). More specifically, although never discussed in his report, Dr. Turow testified at his deposition that the underlying "privacy rights" he opined on refer to "ethical and social" rights,[22] and that violation of such "ethical and social" rights does *not* correspond to any physical injury, financial consequences, loss of property, or other quantification scheme.[23] Dr. Turow's own deposition testimony and logic therefore

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[17] *E.g.*, Complaint, ¶ 70.
[18] *E.g.*, Turow Report, p. 8.
[19] *E.g., id.*, p. 6.
[20] *E.g., id.*, p. 9.
[21] Utility (in economic terms) refers to the benefit (*e.g.*, satisfaction or usefulness) a consumer derives from a good or service. *See also, e.g.*, Mankiw, N. Gregory (2012), *Principles of Economics*, Mason, OH: South-Western Cengage Learning, p. 447 ("Another common way to represent [consumer] preferences is with the concept of *utility*. Utility is an abstract measure of the satisfaction or happiness that a consumer receives from a bundle of goods. Economics say that a consumer prefers one bundle of goods to another if one provides more utility than the other.").
[22] August 26, 2022 Deposition of Joseph Turow (hereinafter, "Turow Deposition"), p. 174.
[23] *See id.*, pp. 177 – 185 & 188.

indicate that any "privacy harms" allegedly caused by CLEAR must exist in consumers' minds and accordingly be measured according to consumers' perceptions and preferences.

24. In reaching his conclusion of common harm, Dr. Turow did not conduct any survey or empirical research to assess consumers' perceptions or preferences regarding the use of their information in a product like CLEAR. Instead, Dr. Turow inappropriately speculated and extrapolated from various sources to the current litigation. These sources, as summarized below, do *not* substantiate (and in many cases directly contradict) the notion that the putative class members allegedly suffered common harm (including any "ethical or social"[24] harm, to the extent that Dr. Turow relies on such a characterization). Further, the Turow Report fails to provide any concrete evidence that even a single putative class member was injured by CLEAR.

25. *First*, Dr. Turow inappropriately conflates *scholars'* (*e.g.*, legal and theoretical) definitions of privacy with *consumers'* (and the putative class members') perceptions and preferences regarding privacy. In particular, the Turow Report invokes multiple legal, as well as other theoretical, sources to support the conceptualization of privacy as the right to "control one's personal information" (and to be "left alone").[25] However, not only do these sources fail to empirically test how consumers would interpret privacy or how they would respond to having their information be collected or otherwise used in a product like CLEAR, but, if anything, they contradict Dr. Turow's narrow definition of privacy. Any conclusions derived from the Turow Report based on scholars' conceptions of privacy would therefore be irrelevant to the putative class members in this litigation.

26. *Second*, the few sources cited in the Turow Report that relate to *consumers'* perceptions and preferences do *not* substantiate Dr. Turow's assumptions or conclusions.

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[24] *Id.*, p. 174.
[25] *E.g.*, Turow Report, pp. 8 ("These quotes reflect California's long-standing public policy in favor of individual privacy through the right to control one's personal information […]") & 9 ("California legislators have also described the right to privacy as 'the right to be left alone,' […]).

Specifically, the six articles that Dr. Turow references are irrelevant to, directly refute, or simply do not support his key assumptions and opinions. These articles do not support Dr. Turow's assumptions and opinions that: (*i*) consumers commonly conceive privacy as the right to control their information about them; (*ii*) consumers are commonly concerned about controlling their information about them and/or others using that information (through a CLEAR-like product); and (*iii*) consumers commonly agree that the harm from a product like CLEAR outweighs its benefits. Contrary to the Turow Report's characterization of privacy, multiple empirical surveys cited by Dr. Turow reveal considerable variation in how consumers understand privacy, with little to no consensus among consumers in their concerns or preferences related to the collection and/or dissemination of information about them.

27. *Third*, Dr. Turow fails to provide evidence of any concrete, specific, actual, or likely negative outcomes suffered by even a single putative class member, let alone commonly classwide. In fact, Dr. Turow fails to even specify what such harm *could* entail, instead asserting (without substantiation) that *all* Californians have suffered "privacy harms of lack of control or violation of the right to be let alone"[26] due to CLEAR. The Turow Report's discussion of alleged classwide injury attributable to CLEAR is fundamentally unscientific, lacks any empirical basis, and suggests a lack of objectivity.

28. *Fourth*, Dr. Turow's claim that CLEAR is not journalism is irrelevant to his conclusions about alleged classwide (or individualized) harm or about consumers' supposed perceptions of privacy in the context of CLEAR.

29. ***The Turow Report ignores relevant empirical evidence and facts about CLEAR and the marketplace that indicate a <u>lack</u> of common classwide injury due to CLEAR.*** More specifically: (*i*) Dr. Turow fails to account for how individual and contextual factors related to CLEAR—including the specific nature of information

[26] *Id.*, p. 4.

collected or disseminated—can affect consumers' perceptions and preferences; (*ii*) Dr. Turow fails to account for CLEAR's various use cases and potential benefits for individual class members and society as a whole; (*iii*) Dr. Turow fails to account for CLEAR's various safeguards; and (*iv*) Dr. Turow ignores the prevalence in the marketplace of products analogous to CLEAR and their likely impact on consumers' perceptions, expectations, and preferences. The existence of varying views (and preferences) related to privacy and the use of information about an individual—particularly when considering numerous, specific aspects of the CLEAR product—renders the Turow Report's "blanket" assertion of common classwide harm invalid, unreliable, and unscientific.

30. ***FSG's model to assess monetary relief is not related to Dr. Turow's opinions, and FSG fails to propose any methodology for apportioning monetary relief across the putative class members.*** The FSG Report attempts to estimate monetary relief by calculating Thomson Reuters's "net profits" that are due to the alleged misconduct. In arriving at his estimate, Mr. Lloyd (on behalf of FSG) does not rely on or even cite *any* of Dr. Turow's conclusions and in fact does not mention "privacy" or "control [of personal information]" even once. Rather than citing to any empirical findings that could ostensibly indicate that common, classwide harm has in fact been inflicted (as the Turow Report purports to show), the FSG Report does not appear to measure harm at all.

31. Relatedly, the fact that the putative class members are highly likely to be heterogenous (*i.e.*, varied) in their perceptions and preferences regarding CLEAR poses a serious, if not insurmountable, barrier for calculating or assessing monetary relief in this litigation. In order to apportion such relief across the putative class, an individualized inquiry into each class member would be necessary. However, Mr. Lloyd has failed to identify any method (if it even exists) that could plausibly apportion monetary relief in this litigation.

C. OVERVIEW OF THE TUROW REPORT

32. In evaluating the reliability and validity of the Turow Report and the opinions expressed in that report, it is useful to overview Dr. Turow's stated objectives, methodology, conclusions, and empirical evidence used to support his opinions.

33. According to the Turow Report, Dr. Turow attempted to, inter alia:[27]

> […] apply the methodologies and techniques used in my field of study to the case materials, discovery to date, academic literature, and other sources detailed in my reliance list in order to assist the Court in evaluating, at this stage of the case, whether Thomson Reuters' operation of the CLEAR product affects a privacy interest of Californians in such a way that **all Californians whose information is accessible through CLEAR could claim to be harmed in the same way** [emphasis added].

34. In formulating his opinions, Dr. Turow did *not* conduct any empirical survey designed to test the specific question at issue in this litigation. Instead, Dr. Turow's approach purportedly uses "methodologies and techniques [that] include synthesizing primary source research and academic studies, and contextualizing those findings […]."[28]

35. Dr. Turow begins by defining privacy,[29] stating that "[i]ndividual privacy has long included the right to control one's information and the right to be let alone"[30] and that "[t]hese rights are prominent in the academic literature surrounding individual privacy and present in California law and policy."[31]

36. In Section III of his report, Dr. Turow proceeds to describe the importance of individuals' right to privacy by invoking Greek philosophy,[32] human history,[33] and American law since the 19th century.[34] The Turow Report argues that individual privacy

[27] Turow Report, p. 4.
[28] *Ibid.*
[29] I use the terms "privacy," "individual privacy," and "information[al] privacy" interchangeably throughout this *Rebuttal Expert Report*.
[30] Turow Report, pp. 4 – 5.
[31] *Ibid.*
[32] *Id.*, p. 6 ("The issue of individuals' right to privacy, a protected sphere of human existence and a bedrock concept underlying human dignity and autonomy, is present in scholarly writings as far back as Socrates and other Greek philosophers.").
[33] *Ibid.* ("The concept itself is as old as human society, and ties in to those most intimate aspects of personhood.").
[34] *Ibid.* ("In American law, and in particular since the late 1800s, informational privacy has centered around the control of one's information.").

was not only important historically but is also perceived and valued similarly in the modern age, ostensibly based on legal scholarship, empirical studies, and qualitative evidence related to the literature on privacy.[35]

37. Citing a 1967 book by the late Alan Westin, lawyer and professor of law and government (as well as an obituary on the life and work of Westin), Dr. Turow defends the school of thought that conceptualizes privacy as the right to control access to "one's personal information."[36] Dr. Turow then quotes law professor Ari Waldman to argue for the importance of privacy rights today,[37] concluding: "Strip away a lot of privacy, and you strip away the belief in relationships that keeps the society together."[38]

38. Dr. Turow next cites six (6) academic and industry sources to purportedly show that consumers' conceptions and preferences about privacy align with the definition (based on control of information)[39] proposed in the Turow Report.[40] Specifically, the Turow Report references the following: (*i*) an unpublished working paper coauthored by Dr. Turow;[41] (*ii*) an online article summarizing results from a survey by the National

[35] *Id.*, p. 7.
[36] *Ibid.* ("[…] Alan F. Westin discussed privacy as 'the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others' in his widely-cited 1967 work 'Privacy and Freedom.' This conception of individual privacy—'the right to determine how much of [one's] personal information is disclosed and to whom, how it should be maintained and how disseminated…became the cornerstone of our modern right to privacy.' This remains '[p]erhaps the most commonly accepted definition of information privacy'" [FNs omitted]).
[37] *Id.*, p. 8 ("As Northeastern University law professor Ari Waldman writes, privacy is 'a facet of social life that gives people the confidence and moral space to share information with others'" [FN omitted]).
[38] *Ibid.*
[39] The Turow Report cites only to legal opinions (*i.e.*, California legislators and a conceptual legal paper) when discussing the right to be left (or let) alone and does *not* define exactly what this right entails.
[40] Note that Dr. Turow cites to an industry whitepaper from The Rise of Privacy Tech to support his assumption that consumers view the right to control information as a central part of privacy. *See* Turrecha, Lourdes M. and Emily Ashley (2021), "Defining the Privacy Tech Landscape 2021," The Rise of Privacy Tech (quoted by Dr. Turow as indicating that control over personal information remains "[p]erhaps the most commonly accepted definition of information privacy"; Turow Report, p. 7 & FN 9). However, as I discuss in Subsection D.2, this industry whitepaper includes a summary of surveys in the appendix that elicited opinions from entrepreneurs at privacy tech startups, and did *not* test *consumer* perceptions or preferences; *see* Turrecha and Ashley (2021), pp. 44 – 71.
[41] Turow, Joseph, Michael Hennessy, and Nora A. Draper (2015), "The Tradeoff Fallacy: How Marketers Are Misrepresenting American Consumers and Opening Them Up to Exploitation," Annenberg School

Telecommunications and Information Administration (NTIA);[42] (*iii*) an online article summarizing results from a survey by ValuePenguin;[43] (*iv*) an unpublished conference paper by boyd[44] and Marwick (2011) describing qualitative research about teens' attitudes toward privacy;[45] (*v*) a 2015 Pew Research Center survey;[46] and (*vi*) a 2019 Pew Research Center survey.[47]

39. After ostensibly establishing that consumers today care about privacy rights, Dr. Turow opines that "the right to control one's information is also deeply rooted in California law."[48] Specifically, describing this right as a "fundamental privacy right,"[49] the Turow Report quotes from a 1972 argument in favor of California's Proposition 11;[50]

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for Communication, Working Paper. Cited in the Turow Report as finding that "84% of adult Americans want to have control over what businesses can learn about them online"; *id.*, p. 7 & FN 6.

[42] Cao (2021), "Nearly Three-Fourths of Online Households Continue to Have Digital Privacy and Security Concerns," National Telecommunications and Information Administration (NTIA) Internet Use Survey. Cited by Dr. Turow as supporting the notion that "[t]he majority of Americans believe that privacy and confidentiality are very important aspects of their lives"; *id.*, pp. 6 – 7 & FN 6.

[43] Fitzpatrick (2019), "Beware! Survey Finds 43% of Americans Have Been Victim of a Cybercrime," ValuePenguin; cited for the idea that "[c]ontemporary research continues to support the principle that consumers view the right to control their information as central to individual privacy" and quoted for the finding that "'51% of Americans list their top data concern as companies selling their personal information or using it against them"; *ibid.*

[44] The author's legal name, "danah boyd," is styled in lowercase.

[45] boyd, danah and Alice Marwick (2011), "Social Privacy in Networked Publics: Teens' Attitudes, Practices, and Strategies," A Decade in Internet Time: Symposium on the Dynamics of the Internet and Society. Used by Dr. Turow to also support the notion that consumers perceive the right to control their information as important to privacy; Turow Report, pp. 7 – 8 & FN 9.

[46] Madden, Mary and Lee Rainie (2015), "Americans' Attitudes About Privacy, Security and Surveillance," *Pew Research Center*. Referenced in the Turow Report as indicating, inter alia, that "93% of American adult report that 'being in control of *who* can get information about them is important,' and '90% say that controlling *what* information about them is important'"; *id.*, pp. 6 – 7 & FN 6.

[47] Auxier, Brooke, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner (2019), "Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information," *Pew Research Center*. Quoted by Dr. Turow as "noting that when Americans were asked for their own definitions of the words 'privacy' and 'digital privacy,' they 'most often mention about the role other people and organizations can play in learning about them, their desire to shield their personal activities and possessions, and their interest in controlling who is given access to their personal information'"; *id*., p. 7 & FN 9.

[48] *Id.* p. 8.

[49] *Ibid*.

[50] *Ibid.* ("These quotes reflect California's long-standing public policy in favor of individual privacy through the right to control one's personal information—a public policy that extends to law enforcement use of personal information.").

relatedly, to support the legal basis for the second part of his conception of privacy (*i.e.*, the right "to be left [or let] alone"), Dr. Turow references Californian legislators[51] and a 1890 *Harvard Law Review* article by Samuel Warren and Louis Brandeis.[52] However, Dr. Turow does not directly define this right to be "let alone," and does not draw any clear distinctions between such a right and the right to control "one's personal information."

40. Section IV of the Turow Report seeks to develop Dr. Turow's key conclusion, namely, that Thomson Reuters's CLEAR product has caused "privacy and economic harm"[53] by "diminish[ing] Californians' right to control their personal information and to be let alone."[54] In characterizing the harm that could arise from CLEAR, Dr. Turow contends:[55]

> **[E]very Californian** whose information is accessible through CLEAR has suffered **the same** fundamental privacy harm of a lack of control and violation of their right to be let alone. Regardless of how expansive an individual's report may be, no Californian has control over the information in or use of dossiers about them. In these critical ways, **all Californians** face these same harms. [Emphasis added]

41. Asserting that he has not seen any evidence that Thomson Reuters "investigates that a customer's use is, in fact, permissible,"[56] Dr. Turow briefly discusses CLEAR's purported inability to prevent authorized customers from viewing information about individuals irrelevant to the focus of their investigation.[57] Dr. Turow then attempts to argue that "permissible use" on the CLEAR platform is irrelevant, claiming that:[58]

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[51] *Id.* p. 9 ("It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.").
[52] Warren, Samuel D. and Louis D. Brandeis (1890), "The Right to Privacy," *Harvard Law Review*, 4(5), 193 – 220; *see ibid.*
[53] *Id.*, p. 5.
[54] *Id.*, p. 9.
[55] *Id.* p. 13.
[56] *Id.*, p. 14.
[57] *Ibid.* ("In addition, although it seems that the 'permissible use' may be tied to the person the customer initially looks up, a customer may nevertheless run a 'person search' in a way that results in that customer viewing information that pertains to other individuals unrelated to the target of their investigation (and accordingly, unrelated to the customer's selected permissible use).").
[58] *Id.*, pp. 14 – 15.

> [W]hether a person has consented to the sale of their data has nothing to do with whether Thomson Reuters lists the use as permissible. And so, whatever the function of a customer certifying a purportedly permissible use, it does nothing to solve the privacy harms of lack of control or violation of the right to be let alone. […]
>
> In addition, the right to be let alone, as mentioned, protects against "business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes." That aptly describes Thomson Reuters' CLEAR, even if Thomson Reuters places certain limitations on the use of its product. Ultimately, **Californians are harmed in these ways, whether their profiles are used for what Thomson Reuters deems a permissible use or not, because Thomson Reuters controls the CLEAR profiles of Californians for its own commercial purposes**. [Emphasis added; FNs omitted]

42. After opining on Thomson Reuters's alleged lack of effort to inform the public about CLEAR or to give Californians control to correct or remove their information,[59] the Turow Report reiterates its conclusion that CLEAR "deprives all Californians of the right to control their personal data,"[60] claiming further that the harms inflicted by CLEAR are "particularly worrisome" according to privacy scholars,[61] "concrete,"[62] and have "material" (*i.e.*, economic) consequences.[63] Dr. Turow also likens CLEAR's aggregation of data and its "dossiers" to "theft of a person's persona," which is "[a]kin to theft of personal property,"[64] and which causes the same harm *regardless of*

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[59] *See, e.g., id.*, pp. 15 ("With its CLEAR product, Thomson Reuters fails to follow the social importance of ensuring individuals are not blindsided by the unknown and unwanted collection and use of information about themselves. In fact, discovery demonstrates that Thomson Reuters is disinterested in helping members of the public learning about the data Thomson Reuters amasses about them, who uses it, and whether or how they could stop it. There is no public campaign to inform Californians that CLEAR exists or to give them an opportunity to control the information about them within CLEAR.") & 16 ("Discovery to date suggests that the steps outlined by [Thomson Reuters's Public Records Privacy Policy] are convoluted, and I have not seen any evidence that this policy is at all effective in giving Californians control over their information, whether to correct that information or to remove it.").
[60] *Id.* p. 17.
[61] *Id.* p. 18.
[62] *Ibid.*
[63] *Id.* p. 19.
[64] *Id.* p. 18 ("Dossiers or profiles of individuals such as those Thomson Reuters makes available through CLEAR inflict concrete privacy harms, amounting to a **theft of a person's persona** in that information taken from that individual is exploited to create a **data-picture of the individual that is not sanctioned by the person and might well be at odds with the picture the individual has been trying to create, or has actually created if all accurate facts were included in CLEAR's dossiers, of herself or himself within society**. Akin to **theft of personal property**, the theft of one's persona in this way works such a harm upon the taking, connecting, or making available of the data; stripping the person of their right to control their own information even if they have not yet realized that it has occurred, and **independent of what particular information has been taken, when or how it is made available to others, or for what**

what information was "taken," when or how that information was made available, and for what purposes that information was used.[65]

43. In the final substantive section of his report (Section V), Dr. Turow asserts that CLEAR is "not journalism," arguing that the CLEAR product does not conform with core "principles" that characterize good journalistic practices (*e.g.*, the "obligation to truth and verification").[66]

44. Based on the analyses outlined in his report, Dr. Turow concludes that:[67]

> Thomson Reuters' operation of the CLEAR product affects Californians' right to control personal information and to be let alone such that **all Californians whose information is accessible through CLEAR are so harmed**. [Emphasis added]

And:[68]

> The very availability of CLEAR to invade Californians' privacy with unwanted profiling **harms all Californians** whose information is available through CLEAR by diminishing their rights to control information and to be let alone. [Emphasis added]

D. THE TUROW REPORT FAILS TO PROVIDE ANY EMPIRICAL OR SCIENTIFIC EVIDENCE OF COMMON CLASSWIDE INJURY ALLEGEDLY SUFFERED BY THE PUTATIVE CLASS MEMBERS DUE TO CLEAR, AND DR. TUROW'S CITED RESEARCH AND ANALYSES DO *NOT* SUBSTANTIATE HIS CONCLUSIONS

45. In his report, Dr. Turow claims that by virtue of their information being accessible through CLEAR, all Californians' right to privacy (*i.e.*, defined by Dr. Turow as the right to control their information and to be "let alone") is violated and that, therefore, all Californians are harmed in the same way.[69] To reach this conclusion, Dr. Turow did not conduct any survey or empirical research in this litigation[70] to test how

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purposes Thomson Reuters makes that information available" [emphases added]).

[65] *Ibid.*

[66] *Id.* p. 20 (citing to an article by Bill Kovach and Tom Rosenstiel titled "The Elements of Journalism").

[67] *Id.*, p. 22; *see also id.*, p. 5 ("Thomson Reuters' operation of the CLEAR product affects privacy interests of Californians—the right to control personal information and to be let alone—in such a way that all Californians whose information is accessible through CLEAR are harmed").

[68] *Id.*, p. 22.

[69] *See, e.g., id.*, pp. 5, 13, & 22.

[70] *See also, e.g.*, Turow Deposition, pp. 71 – 72 ("Q. Okay. And final few questions. You didn't – just for clarity, you didn't conduct a survey in connection with your engagement in this case; correct? A. Correct. Q. You didn't survey consumers or the American public or California residents in connection with this

consumers view privacy (in particular, how they would view the collection or dissemination of information about them through CLEAR or a similar product[71] and whether they perceive this as a loss of control over their information). Nor did he conduct any secondary data analysis on consumers' perceptions or preferences regarding CLEAR or a product similar to CLEAR.

46. Absent an empirical survey or secondary data analysis, Dr. Turow should have judiciously applied existing research, data, and evidence to the particulars of this litigation. Instead, Dr. Turow inappropriately extrapolates the sources he cites to draw conclusions about alleged violations of "long-held conceptions of individual privacy"[72] and about alleged common, classwide economic harm. Dr. Turow's cited sources (both conceptual and empirical) do *not* substantiate and in many cases directly contradict his conclusions. Moreover, *none* of Dr. Turow's cited sources place consumers' perceptions and preferences in the relevant context of CLEAR. Nor does the Turow Report provide any concrete evidence that describes how a single putative class member was specifically harmed by CLEAR, let alone how such a harm could apply equally to all class members.

47. I develop my aforementioned professional opinions and conclusions in the five subsections that follow.

D.1. <u>To Evaluate Whether Consumers Derive Harm or Utility from a Product at Issue, It is Necessary to Empirically Assess *Consumers' Perceptions and Preferences* Regarding the Challenged Product in its Relevant Context</u>

48. At the outset, the Turow Report acknowledges that a key question in this litigation involves weighing the *harm* incurred due to a challenged product or practice against any *utility* (benefit) derived from that product or practice:[73]

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case; correct? A. Correct. Q. And do you have any plans to conduct such a survey? A. I have no plans.").

[71] At his deposition, Dr. Turow conceded that the nine national surveys that he has conducted of the American public (not in connection with the current litigation) did not concern either CLEAR, Thomson Reuters, or "a product or platform that was similar to CLEAR"; *id.*, p. 71.

[72] Turow Report, p. 4.

[73] *Ibid*.

> I am further informed that in order to evaluate whether a business practice violates California's Unfair Competition Law, a court must **weigh the harm to Californians against the utility of the challenged business practice**. I offer no legal opinions in this case, but instead apply the methodologies and techniques used in my field of study to the case materials, discovery to date, academic literature, and other sources details in my reliance list in order to assist the Court in evaluating, at this stage of the case, whether Thomson Reuters's operation of the CLEAR product affects a privacy interest of Californians in such a way that **all Californians whose information is accessible through CLEAR could claim to be harmed in the same way**. [Emphases added]

49. As I explain below, to assess whether the relevant consumers in fact derive a harm versus benefit from a product at issue (such as CLEAR), it is necessary to evaluate, using *empirical* research, these consumers' *perceptions and/or preferences* of that product. According to the Turow Report: (*i*) privacy is conceptualized by scholars as the right to "control one's personal information" and to be "let alone";[74] and (*ii*) CLEAR (or Thomson Reuters' operation thereof) has inflicted on Californians "privacy harms" in the form of violations of their right to control information about them and to be left alone.[75] Although not set forth in his report, Dr. Turow subsequently testified at his deposition that these rights—to control information about oneself and to be left alone—refer to "*ethical*" and "*social*" rights.[76] When asked how harms to such ("ethical" and "social") rights manifest, Dr. Turow conceded that he had *no* opinions in this case as to whether the harm caused by CLEAR resulted in any physical injury, financial consequences, or loss of property.[77] Dr. Turow similarly acknowledged that he has not "quantified the amount of

[74] *E.g., id.*, pp. 4 – 5.
[75] *E.g., id.*, pp. 14 & 18 (*e.g.*, "Thomson Reuters' collection of wide-ranging information about Californians, its aggregation of that data into interconnected databases, and its selling of that information for profit without providing Californians a meaningful right to remove or correct their information, strip away Californians' right to control their information and to be let alone, and thus violates the long-standing right to informational privacy discussed above").
[76] Turow Deposition, p. 174 ("Q. All right. And you also testified that you're not rendering a legal opinion in this case. So what is the nature of the rights you are talking about in your report? Are they legal rights? Moral rights? Psychological rights? What is – what type of right are you talking about? A. I would characterize them as ethical and social.").
[77] *See id.*, pp. 177 – 185.

harm per person"[78] and has no "systematic opinion"[79] on whether "different individuals experience different amounts of harm due to the CLEAR platform."[80]

50. Because the "privacy harms" allegedly inflicted by CLEAR (and conceptualized by Dr. Turow as ethical and social harms) are not objectively quantified with respect to Dr. Turow's opinions in this litigation, and given that he does not purport to offer any legal opinion (including with respect to these harms),[81] such "harms," to the extent that they exist, must therefore (by Dr. Turow's own logic) exist in the minds of *consumers* and must accordingly be defined and measured based on *consumers' (subjective) perceptions and preferences*.[82] Indeed, as Dr. Turow testified, his opinion in this case does purport to "reflect consumer perceptions," specifically on the topic of "the right to control one's information."[83]

51. Hence, the question of whether the putative class members in this litigation have suffered common (or even individualized) harm attributable to CLEAR depends crucially on investigating how class members would perceive or respond to the CLEAR product and/or Thomson Reuters's operation thereof. Such consumer perceptions and preferences *cannot* be investigated, ascertained, or substantiated on the basis of: (*i*) legal opinions; (*ii*) personal opinions or ideologies, even those held by an expert; or (*iii*) research

[78] *Id*., p. 187.
[79] *Id*., p. 188.
[80] *Ibid*.
[81] *See, e.g., id*., p. 111.
[82] To the extent that Dr. Turow relies on an (undefined) "societal" evaluation of harm as the metric by which a "privacy harm" should be judged (*i.e.*, irrespective of consumers' opinions), such an approach would still need to "balance" the risks or negative aspects of a challenged product with its potential benefits and utilities to society. However, as evinced by both the Turow Report and during his deposition, Dr. Turow disavowed any consideration of the potential benefits; *see* Section E of this *Rebuttal Expert Report* for further discussion on this point.
[83] Turow Deposition, pp. 119 – 120 ("Q. So is your opinion in this case purporting to reflect consumer perceptions with respect – well, just consumer perceptions. And then I'll ask on what topics. I'm going to – A. Yes. Q. Okay. So the answer is yes? A. Yes. Q. All right. And on what topics? A. On the right to control one's information. Q. Where does your report discuss consumer perceptions of the right to control one's information? A. I discuss the – tell you in just a second. Look at Page 6 and look at Footnote 6 and you'll see that.").

or analyses that do *not* evaluate consumers' perceptions and preferences in the relevant context of the product or service at issue.

52. Thus, it was necessary for Dr. Turow to provide a scientific, empirical basis for his claim that the putative class members suffered common harm due to CLEAR's alleged violation of consumers' privacy. Such substantiation could consist of (original) survey data collected specifically for the current litigation, analysis of (existing) relevant secondary data, or a careful application to the particulars of CLEAR of existing (empirical) academic literature on consumers' perceptions and preferences about privacy.[84] For example, Dr. Turow would have needed to ask whether consumers who discover that information about them was collected or disseminated through the CLEAR platform…

- … commonly *are* concerned about their privacy rights or interests?
- …commonly believe that their privacy was violated?
- …commonly feel disappointed or dissatisfied with CLEAR and Thomson Reuters?
- …commonly feel "blindsided" or surprised by Thomson Reuters's operation of CLEAR?
- …commonly feel "betrayed" by Thomson Reuters?
- …commonly perceive the use of CLEAR as unfair or unjust?
- …commonly prefer to control information about themselves in the platform?
- …commonly expect to receive some form and amount of compensation (either monetary or otherwise) from Thomson Reuters?
- …commonly refuse to have information about them collected and/or disseminated through the platform?
- …commonly perceive the harms from CLEAR to outweigh its benefits?

[84] As Dr. Turow indicated at his deposition, "[t]he value of a survey is to find out what people think and what they know with respect to a particular topic"; *id.*, p. 69.

53. As detailed in the remaining subsections, Dr. Turow offers *none* of the aforementioned empirical evidence on consumer perceptions or preferences[85] that could potentially support his conclusions in this litigation. The Turow Report does not point to even a single class member who was harmed as a result of finding out that information about them was collected or disseminated through CLEAR. Beyond repeating abstract and theoretical concepts such as "privacy harm"[86] and "material harm,"[87] Dr. Turow does not even identify or provide any specific descriptions or examples of *how* consumers *could* hypothetically be harmed by CLEAR. Further, an analysis of the stated bases for Dr. Turow's opinions in this litigation—including sources that relate to scholars' and consumers' views—indicate that these sources do *not* substantiate the conclusions set forth in the Turow Report, and in fact do not support the notion that either (*i*) privacy rights constitute inalienable "ethical and social" rights[88] that should not be weighed against any countervailing rights; or (*ii*) that these privacy rights would be violated by CLEAR. On the contrary, Dr. Turow's own cited evidence leads to the conclusion that the putative class members are likely to hold varying and highly individualized perceptions of privacy and of the level of harm, if any, caused by CLEAR.

54. Critically, Dr. Turow also fails to cite any sources or otherwise conduct any analyses that situate consumers' perceptions and preferences in the specific context of CLEAR. Such a serious omission renders the Turow Report's conclusions fundamentally nonprobative and irrelevant to the questions at issue, as consumers' perceptions or preferences regarding a stimulus (*e.g.*, product or service) depend on considering the relevant context of that stimulus. Seminal research in cognitive psychology and decision making indicates that human perception is dependent on the *context* provided by, inter

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[85] Hereinafter, in the interest of brevity, I use "perceptions or [/and] preferences" to denote consumers' attitudes, beliefs, opinions, expectations, and concerns such as those mentioned immediately above.
[86] *See, e.g.*, Turow Report, p. 18.
[87] *Id.*, p. 19.
[88] Turow Deposition, p. 174.

alia, words, visual stimuli, specific elements of a product, service, or industry, and others' perceptions or preferences, all of which drive people's interpretations.[89]

55. Further, consumers are frequently sensitive to the information presented to (or omitted from) them and to the framing of survey questions.[90] Thus, for example, consumers can form potentially very different (even opposing) perceptions of a focal product depending on how, or what aspects of, that product are described or inquired about. A survey that fails to accurately and sufficiently characterize the challenged product for participants—or that asks questions that are not tied to the product at all—cannot yield valid, reliable, or *relevant* data applicable to the product at issue. The Turow Report has not proffered *any* empirical evidence that relates consumers' perceptions or preferences (*e.g.*, regarding privacy) to a product that adequately approximates CLEAR. Next, I evaluate the sources—both conceptual and empirical—on which Dr. Turow does rely.

[89] *See, e.g.*, Anderson, John R. (1985), *Cognitive Psychology and Its Implications*, New York, NY: W.H. Freeman and Company. Such processing, in which context guides perception, is called "top-down processing," because high-level general knowledge determines the interpretation of low-level perceptual units. *See also, e.g.*, Simonson, Itamar and Amos Tversky (1992), "Choice in Context: Tradeoff Contrast and Extremeness Aversion," *Journal of Marketing Research*, 29(3), 281 – 295; Kivetz, Ran, Oded Netzer, and V. Srinivasan (2004a), "Alternative Models for Capturing the Compromise Effect," *Journal of Marketing Research*, 41(3), 237 – 257 (Lead article) (*Finalist*, 2009 *William O'Dell Award; Finalist*, 2005 *Paul Green Award*); Kivetz, Ran, Oded Netzer, and V. Srinivasan (2004b), "Extending Compromise Effect Models to Complex Buying Situations and Other Context Effects," *Journal of Marketing Research*, 41(3), 262 – 268.

[90] *See, e.g.*, Kahneman, Daniel and Amos Tversky (1981), "The Framing of Decisions and the Psychology of Choice," *Science*, 211(4481), 453 – 458; Loftus, Elizabeth and Guido Zanni (1975), "Eyewitness Testimony: The Influence of the Wording of a Question," *Bulletin of the Psychonomic Society*, 5(1), 86 – 88. *See also, e.g.*, Schkade, David A. and Daniel Kahneman (1998), "Does Living in California Make People Happy? A Focusing Illusion in Judgments of Life Satisfaction," *Psychological Science*, 9(5), 340 – 346; Kahneman, Daniel, Alan B. Krueger, David Schkade, Norbert Schwarz, and Arthur A. Stone (2006), "Would You Be Happier If You Were Richer? A Focusing Illusion," *Science,* 312(5782), 1908 – 1910; Wilson, Timothy D., Thalia Wheatley, Jonathan M. Meyers, Daniel T. Gilbert, and Danny Axsom (2000), "Focalism: A Source of Durability Bias in Affective Forecasting," *Journal of Personality and Social Psychology*, 78(5), 821 – 836; Kivetz, Ran and Itamar Simonson (2000), "The Effects of Incomplete Information on Consumer Choice," *Journal of Marketing Research*, 37(4), 427 – 448 (This article was a finalist for the 2005 O'Dell Award, given to the *Journal of Marketing Research* article that has had the greatest impact on the marketing field in the previous five years).

D.2. Dr. Turow Inappropriately Conflates *Scholars' Definitions* of Privacy with *Consumers'* (and the Putative Class Members') *Perceptions and Preferences* of Privacy

56. At his deposition, Dr. Turow testified that his opinions in this litigation address how both scholars[91] *and* consumers[92] view privacy. However, the Turow Report conflates the two without adequate substantiation. More specifically, as I explain below, not only does Dr. Turow fail to show that consumers in general (or Californians in particular) would in fact agree with scholars' conception(s) of privacy, but also Dr. Turow's own cited sources indicate a *lack* of consensus among even scholars on this topic.

57. The Turow Report conceptualizes privacy as the right to "control personal information" and to be "let alone" (or "left alone").[93] For example, Dr. Turow opines in Section III of his report: "Privacy in the digital age requires protection of the right to exercise control over one's personal information and the right to be let alone."[94] Referring to the right to privacy as a "protected sphere of human existence and a bedrock concept underlying human dignity and autonomy,"[95] Dr. Turow appeals to the writings of Socrates and other Greek philosophers,[96] to human history and society at large,[97] and to the interpretation of (information) privacy in "the American legal tradition."[98] The Turow Report recognizes the existence of other conceptualizations of privacy;[99] nevertheless, Dr.

[91] Turow Deposition, p. 118 ("Q. […] [A]re you addressing the way scholars view the right to control one's information, and the way scholars view the impacts to people when their right to control their information is diminished? A. Yes. I've read both, obviously.").
[92] *See id.*, p. 119 ("Q. Ah, okay. Are you offering opinion in this case regarding consumer perceptions? A. Yes. […] THE WITNESS: People's desire not to be – the desire to have their – to control their information, yes" [objections omitted]) & p. 125 (*e.g.*, "Q. So the question is: Is your opinion in this case intended to address consumer preferences? A. Yes.").
[93] *E.g.*, Turow Report, p. 5.
[94] *Id.*, p. 6 (title of the Turow Report's Section III).
[95] *Ibid*.
[96] *Ibid*.
[97] *Ibid*.
[98] *Id.*, pp. 6 – 7.
[99] *See id.*, p. 5 & FN 1 ("My opinion addresses the ways scholars view the right to control one's information as one important aspect of privacy, and the impacts to people when their right to control their information is diminished. I also address the right to be let alone. **There are other aspects of privacy that are present in**

Turow argues that because controlling information about the self is a fundamental part of the definition of privacy, any violation of this right to control information is therefore a violation of consumers' right to privacy.

58. Despite stating that he offers "no legal opinions in this case,"[100] Dr. Turow frequently uses legal concepts, theoretical constructs, and public policies to either substantiate claims involving *consumer* perceptions or preferences, or to opine about consumer harm without any accompanying scientific evidence. For example, the Turow Report quotes repeatedly from California legislators to support his dual-pronged conceptualization of privacy as the right to "control one's personal information" and to be "let alone."[101] As Table 1 below shows, the Turow Report relies on several sources that discuss the idea of privacy through a legal, historical, and/or philosophical lens—but that do *not* directly empirically test (*i*) how consumers actually understand or perceive privacy or, more importantly, (*ii*) how consumers would respond to having their information collected or disseminated through a product like CLEAR.

(*Continues on the next page*)

the academic literature. My opinion is not intended to foreclose the validity of these measures of privacy, which may be relevant to Californians writ-large or individually" [emphasis added].").

[100] *Id.*, p. 4.

[101] *Id.*, pp. 8 – 9 (citing a 1972 argument in favor of California ballot Proposition 11, a California Senate bill, and a 1980 legal article published in the *Harvard Law Review*).

Table 1: The Turow Report's Reliance on Legal and Conceptual (Non-Empirical) Analyses of Privacy

No.	Article	Description
1	Holvast, Jay (2009), "History of Privacy," in *The Future of Identity, International Federation for Information Processing*, Matyáš, Václav et al. (eds.), IFIP AICT 298, pp. 13 – 42	Conceptual conference paper discussing the history of privacy, including the evolution of privacy's definition, the conflict between privacy and advancements in information technology, and the protection of privacy over time.
2	Moreham, Nicole (2005), "Privacy in the Common Law: A Doctrinal and Theoretical Analysis," *Law Quarterly Review*, 121, 628 – 656	Conceptual legal article on privacy according to English common law. In discussing the ruling of *Campbell v. MGN Ltd* and various formulations of privacy, the author arrives at her own definition: "In my view, privacy is best defined as the state of 'desired "inaccess"' or as 'freedom from unwanted access.'"[102]
3	Delany, Hilary and Eoin Carolan (2008), "The Concept of a Right to Privacy: The Emergence of a Right to Privacy," in *The Right to Privacy: A Doctrinal and Comparative Analysis*, Round Hall	Conceptual chapter that reviews different conceptions of privacy (*e.g.*, skeptical accounts vs. intuitionist accounts) and discusses the relationships among privacy, autonomy, control, and expression.
4	Westin, Alan F. (1967), *Privacy and Freedom*, New York, NY: Athenium	Book by a lawyer and professor of law and government that discusses, inter alia, the social value of privacy and the response of American law to greater surveillance.[103] While the author espoused legislation that better protects a right to privacy, he "advocate[d] a balanced position, generally prohibiting surveillance but allowing limited use in cases of national security and major crimes."[104]
5	Fox, Margalit (2013), "Alan F. Westin, Who Transformed Privacy Debate Before the Web Era, Dies at 83," *New York Times*, https://www.nytimes.com/2013/02/23/us/alan-f-westin-scholarwho-defined-right-to-privacy-dies-at-83.html	Online article on the life and work of Alan Westin, who argued that individuals have the right to determine how much information about them is disclosed and to whom, how it should be maintained, and how disseminated. Nevertheless, Westin is described as having "steered a middle course," arguing in favor of wiretapping, the Patriot Act, and targeted advertising with consumers' permission.
6	Turrecha, Lourdes M. and Emily Ashley (2021), "Defining the Privacy Tech Landscape 2021," *The Rise of Privacy Tech*	Industry whitepaper on various conceptions of privacy, with an emphasis on privacy tech startups.

[102] Moreham (2005), p. 636.
[103] Although the Turow Report cites Alan Westin only for his proffered definition of privacy (*see* Turow Report, p. 7 & FN 7), Westin himself had conducted multiple surveys/opinion polls on individuals' perceptions regarding privacy and personal information. Such polls, if anything, support the notion that individuals *differ* in the degree to which they are concerned about privacy; *see, e.g.*, Westin, Alan F. (2003), "Social and Political Dimensions of Privacy," *Journal of Social Issues*, 59(2), 431 – 453.
[104] *See* Bland, Robert L. (1968), "Book Notes: Privacy and Freedom," *Washington and Lee Law Review*, 25(1), 166 – 167.

Table 1 (cont.): The Turow Report's Reliance on Legal and Conceptual (Non-Empirical) Analyses of Privacy

No.	Article	Description
7	Waldman, Ari (2021), *Industry Unbound: The Inside Story of Privacy, Data, and Corporate Power*, Cambridge, UK: Cambridge University Press	Book by a law professor and sociologist that argues that tech companies have exploited seemingly pro-privacy corporate strategies which ultimately undermine consumer privacy.
8	California Proposition 11 (1972), http://repository.uchastings.edu/ca_ballot_props/762	Ballot pamphlet from 1972 presenting arguments in favor of and against amending the state constitution of California to include privacy as an inalienable right.
9	California Senate Bill 178 (2015), Privacy: Electronic Communications: Search Warrant, https://openstates.org/ca/bills/20152016/SB178/	Legislation which prohibits state government entities from acquiring user data from certain communications service providers without first obtaining a search warrant, wiretap order, order for electronic reader records, or subpoena, except for emergency situations.
10	ACLU Southern California (2015), "In Landmark Victory for Digital Privacy, Gov. Brown Signs California Electronic Communications Privacy Act Into Law Sends Message to Nation About Importance of Saying No to Warrantless Digital Searches," https://www.aclusocal.org/en/press-releases/landmark-victory-digital-privacy-gov-brown-signs-california-electronic-communications	Online article on the signing of California Senate Bill 178 (California Electronics Communications Privacy Act) into law (*i.e.*, requiring that government agencies obtain a search warrant before requesting electronic information from certain communications service providers).
11	Warren, Samuel D. and Louis D. Brandeis (1890), "The Right to Privacy," *Harvard Law Review*, 4(5), 193 – 220	Conceptual legal essay that defines privacy as the right to be "let alone," that discusses various case law and whether "existing law affords a principle which can be properly invoked to protect the privacy of the individual,"[105] and that attempts to delineate limitations to this right.[106]
12	Lauer, Josh (2017), *Creditworthy: A History of Consumer Surveillance and Financial Identity in America*, New York, NY: Columbia University Press	Book by a communication professor on the history and evolution of the credit reporting industry in America.
13	Post, Robert C. (2000), "Three Concepts of Privacy," *Georgetown Law Journal*, 89, 2087 – 2098	Legal essay that reviews three different conceptions of privacy: the connection between privacy and (*i*) the creation of knowledge, (*ii*) dignity, and (*iii*) freedom.

[105] Warren and Brandeis (1890), p. 197.
[106] Such limitations include, inter alia: (*i*) "any publication of matter which is of public or general interest" (*id.*, p. 214) and (*ii*) "upon the publication of the facts by the individual, or with his consent" (*id.*, p. 218).

Table 1 (cont.): The Turow Report's Reliance on Legal and Conceptual (Non-Empirical) Analyses of Privacy

No.	Article	Description
14	Bouk, Dan (2017), "The History and Political Economy of Personal Data over the Last Two Centuries in Three Acts," *Osiris*, 32(1), 85 – 106	Conceptual historical essay on the collection and usage of personal data over time. The author defines the sociological concept of the "data double" as a "stand in for us in bureaucracies"[107] and seeks to categorize personal data into three periods in history.
15	Burk, Dan L. (2021), "Algorithmic Legal Metrics," *Notre Dame Law Review*, 96(3), 1147 – 1204	Conceptual legal article on the social effects of predictive legal algorithms. Argues that concerns about algorithms extend beyond accuracy and include aggravating tensions between equity and autonomy and undermining democratic values.
16	Fourcade, Marion and Keiran Healy (2017), "Seeing Like a Market," *Socio-Economic Review*, 15(1), 9 – 29	Conceptual sociological article on the rise of data collection and the potential value derived from aggregated data (so-called "übercapital"[108]). The author speculates on the (moral) consequences of targeting and segmentation using such data.
17	Laudon, Kenneth C. (1996), "Markets and Privacy," *Communications of the Association for Computing Machinery*, 39(9), 92 – 104	Conceptual article that proposes incorporating market forces (via a "National Information Market")[109] to regulate privacy, which the author argues could be achieved by allowing individuals to be compensated for the use of information about themselves.[110]
18	Cohen, Julie E. (2013), "What Privacy Is For," *Harvard Law Review*, 126(7), 1904 – 1933	Conceptual legal article discussing the importance of privacy. In recognizing the subjective notion of the self, the author argues for the benefits of privacy in a liberal democratic political system.
19	Stack, Brian (2017), "Here's How Much Your Personal Information is Selling for on the Dark Web," *Experian*, https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/	Online article on how much criminals purportedly pay for hacked "personal information" on the dark web.
20	Turow, Joseph (2021), "Hear That? It's Your Voice Taken for Profit," *New York Times* Opinion Essay, https://www.nytimes.com/2021/09/12/opinion/voice-surveillance-alexa.html	Online article (opinion essay) on how call centers can customize customer service based on consumers' tone and spoken words. The essay then speculates on future uses where voice data could be abused by hypothetical discriminatory business practices.

[107] Bouk (2017), p. 86.
[108] Fourcade and Healy (2017), p. 10.
[109] *See, e.g.*, Laudon (1996), p. 99.
[110] This article briefly references in the body of the text, but does not formally cite, a 1994 survey sponsored by Equifax, described as ostensibly finding that "76% of U.S. citizens believe they have lost all control over personal information"; *id.*, p. 94. As the article provides no citation or further information about the results or underlying question(s) asked of participants, I do not discuss this survey further.

59. An examination of the 20 sources listed in Table 1 reveals that *none* provides empirical evidence of *consumers' perceptions or preferences* regarding privacy, particularly in the context of a product like CLEAR. Instead, the aforementioned references consist of six conceptual legal papers and editorials; four conceptual articles and essays that discuss privacy from a historical, philosophical, and/or sociological perspective; four online articles that provide background commentary or opinions on general privacy-related topics; three books that opine on concepts related to privacy (including varying schools of thought on the subject) and surveillance; two pieces of legislation (*i.e.*, a Senate bill and a California Proposition argument); and one industry whitepaper about privacy in tech startups.

60. Crucially, how privacy is defined by scholars in the abstract (*e.g.*, in law, history, political philosophy/economy, or academia in general) is distinct from—and *irrelevant* to—how consumers understand, perceive, or value their privacy, particularly when considering the use of their information in connection with a specific product such as CLEAR. These theoretical definitions of privacy do not address whether and to what extent Californians are harmed. Answering that question requires asking whether consumers—when made aware that information about them was collected or disseminated through CLEAR—would, inter alia: be concerned about not being able to control their information on CLEAR; be disappointed or dissatisfied with Thomson Reuters's operation of CLEAR; feel "blindsided" or surprised; feel "betrayed" by Thomson Reuters; expect compensation from a product like CLEAR; not have consented to having their information be collected or disseminated through the CLEAR platform; believe that the harms from CLEAR outweigh any benefits; or express any other relevant perception or preference regarding Thomson Reuters and/or CLEAR. The Turow Report does not ask, let alone answer, any of these questions.

61. Although the sources in Table 1 do *not* directly present empirical evidence related to consumers' perceptions or preferences, it is noteworthy that multiple of these

sources nevertheless advance opinions by scholars that, if anything, are *inconsistent with* Dr. Turow's characterization of privacy. To take one example, and as Dr. Turow himself appears to acknowledge,[111] one essay on (English) common law[112] proposes a definition of privacy that does *not* center on control. In particular, Moreham (2005) argues that defining privacy entails taking into account both *desire* (*i.e.*, whether the individual wants certain information to remain private in the first place,[113] a "subjective focus"[114]) and *access* (*i.e.*, whether access to any information that the individual wants to keep to him/herself has been gained).[115] Rejecting definitions of privacy as "control over knowledge about oneself,"[116] the author states that: (*i*) "[c]ontrol-based definitions […] fail to distinguish between those situations where there is a *risk* of unwanted access and those where unwanted access has in fact been obtained";[117] and (*ii*) "it is difficult to see how a person can actually exercise control over information in any meaningful way."[118] The article proceeds to discuss various desirable "legal checks on the subjective privacy interest,"[119] including a "public interest defense" such that "a person's desire not to be accessed must sometimes give way to the public's interest in access being obtained among other things."[120] Ultimately, contrary to Dr. Turow's portrayal, Moreham (2005) emphasizes the inherent *subjectivity* of privacy:[121]

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[111] Turow Report, p. 6 & FN 5 (admitting differences in the preferred definition of privacy between Moreham (2005) and Delany and Carolan (2008)).
[112] Moreham (2005).
[113] *See id.*, p. 637 ("The desire element therefore recognizes that self-disclosure is only a breach of privacy if the individual concerned does not *want* it to occur and that there are many situations in which self-disclosure is both desired and desirable").
[114] *See id.*, p. 643.
[115] *See id.*, pp. 636 – 643.
[116] *Id.*, pp. 637 – 638.
[117] *Id.*, p. 638; *see also ibid*. ("Whilst it is important to recognize that the risk of a privacy interference can itself have advertise effects on an individual, such risks should not be equated with privacy interferences themselves.").
[118] *Ibid*.
[119] *Id.*, p. 643.
[120] *Id.*, p. 644.
[121] *Id.*, pp. 641 – 642.

> This broad, subjective approach is necessary because what is private to one person is not necessarily private to another: Y, the impecunious academic, might regard her annual income as an intensely private matter while X, the braying City banker, will boast about this to anyone who will listen. Conversely, X might regard the intimate details of his medical misadventures as intensely private while Y will recount hers enthusiastically to the barest acquaintances. **A comprehensive definition of privacy must therefore recognize that different people have different reactions to different types of disclosure** […]. [Emphasis added]

62. Echoing the above-quoted sentiment, multiple other scholars (whose articles are cited by Dr. Turow) reiterate the complex, nuanced, subjective, and context-dependent nature of "privacy":

> Privacy is a notoriously **elastic and equivocal** notion. It has a "**protean capacity to be all things to all lawyers**". **Its imprecision as a concept has given rise to extensive academic discussion and debate**. A significant proportion of the voluminous literature in this area is dedicated to the preliminary task of defining what privacy is. These discussions have generated heat and light but **little unanimity**. In fact, "the most notable feature of th[e] literature has been **an almost complete absence of agreement concerning both the definition of privacy and the values said to be promoted by the legal protection of privacy". Privacy has been defined in different ways and invoked in support of varying, sometimes even opposing outcomes**.[122] [FNs omitted; emphases added]

> Privacy is a value so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all.[123]

> **Definitions of privacy grounded in core principles, however, inevitably prove both over- and underinclusive when measured against the types of privacy expectations that real people have.** … **In the real world, privacy expectations and behaviors are unruly and heterogeneous, persistently defying efforts to reduce them to neat conceptual schema**[124] [FN omitted; emphasis added]

63. Another source referenced in the Turow Report, an industry whitepaper by Turrecha and Ashley (2021) from The Rise of Privacy Tech, catalogues a range of

[122] Delany and Carolan (2008), p. 4.
[123] Post (2000), p. 2087.
[124] Cohen (2013), pp. 1907 – 1908. *See also id*., pp. 1906 – 1907 ("**Nor can privacy be reduced to a fixed condition or attribute (such as seclusion or control)** whose boundaries can be crisply delineated by the application of deductive logic. Privacy is shorthand for breathing room to engage in the processes of boundary management that enable and constitute self-development. So understood, privacy is fundamentally dynamic. […] [L]ike liberal political theorists more generally, privacy scholars disagree about whether autonomy is most appropriately characterized as negative or positive liberty" [emphasis added]) & 1908 ("the way forward for privacy theory in the liberal tradition requires engaging with other scholarly traditions that acknowledge the emergent and relational character of subjectivity. One place to begin is with literatures in the fields of cognitive science, sociology, and social psychology, which establish empirical foundations for an understanding of subjectivity as socially constructed. […] [Emphasis added]").

different privacy conceptualizations among scholars besides the notion of "privacy as control," including: privacy as obscurity,[125] privacy as trust,[126] privacy as power,[127] and privacy as contextual integrity.[128] The authors of this whitepaper also highlight the importance of considering privacy in a contextualized manner, espousing a view that focuses on the specific circumstances and activities at issue:[129]

> **[P]rivacy can mean different things to different people**. Perhaps the most comprehensive conceptualization of privacy is Daniel Solove's A Taxonomy [of] Privacy, a framework for understanding privacy in a pluralistic and contextual manner, grounded in the different kinds of activities that impinge upon privacy. **This conceptualization shifts the focus away from the vague term "privacy" and toward the specific activities that pose privacy problems**. [Citation omitted; emphases added]

64. Overall, the Turow Report's reliance on legal, historical, and ethical/philosophical analyses of privacy (*i.e.*, scholars' opinions) is inappropriate and nonprobative of how *consumers* would perceive or value privacy and control over information about them in the context of CLEAR. Instead, an (empirical) evaluation of consumers' perceptions and values is necessary in order to evaluate the existence and magnitude of harm.

65. Separately, Dr. Turow's sources simply do *not* provide any basis for Dr. Turow's conclusion that CLEAR has caused common classwide economic harm by violating "long-held conceptions of individual privacy" since, as Dr. Turow's sources

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[125] Turrecha and Ashley (2021), p. 8 ("Obscurity is the idea that information is safe—at least to some degree—when it is hard to obtain or understand." [Citations omitted]).
[126] *Ibid.* ("Privacy has also been conceptualized as trust, with four foundations: (1) the commitment to be honest about data practices, (2) the importance of discretion in data usage, (3) the need for protection of personal data against outsiders, and (4) the overriding principle of loyalty to the people whose data is being used, so that it is data and not humans that become exploited. Trust is important in forging information relationships in today's networked, data-driven society. […] Trust expectations make privacy expectations reasonable. Trust greases the wheels of effective sharing by encouraging interactions and information sharing." [Citations omitted]).
[127] *Ibid.* ("Privacy as power builds on privacy as choice and provides support for users to exercise their power and take back control over their personal data in a world where personal data is constantly being harvested and exploited through a surveillance economy." [Citation omitted]).
[128] *Ibid.* ("Privacy norms or expectations vary by context. Contextual integrity links privacy protection to norms for specific contexts, so that "information gathering and dissemination are appropriate to that context and obey the governing norms of distribution within it." [Citation omitted]).
[129] *Ibid*.

confirm, there is no single, long-held conception of individual privacy among even scholars, let alone consumers.[130]

D.3. Dr. Turow's Cited Research About Consumers' Perceptions Does *Not* Substantiate His Assumptions or Conclusions

66. Privacy is repeatedly defined throughout the Turow Report as the right to "control one's personal information" and to be "let alone."[131] Beyond the various legal and conceptual articles that Dr. Turow cites (reviewed in Subsection D.1), Dr. Turow refers to a small handful of empirical sources (*i.e.*, academic articles and industry reports) used ostensibly to substantiate the notion that *consumers* share his control-based conceptualization of privacy.[132] However, as I detail in this subsection, these sources do *not* in fact support—and in many instances contradict—Dr. Turow's conclusions.

67. As explained above, the Turow Report's conclusion that CLEAR has caused classwide harm by violating Californian consumers' privacy rights[133] rests on three key assumptions:[134] (*i*) consumers would commonly agree with Dr. Turow's conceptualization of privacy as the right to control information about them;[135] (*ii*) consumers would commonly be concerned about controlling information about them and/or about others

[130] Turow Report, p. 4.
[131] *E.g., id.*, pp. 4 – 5.
[132] As noted previously, Dr. Turow does not cite to any empirical evidence on consumers' perceptions or preferences regarding a right "to be let alone," and never directly defines what this right means or entails. Therefore, I evaluate whether the cited research substantiates the control-based prong of Dr. Turow's conception of privacy.
[133] *See, e.g., id.*, p. 5 ("In my opinion, Thomson Reuters' operation of the CLEAR product affects privacy interests of Californians—the right to control personal information and to be let alone—in such a way that all Californians whose information is accessible through CLEAR are harmed.").
[134] Although the Turow Report includes a number of other assumptions that are never substantiated (*e.g.*, that consumers would be "blindsided" by the "unknown and unwanted collection and use of information about themselves"; *see id.*, p. 15), I focus on the three major assumptions delineated herein.
[135] This assumption includes the related assumption that most consumers would perceive control over one's personal information as a central aspect of privacy. *See, e.g., id.*, p. 6 ("The long history of protecting privacy through the right to control one's information is reflected in the view of privacy enunciated by Americans today"); *see also id.*, p. 7 ("This conception of individual privacy—'the right to determine how much of [one's] personal information is disclosed and to whom, how it should be maintained and how disseminated…became the cornerstone of our modern right to privacy.' This remains '[p]erhaps the most commonly accepted definition of information privacy.'" [FNs omitted]).

collecting and/or disseminating such information[136] (using a product like CLEAR); and (*iii*) consumers would commonly agree that the harm from a product such as CLEAR outweighs its benefits.[137] In (supposed) support of these assumptions, Dr. Turow cites six sources related to consumer opinions, including his own coauthored work, that present survey results of consumers' beliefs and attitudes toward privacy-related issues.

68. Table 2 below lists these six articles, along with a categorization of the type of article and my evaluation of that article as it relates to each of Dr. Turow's central underlying assumptions. Specifically, based on my review of each cited work, I classify whether that source: (*i*) is *irrelevant* to (*e.g.*, does not test) Dr. Turow's assumptions; (*ii*) *contradicts*, in at least one way, Dr. Turow's assumptions; (*iii*) is *inconclusive*, offering insufficient or unreliable evidence for his assumptions (*e.g.*, due to methodological flaws); or (*iv*) provides direct support for, or is *consistent* with, his assumptions.

(*Continues on next page*)

[136] In the interest of brevity, "others using such information" encompasses the notion of information being made available (collected) and/or disseminated. *See, e.g., id*., p. 6 & FN 6 ("The majority of Americans believe that privacy and confidentiality are very important aspects of their lives"); *see also ibid*. ("In our contemporary world, Americans overwhelmingly believe that control over their personal information is central to maintaining individual privacy."); *see also id*., p. 7 ("This conception of individual privacy—'the right to determine how much of [one's] personal information is disclosed and to whom, how it should be maintained and how disseminated…because the cornerstone of our modern right to privacy.' This remains '[p]erhaps the most commonly accepted definition of information privacy'" [FNs omitted]).

[137] This assumption includes the related assumption that most consumers, when informed about the potential benefits of CLEAR, would not factor these benefits into their assessment of whether the product has harmed them. *See, e.g., id*., pp. 4 ("I am further informed that in order to evaluate when a business practice violates California's Unfair Competition Law, a court must **weigh the harm to Californians against the utility of the challenged business practice** [emphasis added]") & 18 ("Dossiers or profiles or individuals such as those Thomson Reuters makes available through CLEAR inflict concrete privacy harms, amounting to a theft of a person's persona […]. Akin to theft of personal property, the theft of one's persona in this way works such a harm […] **independent of what particular information has been taken, when or how it is made available to others, or for what purposes Thomson Reuters makes that information available**" [emphasis added]).

Table 2: Articles Cited in the Turow Report About Consumers' Perceptions of Privacy, Evaluated Against Three Key Assumptions Underlying Dr. Turow's Conclusions

- ***Assumption 1:*** *Consumers commonly conceptualize privacy as the right to control information about them*
- ***Assumption 2:*** *Consumers would commonly be concerned about controlling their information about them and/or about others using this information (through a product like CLEAR)*
- ***Assumption 3:*** *Consumers would commonly agree that the harm from a product like CLEAR outweighs its benefits*

No.	Article	Description	Evaluation Against Assumption 1	Evaluation Against Assumption 2	Evaluation Against Assumption 3
1	Turow, Hennessy, and Draper (2015)	Unpublished paper on how marketers are "misrepresenting" and exploiting American consumers	Irrelevant	Irrelevant	Irrelevant
2	Cao (2021): National Telecommunications and Information Administration (NTIA) Internet Use Survey	Summary of industry survey on Americans' Internet usage	Contradicts	Contradicts	Irrelevant
3	Fitzpatrick (2019): ValuePenguin Survey	Summary of industry survey on Americans' concerns about cybercrime	Irrelevant	Contradicts	Irrelevant
4	boyd and Marwick (2011)	Unpublished conference paper on teens' attitudes regarding privacy and social networks	Contradicts	Contradicts	Irrelevant
5	Madden and Rainie (2015): Pew Survey	Industry survey on Americans' attitudes about privacy	Contradicts	Inconclusive	Irrelevant
6	Auxier et al. (2019): Pew Survey	Industry survey on Americans' attitudes about privacy	Contradicts	Inconclusive	Contradicts

69. As my analysis indicates and as shown in Table 2 above, *none* of the six above-referenced articles provides valid scientific evidence for Dr. Turow's assumptions that: (*i*) consumers commonly view privacy as the right to control information about them; (*ii*) consumers are commonly concerned about controlling information about them and/or others using such information through a product like CLEAR; and (*iii*) consumers commonly agree that the harm from CLEAR (or a similar product) outweighs its benefits. Of the six empirical sources cited in the Turow Report: five sources reveal a *lack* of commonality in consumers' perceptions of privacy; three sources directly contradict the notion that most consumers are concerned about controlling information about them (while two sources provide non-dispositive, and therefore insufficient, evidence); several sources are irrelevant in different ways, as they either describe scenarios that bear no resemblance to CLEAR or that do not test Dr. Turow's assumption; and one source contradicts Dr. Turow's assertion of automatic (and blanket) harm. Next, I evaluate each of the sources listed in Table 2 in greater detail.

D.3.1. *The Results from the Turow, Hennessy, and Draper (2015) Working Paper are Irrelevant to Each of the Turow Report's Three Assumptions*

70. The article cited by Dr. Turow that he coauthored[138] is irrelevant to this litigation, as the survey questions asked of participants refer to concepts and information that bear no relation to a product such as CLEAR (or the services provided by CLEAR). The Turow Report cites to this unpublished, non-peer-reviewed working paper to purportedly support the assumption that consumers care about (or value/are concerned about) controlling information about them. Specifically, Dr. Turow writes:[139]

> A major national survey I conducted with colleagues found that 84% of adult Americans want to have control over what businesses can learn about them online.

71. However, an examination of this working paper reveals a key discrepancy between the language describing the survey in the Turow Report and the actual underlying

[138] Turow, Hennessy, and Draper (2015).
[139] Turow Report, p. 7 & FN 6.

language used in the survey itself. As reproduced in Figure 2 below, participants in Dr. Turow's working paper were asked to what extent they agreed or disagreed with the statement "I want to have control over what **marketers** can learn about me online" [emphasis added].

Figure 2: Participants' Perceptions as Reported in Table 4 of the Turow, Hennessy, and Draper (2015) Working Paper

Table 4: Americans' Responses to the Resignation Attitude Statements (N=1,506)

	Strongly Agree (%)	Agree (%)	Disagree (%)	Strongly Disagree (%)	Neither* (%)	DK (%)
I want to have control over what marketers can learn about me online. (**84% agree**)	61	23	8	7	1	1
I've come to accept that I have little control over what marketers can learn about me online. (**65% agree**)	31	34	16	18	1	1

*"Neither" was a volunteered answer.

72. This distinction in language is critical, as "businesses" are not the same as "marketers." I understand that CLEAR is *not* a marketing or advertising platform, and it is *not* made available to marketers or advertisers.[140] Marketers typically collect and use consumers' data to show targeted advertisements (*e.g.*, via Facebook display ads, Google search ads, YouTube video ads) directly to the consumer to drive purchases and/or increase brand awareness. By contrast, Thomson Reuters's business model with respect to CLEAR involves providing authorized customers (*i.e.*, government and business entities) access to the CLEAR platform for an expressly designated "permissible" purpose (*e.g.*, preventing identify theft, financial scams, or locating criminals).[141] That is, CLEAR does not resemble a "marketer" and is not consumer-facing (*e.g.*, neither Thomson Reuters nor its customers use data from CLEAR to deliver marketing materials

[140] *See, e.g.*, Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 1 ("CLEAR is available only to business and government entities") & 3 ("For example, CLEAR may *not* be used for creating mailing lists, soliciting clients, or any other marketing efforts […]").
[141] *Id.*, p. 1.

or advertisements to consumers).[142] Hence, the results reported by Turow and colleagues (2015) are irrelevant to whether consumers are concerned about or expect to maintain control over information about them in the context of CLEAR.

73. In fact, none of the other results reported in Dr. Turow's working paper are relevant to any of the three assumptions underlying the Turow Report, as these questions either pertain to (*i*) marketers, (*ii*) retailers (*e.g.*, stores and supermarkets), or (*iii*) true-false questionnaires that measure participants' knowledge of privacy as opposed to their attitudes, perceptions, or preferences regarding privacy.[143] Critically, consumers' perceptions of privacy and concerns (if any) regarding the use of information about them are likely to depend on *who* is gaining access to this information, *what* specific information is accessed, *how* such information was first obtained, and in *what context(s)* and for what *purpose(s)* the information could be used. For example, an authorized "business" (*e.g.*, a bank) using a platform that makes available data to verify that a client is not engaged in money laundering may be viewed by a consumer in a completely different light compared to a marketing company collecting data from its users to deliver targeted ads and promote specific products. Given their lack of *any* relevance to CLEAR, the findings reported in Turow and colleagues' (2015) working paper cannot be generalized or applied to the present matter.

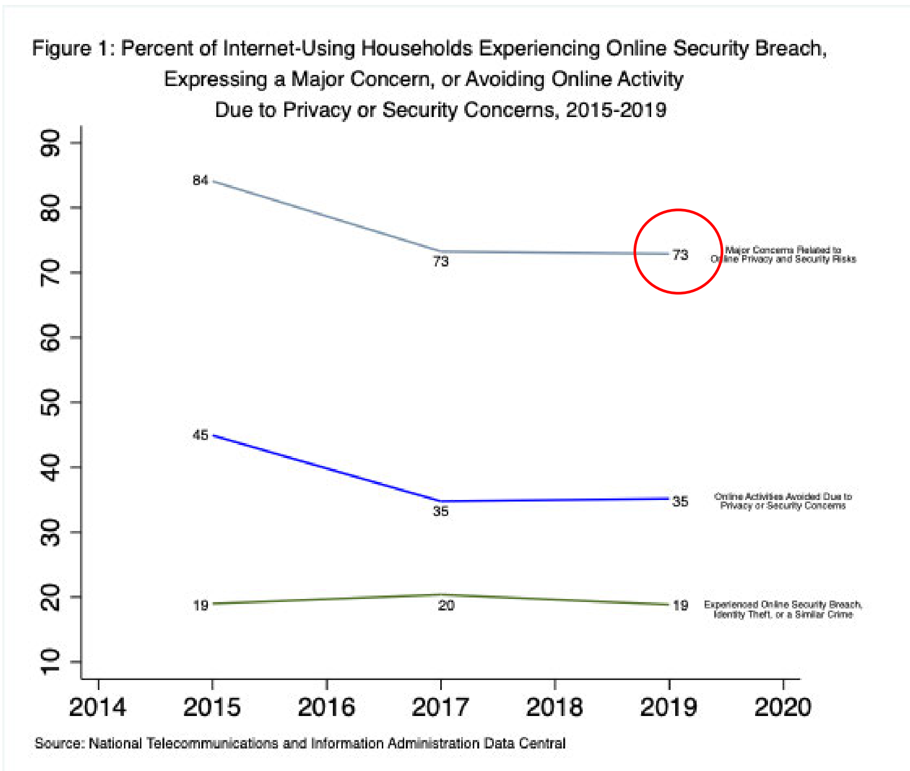
D.3.2. *The Results from the NTIA Survey Contradict Dr. Turow's Assumptions 1 and 2*

74. The results from the survey by the National Telecommunications and Information Administration (NTIA), titled "Nearly Three-Fourths of Online Households Continue to Have Digital Privacy and Security Concerns,"[144] do *not* support—and in fact contradict—Dr. Turow's assumptions that (*i*) most consumers view privacy in terms of the

[142] *Id.*, p. 3.
[143] *See* Turow, Hennessy, and Draper (2015), pp. 12 – 14 (asking about marketing tradeoffs, supermarket scenarios, and general "resignation" toward marketers) & 16 – 17 (asking "True-False statements about how marketers use information and regulations related to personalized pricing").
[144] Cao (2021).

right to control information about them; and (*ii*) most consumers care about (or are concerned with) the ability to control information about them (or others' accessing or using their information). As reproduced in Figure 3 below, the NTIA Internet Use Survey indicates that 73% of participants surveyed in 2019 expressed "Major Concerns Related to Online Privacy and Security Risks."[145]

Figure 3: Percentage of Households Expressing Major Concerns Related to Online Privacy and Security Risks as Shown in NTIA Survey [146]

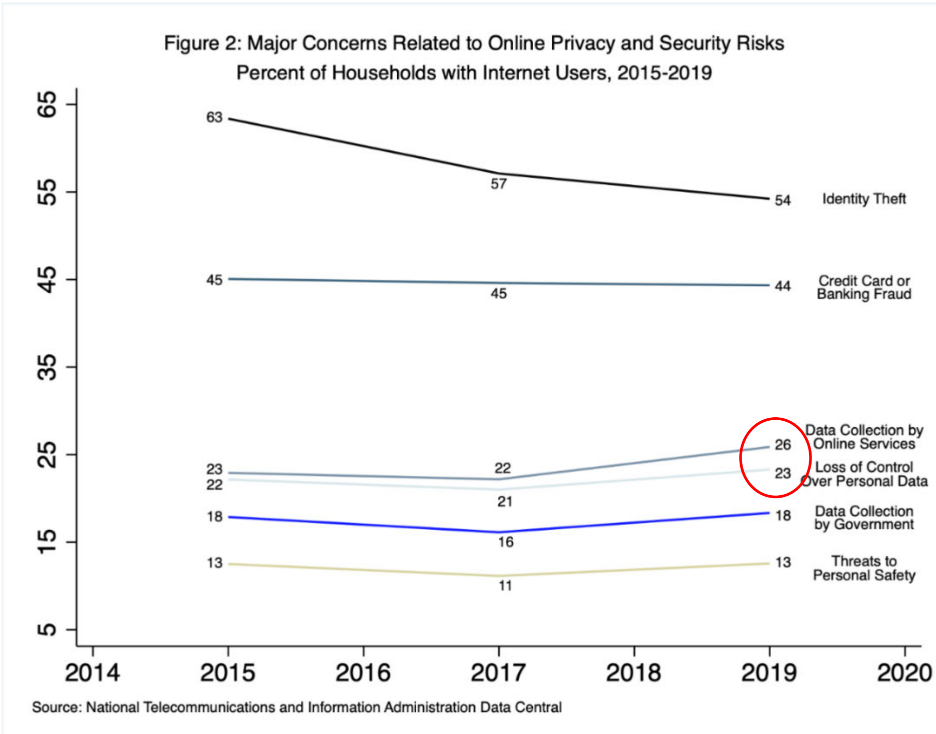


75. In reality, the above 73% statistic represents the sum of two distinct concerns: (*i*) those related to "online privacy," which (albeit vague and ill-defined) may potentially be relevant to CLEAR; and (*ii*) "security risks," such as identity theft and credit card fraud, which, if anything, are the very type of concerns that CLEAR is intended to alleviate. To disentangle these two types of concerns, a subsequent question

[145] *Id.*, p. 2 & Figure 1.
[146] *Ibid*. The 73% figure (from 2019) quoted by Dr. Turow is highlighted in red.

in the survey apparently asked participants to clarify the specific source of their major concerns (reproduced in Figure 4 below).

Figure 4: Breakdown of Major Concerns Related to Online Privacy and Security Risks as Shown in NTIA Survey [147]



76. When the measure of privacy as a general concept is broken down into more granular concepts related to privacy, only a *minority* of participants perceived control over "personal data" as important (*i.e.*, only 23% of participants in 2019 cited "loss of control over personal data" as a major concern). As Figure 4 above makes clear, the main drivers of consumer concern are irrelevant to the Plaintiffs' allegations against Thomson Reuters's CLEAR and to the Turow Report's underlying assumptions about the centrality of control in consumers' views of privacy. Specifically, 54% of participants surveyed in 2019 indicated identity theft as the source of their privacy concern, and 44% of participants indicated credit card and bank fraud as the root of their concerns. By reporting aggregate

[147] *Id.*, p. 3 & Figure 2. Note that figures across all categories total more than 100% due to participants (presumably) being allowed to select multiple "concerns." Concepts related to control over personal information (in 2019) are highlighted in red.

measures of privacy that are confounded with completely different conceptualizations, the Turow Report inappropriately and artificially inflates the level of concern supposedly held by consumers about controlling information about them.

77. Of the concerns potentially relevant to CLEAR, only 26% and 23% of participants identified "data collection by online services" and "loss of control over personal data," respectively, as sources of major concern regarding online privacy in 2019 (*see* Figure 4 above). In other words, contrary to the Turow Report's framing of the survey's findings, 74% of participants did *not* view data collection by online services as a source of major concern, and 77% of participants *disagreed* that losing control over their personal data is a major concern. In fact, in every year in which the NTIA survey was conducted (since 2015, as shown in Figure 3), concerns over data collection never exceeded 26%. Thus, evaluating the survey results as they could plausibly relate to the product at issue leads to the conclusion that the NTIA survey directly contradicts the Turow Report's Assumption 1 (*i.e.*, that consumers commonly conceptualize privacy as the right to control information about them) and Assumption 2 (*i.e.*, that consumers are commonly concerned about controlling information about them and/or others using that through a CLEAR-like product).

78. Not only do the aforementioned findings contradict Dr. Turow's assumptions, but they also suggest that consumers may, if anything, *support* the use of CLEAR and may even accept the inclusion and/or dissemination of information about them in CLEAR. Given that the most frequently-selected concerns were identity theft and credit card fraud, participants may reasonably perceive the services provided by CLEAR to protect them by, inter alia, enhancing financial institutions' screening process for fraudulent activities.[148] For example, as I later explain in Subsection E.2, the CLEAR

[148] *See, e.g.*, https://legal.thomsonreuters.com/en/products/clear-investigation-software/retail-fraud ("Thomson Reuters CLEAR e-commerce technology brings together vast public records, sophisticated analytics, and transparent data into a single working environment. **It gives you insight to easily understand and resolve fraudulent transactions. Save money by avoiding fraud, reducing charge-**

platform allows authorized customers (*e.g.*, law enforcement agents) to conduct searches that could benefit individuals and society, including by catching criminals who commit identity theft and credit card fraud.[149]

79. Finally, the results of the NTIA survey also reveal variation in consumers' perceptions regarding privacy. The fact that participants expressed several different "major concerns" about different aspects of privacy—including Identity Theft (54%), Credit Card or Banking Fraud (44%), Data Collection by Online Services (26%), Loss of Control Over Personal Data (23%), Data Collection by Government (18%), Threats to Personal Safety (13%)[150]—indicate a lack of commonality in consumers' conceptions and concerns regarding privacy.

D.3.3. *The Results from the ValuePenguin Survey Contradict Dr. Turow's Assumption 2*

80. Dr. Turow cites a ValuePenguin survey titled "Beware! Survey Finds 43% of Americans Have Been Victim of a Cybercrime,"[151] asserting that "51% of Americans list their top data concern as companies selling their personal information or using it against them"[152] as evidence of consumers' concern about (or value attributed to) controlling information about themselves (Assumption 2). Again, however, a review of this survey reveals that the results contradict Dr. Turow's assumption when the above composite statistic is disaggregated into concerns relevant to the issues in this litigation. According to the ValuePenguin survey, the statistic that "51% of consumers are more concerned about company use of their data than a cybercrime"[153] is in reality a summation of two separate metrics: (*i*) "17% of consumers are concerned companies will use private information

backs, and minimizing false positives [emphasis added].").

[149] *See, e.g.*, *ibid*.

[150] Cao (2021), p. 3.

[151] Fitzpatrick (2019).

[152] Turow Report, p. 7 & FN 9.

[153] Fitzpatrick (2019), p. 4.

against them"[154] and (*ii*) "34% of consumers are concerned of [*sic*] companies selling personal information" (*see* Figure 5 below).[155]

Figure 5: Breakdown of Consumer Concern About Company Use of Their Data as Shown in ValuePenguin Survey Infographic [156]

81. As an initial matter, both aforementioned metrics are non-dispositive as to how consumers would perceive a product like CLEAR, given the many ways in which survey participants could have interpreted such broad concepts as "companies," "use," "private information," "selling," and "personal information." The Fitzpatrick (2019) online article cited in the Turow Report, which only summarizes the ValuePenguin study results, does *not* provide any details into the underlying survey questions that could clarify how the question was phrased and presented to participants. For example, if participants had in mind marketing companies while answering the questions, the findings from this study would be entirely irrelevant to this litigation.

[154] *Ibid*.
[155] *Ibid*.
[156] *Ibid*.

82. Setting aside the question of relevance, assuming arguendo that CLEAR did "use" in some form consumers' "private information" (itself an ill-defined phrase that could mean different things to different individuals, as noted in one of Dr. Turow's own cited legal sources),[157] there would still be no basis to assume that the putative class members would perceive CLEAR's use cases[158] as examples of using "information against them."[159] Indeed, if anything, as I discuss in Subsection E.2, many consumers may hold the opposite opinion upon learning of CLEAR's use cases and potential benefits. Thus, the statistic that "17% of consumers are concerned companies will use private information against them"[160] cannot be generalized to Thomson Reuters's operation of CLEAR.

83. The second survey statistic pertaining to "companies selling personal information" could arguably relate to the issues in this litigation. I understand that CLEAR's business model is such that it does *not* directly "sell"[161] any given individual's "personal information" or "dossier" to a third-party company; rather, "authorized, credentialed entities" pay for access to CLEAR in order to "search and access information from records that have been licensed or otherwise acquired from third-party sources that represent they are authorized to provide the information."[162] However, even assuming arguendo that CLEAR were to "sell" an individual's "personal information," taking this metric at face value means that only 34% of participants, which represents a *minority* of consumers, hold a concern potentially relevant to the right to control information about the self. Thus, the key finding from the ValuePenguin survey cited by Dr. Turow contradicts

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[157] Moreham (2005), p. 641 ("[W]hat is private to one person is not necessarily private to another").
[158] *See, e.g.*, https://legal.thomsonreuters.com/en/products/clear-investigation-software ("Anti-money laundering, Child and family services, Commercial lending, Contact tracing, Corporate security, Federal government, Healthcare fraud, Insurance fraud, Know your vendor, Law enforcement, Retail fraud investigations, Skip tracing, Tax fraud prevention, Third-party risk management, Unemployment insurance").
[159] Fitzpatrick (2019), p. 4.
[160] *Ibid*.
[161] For example, to the extent that the concept of "sell" denotes any transfer of proprietary interest from one party to the other, my understanding is that such a transfer does *not* occur in the case of the CLEAR product; September 1, 2022 Interview.
[162] Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, p. 1.

his assumption that consumers are (commonly) concerned about controlling information about them and/or others using that information.

84. In addition, according to the Fitzpatrick (2019) article, the ValuePenguin survey found that 26% of participants are "concerned they'll be a victim of a cyber attack or cyber extortion"[163]—a concern that does not relate to CLEAR. The article also proceeds to document differences across consumers in the willingness to share personal data in different scenarios (albeit in situations that do not describe CLEAR),[164] concluding from the results that "[t]he type of data shared matters, especially for younger consumers."[165] Such diversity in participants' concerns about different aspects related to privacy—and in their willingness to share data—indicates that the putative class members are *not* likely to commonly construe and value privacy. Instead, the putative class members are likely to hold different perceptions and preferences regarding the collection and/or dissemination, of information about them through CLEAR.

D.3.4. *The Results from the boyd and Marwick (2011) Conference Paper Contradict Dr. Turow's Assumptions 1 and 2*

85. The Turow Report cites an unpublished conference paper by boyd and Marwick (describing qualitative research about teens' attitudes toward privacy)[166] to support the assumption that consumers view the right to control their information as central to privacy (Assumption 1). Variation in consumers' understanding of, and preferences toward, privacy and control of information about themselves is similarly

[163] Fitzpatrick (2019), p. 4.
[164] *Id.*, p. 5 ("We asked respondents whether they would be willing to share personal data in a variety of consumer scenarios, ranging from insurance transactions to online shopping. Although 37% of those surveyed would be unwilling to share personal data in any scenario, respondents were more willing to share personal data when they can get savings in return.").
[165] *Id.*, pp. 4 – 6 (*e.g.*, indicating that millennials, or those aged 23 – 38, were most willing to share some form of personal data).
[166] boyd and Marwick (2011).

evident in an unpublished conference paper cited in the Turow Report, authored by boyd and Marwick (2011) and which states:[167]

> **Privacy is a fraught concept, with no clear agreed-upon definition**. Philosophers and legal scholars have worked diligently to conceptually locate privacy and offer a framework for considering how and when it has been violated. Yet, fundamentally, privacy is a social construct that reflects the values and norms of everyday people. **How people conceptualize privacy and locate it in their life varies wildly, highlighting that a universal notion of privacy remains enigmatic**. When we asked teens to define privacy for us, their cacophonous responses reveal the diverse approaches that can be taken to understand privacy. [FNs omitted; emphases added]

86. In particular, the boyd and Marwick (2011) conference paper reports data from ethnographic fieldwork collected from 2006 to 2010 and that included 58 interviews with teenagers (either enrolled in or recently dropped out of high school) in which "[p]rivacy was the central topic,"[168] focusing on how teenagers think about privacy in "networked publics" (*e.g.*, on Facebook).[169] Based on these interviews, the authors note a range of definitions of privacy (*e.g.*, a personal boundary, a physical space, a safe space, privacy with respect to thoughts)[170] that both varied across participants and that differ from the Turow Report's narrow conceptualization of privacy (*i.e.*, as the right to "control personal information" and "to be let alone"). According to the manuscript, teens also expressed different views about privacy and controlling their information—as well as the extent of concern regarding such control—with some adopting a "public-by-default, private-through-effort" view in the age of social networking and technology.[171] The authors then highlight the need to understand interpretations and preferences regarding privacy *in* context:[172]

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[167] *Id.*, pp. 2 – 3.
[168] *Id.*, p. 2.
[169] *Id.*, pp. 1 & 7.
[170] *Id.*, pp. 3 – 4.
[171] *Id.*, pp. 11 – 12 (*e.g.*, "Rather than seeing privacy as the default, Alicia sees privacy as a conscious choice. In her interactions online, she assumes that Facebook is public-by-default, private-through-effort."; "How teens negotiate privacy in networked publics varies tremendously, shaped not only by the underlying architecture of the software, but also young people's personal values and social norms that surround them.").
[172] *Id.*, p. 12.

> Even though all the teens we interviewed expressed an appreciation for privacy at some level, they did not share a uniform set of values about privacy and publicity. […]
>
> Privacy must be contextualized. Teen understandings of privacy and how they carry these out varies by individual, by community, by situation, by role, and by interaction. In other words, privacy – and the norms surrounding privacy – cannot be divorced from context. [FN omitted]

87. Hence, to the extent that the qualitative interviews from the boyd and Marwick (2011) conference paper can be used to draw any conclusions, such conclusions are inconsistent with Dr. Turow's Assumption 1 (*i.e.*, most consumers construe privacy as the right to control information about them) and Assumption 2 (*i.e.*, most consumers are concerned about controlling information about them and/or others using that information).[173]

D.3.5. *The Results from the 2015 Pew Research Center Survey Contradict Dr. Turow's Assumption 1 and Fail to Support Assumption 2*

88. The Turow Report cites two surveys from Pew Research Center, one from 2015 (hereinafter, the "2015 Pew Survey")[174] and one from 2019 (hereinafter, the "2019 Pew Survey").[175] As detailed next, both surveys' results contradict Assumption 1 (*i.e.*, that consumers commonly view privacy in terms of controlling information about them) and are non-dispositive and fail to support Dr. Turow's Assumption 2 (*i.e.*, that consumers are commonly concerned about controlling information about them and/or others using that information through a CLEAR-like product). Moreover, the 2019 Pew Survey's results

[173] Note that boyd and Marwick (2011) also state that teens make tradeoffs and consider both the risks *and* rewards of information disclosure (*e.g.*, "There is always a trade-off, as teens account for what they might gain and what they might lose and how such cost-benefit analyses fit into their own mental models of risk and reward. Thus, when teens are negotiating privacy, they aren't simply thinking about a 'loss'; they're considering what they might gain from revealing themselves."); *ibid*. Such a sentiment, albeit in the context of teens proactively sharing information about themselves to others (*e.g.*, on Facebook), is also arguably inconsistent with Dr. Turow's Assumption 3 (*i.e.*, that consumers would agree that the harms of a product such as CLEAR would outweigh its benefits).
[174] Madden and Rainie (2015). Note that this report includes the results from multiple, separate surveys; the specific question to which Dr. Turow refers appeared as a standalone question in a survey conducted in 2015. Therefore, I use "2015 Pew Survey" to refer to this specific survey and "2015 Pew Report" to refer to the broader research report encompassing the 2015 Pew Survey.
[175] Auxier et al. (2019).

directly contradict Assumption 3 (*i.e.*, that consumers would agree that the harm from a product like CLEAR outweighs its benefits).

89. Dr. Turow references the 2015 Pew Survey to substantiate his claims that "[t]he majority of Americans believe that privacy and confidentiality are very important aspects of their lives"[176] and that "Americans overwhelmingly believe that control over their personal information is central to maintaining individual privacy."[177] He proceeds to quote the 2015 Pew Survey's finding that "93% of American adults report that 'being in control of *who* can get information about them is important,' and '90% say that controlling *what* information is collected about them is important.'"[178] However, these cited findings do not in actuality provide dispositive evidence that (per Dr. Turow's Assumption 2) consumers care about exercising control over information about them, and, more importantly, cannot be generalized to how consumers would perceive the access or use of information about them in a product like CLEAR.

90. *First*, even taking at face value the statement that "[t]he majority of Americans believe that privacy and confidentiality are very important aspects of their lives,"[179] such a result does *not* mean that consumers therefore commonly believe their privacy to be defined based on control over information about them, or that consumers would be concerned with privacy or control over such information *in the context of CLEAR*. A consumer's belief that privacy and confidentiality are important in general is *not* tantamount to that consumer believing that, for example, their privacy was violated, that they were harmed, or that they should be compensated because their information was collected and/or disseminated through CLEAR (or a product like CLEAR), *regardless of* the product's use cases and safeguards.

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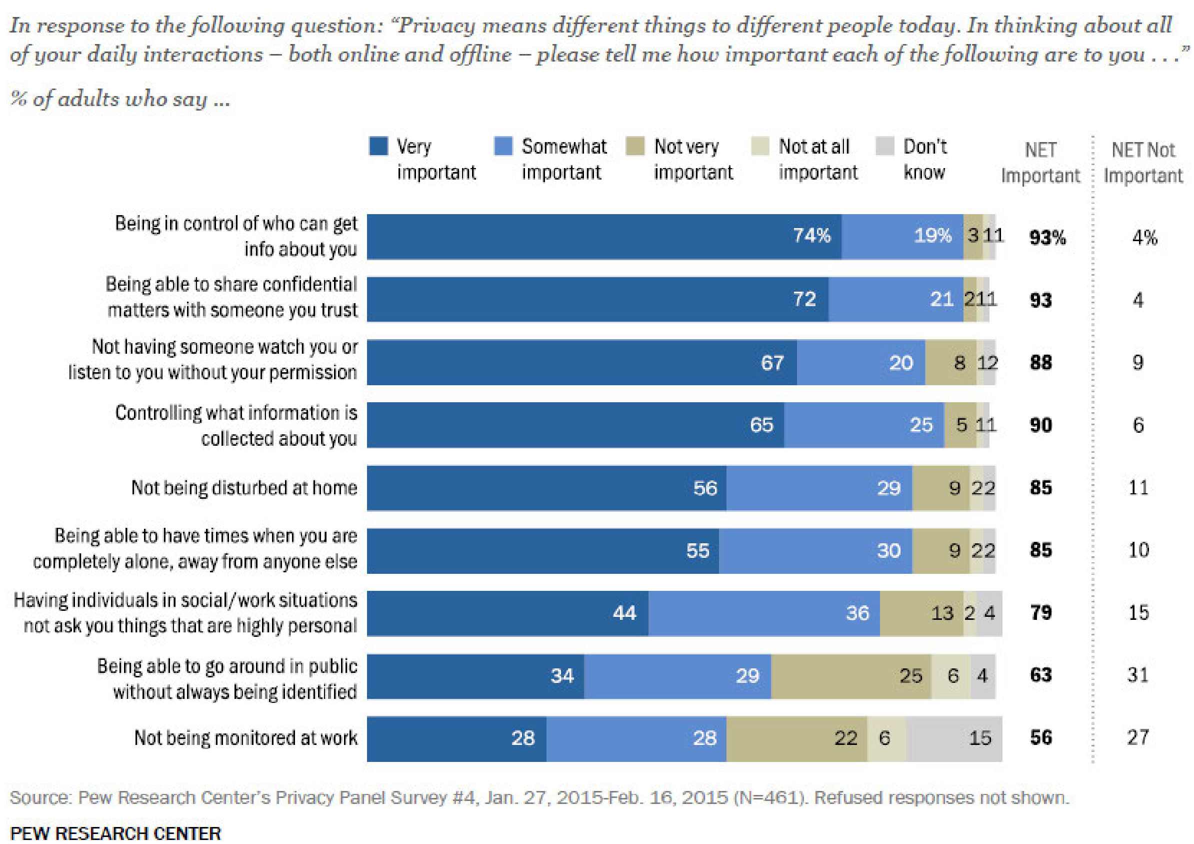
[176] Turow Report, p. 6 & FN 6.
[177] *Id.*, p. 7 & FN 6.
[178] *Ibid*.
[179] *Id.*, p. 6 & FN 6.

91. *Second*, the specific question in the 2015 Pew Survey that generated the statistics quoted by Dr. Turow (*see* Figure 6 below) was extremely broad, vague, and leading. Such flaws render this question (hereinafter, the "importance of privacy" question) non-dispositive with respect to consumers' actual perceptions regarding information about them in the context of any situation or product resembling CLEAR.

Figure 6: 2015 Pew Survey Question Regarding Importance of Selected Aspects of Privacy[180]



92. As Figure 6 depicts, participants were asked a closed-ended question that specifically informed them in the instructions that "*Privacy means different things to different people today*" and to "think[] about all of your daily interactions—both online and offline." The question then elicited importance ratings (from "Very Important" to "Not at all important") for each of nine pre-selected characteristics—two of which were related to

[180] Madden and Rainie (2015), p. 5.

control over information. Notably, the wording of these two characteristics was highly vague and broad, encompassing potentially infinite circumstances and likely yielded idiosyncratic and varied interpretations across participants in terms of what "control," "information," and "collected" meant. Further, because participants were not asked to clarify what exactly controlling their information meant and whether they would be willing to relinquish this control under more specific circumstances, the findings from this single closed-ended question are completely non-dispositive for how consumers would perceive or react to CLEAR.

93. Beyond the "importance of privacy" question's non-dispositive nature, its design is also leading and cannot generate valid or reliable estimates of consumer perceptions for purposes of this litigation.[181] The closed-ended question employed an incomplete and non-neutral set of answer choices and cued participants to attribute at least

[181] A leading question or survey procedure suggests to participants particular answers, thus creating a bias and producing invalid results. Indeed, seminal research shows that people's survey responses are often distorted based on the survey context and on leading phrases and questions. *See, e.g.*, Kahneman, Daniel and Amos Tversky (1981), "The Framing of Decisions and the Psychology of Choice," *Science*, 211(4481), 453 – 458; Loftus, Elizabeth and Guido Zanni (1975), "Eyewitness Testimony: The Influence of the Wording of a Question," *Bulletin of the Psychonomic Society*, 5(1), 86 – 88. For a review, *see* Weinberg, Howard I., John Wadsworth, and Robert S. Baron (1983), "Demand and the Impact of Leading Questions on Eyewitness Testimony," *Memory & Cognition*, 11(1), 101 – 104. *See also, e.g.*, Loftus, Elizabeth, Diane Altman, and Robert Geballe (1975), "Effects of Questioning Upon a Witness' Later Recollections," *Journal of Police Science and Administration*, 3(2), 162 – 165; Loftus, Elizabeth (1975), "Leading Questions and the Eyewitness Report," *Cognitive Psychology*, 7, 550 – 572; Loftus, Elizabeth and John C. Palmer (1974), "Reconstruction of Automobile Destruction: An Example of the Interaction between Language and Memory," *Journal of Verbal Learning and Verbal Behaviour*, 13, 585 – 589; Burt, Christopher D. and Jennifer S. Popple (1996) "Effects of Implied Action Speed on Estimation of Event Duration," *Applied Cognitive Psychology*, 10(1), 53 – 63. Participants' reactions to leading survey questions about decontextualized information can reflect a number of background considerations (*e.g.*, social desirability concerns), whereas the true influence, if any, of various factors in the actual marketplace is difficult for survey participants to accurately identify, predict, and verbalize. *See, e.g.*, Fiske, Susan T. and Shelley E. Taylor (1991), *Social Cognition* (2nd ed.), New York, NY: McGraw-Hill; Nisbett, Richard E. and Timothy D. Wilson (1977), "Telling More Than We Can Know: Verbal Reports on Mental Processes," *Psychological Review*, 84(3), 231 – 259; Wilson, Timothy D. and Daniel T. Gilbert (2003), "Affective Forecasting," in *Advances in Experimental Social Psychology Vol. 35*, Zanna, Mark P. (ed.), San Diego, CA: Elsevier, pp. 345 – 411; Wilson, Timothy D. and Jonathan W. Schooler (1991), "Thinking Too Much: Introspection Can Reduce the Quality of Preferences and Decisions," *Journal of Personality and Social Psychology*, 60(2), 181 – 192.

some importance to most of the listed attributes.[182] Indeed, the "net" importance score (calculated as the sum of "Very important" and "Somewhat important" ratings) was 79% or above for *seven* out of *nine* characteristics.

94. Hence, although Dr. Turow focused on the two statistics related to control because they fit his preferred conceptualization of privacy (*i.e.*, 93% rated "Being in control of who can get info about you" as "Very important/Somewhat important" [74%/19%]; 90% rated "Controlling what information is collected about you" as "Very important/Somewhat important" [65%/25%]),[183] similarly high levels of importance were obtained for several *other* characteristics (none of which relate to CLEAR):[184]

- 93% rated "Being able to share confidential matters with someone you trust" as "Very important/Somewhat important" [72%/21%];
- 88% rated "Not having someone watch you or listen to you without your permission" as "Very important/Somewhat important" [67%/20%];
- 85% rated "Not being disturbed at home" as "Very important/Somewhat important" [56%/29%];
- 85% rated "Being able to have times when you are completely alone, away from anyone else" as "Very important/Somewhat important" [55%/30%]; and
- 79% rated "Having individuals in social/work situations not ask you things that are highly personal" as "Very important/Somewhat important" [44%/36%].

If anything, the results above contradict Dr. Turow's Assumption 1, as they suggest that consumers, when presented with a list of characteristics related to the general concept of

[182] In many cases, closed-ended questions have a disadvantage (compared to open-ended questions) because the closed-ended questions give participants hints about the answers that are expected or preferred. The answer choices provided in a closed-ended question can steer participants toward or away from particular answers, and can prompt participants to report opinions (offered as answer choices) that are not actually formed or held by consumers in the marketplace. Further, the results attained from closed-ended questions may be misleading and biased if the list of answer choices provided is incomplete. *See, e.g.*, Diamond, Shari S. (2011), "Reference Guide on Survey Research," in *Reference Manual on Scientific Evidence*, Federal Judicial Center, pp. 391 – 394 & 389 – 390.
[183] Madden and Rainie (2015), p. 5.
[184] *Ibid*.

privacy, are likely to find most such characteristics important and are *not* likely to gravitate towards *only* one conceptualization. Which interpretation(s) of privacy various consumers form is a highly relevant question, as such interpretations contextualize how a given consumer may react in a specific circumstance. For example, a consumer who believes that their privacy is preserved when sharing confidential information with a *trusted* entity may conclude, if they perceive Thomson Reuters and CLEAR as trustworthy, that they have *not* been harmed by (and even benefitted from) having their data collected and/or disseminated through CLEAR.

95. *Finally*, while not statistically generalizable, it is useful to consider the responses from various focus group panelists included in the 2015 Pew Report; such responses are consistent with heterogeneity (lack of commonality) across consumers in their concern (or lack thereof) about the collection and use of information about them (particularly with respect to a product like CLEAR). According to the report, "online focus groups"[185] were conducted among a subset of panelists who participated in a separate survey in 2014.[186] In one such discussion, participants were asked whether they "feel as though [they] know enough about who collects information about [them] and [their] activities or would [they] like to know more about who is doing the collecting and the reasons for it."[187] The report states, based on these discussions, that "many want more transparency in who collects information about them, but some don't care or don't worry."[188]

96. In addition, focus group participants' spontaneous impressions as to what information is being collected and how such information is collected suggests that it is unlikely that consumers, if not directly prompted, would have in mind an entity similar to

[185] *Id.*, p. 22.
[186] *Ibid.*
[187] *Ibid.*; *see also id.*, p. 23 ("At the same time, another group of participants voiced the view that they 'don't care' or 'don't worry' about who might be collecting data about them and why.").
[188] *Ibid.*

CLEAR (or Thomson Reuters's operation thereof) that collects their data. According to the 2015 Pew Report, when asked what kind of information about them and their activities is being collected and who is collecting it, "many respondents" cited "[e]xpansive government data collection efforts," and "several noted the ways in which hackers might access records that were gathered for other purposes."[189] Such responses cast further doubt on the validity of generalizing to the present litigation—as Dr. Turow seeks to do—based on results from a question that invokes only privacy-related concepts in the abstract (*i.e.*, without any relation to CLEAR).

D.3.6. *The Results from the 2019 Pew Research Center Survey Contradict Dr. Turow's Assumptions 1 and 3, and Fail to Support Assumption 2*

97. Dr. Turow cites the 2019 Pew Survey[190] to support the notion that "consumers view the right to control their information as central to individual privacy," specifically quoting the following finding:[191]

> [W]hen Americans were asked for their own definitions of the words "privacy" and "digital privacy," they "most often mention their concerns about the role other people and organizations can play in learning about them, their desire to shield their personal activities and possessions, and their interest in controlling who is given access to their personal information."

98. A closer examination of the open-ended questions to which the Turow Report refers, however, reveals that their results do *not* substantiate—and in fact are inconsistent with—Assumption 1 (*i.e.*, that most consumers conceptualize privacy as control over information about them). Figures 7a and 7b below reproduce reported results corresponding to the questions "What does privacy mean to you?" and "What does digital privacy mean to you?"[192]

[189] *Id.*, p. 26; *see also id.*, p. 27 (naming such entities as the NSA, hackers, retailers, and the government in general).
[190] Auxier et al. (2019).
[191] Turow Report, p. 7 & FN 9 (quoting from the 2019 Pew Survey report).
[192] Auxier et al. (2019), p. 12. The complete survey questionnaire suggests that participants were asked to define either "privacy" or "digital privacy"; *see id.*, p. 50.

Figure 7a: 2019 Pew Survey Question Regarding Definition of Privacy [193]

% of U.S. adults who mention the following themes when asked "what does privacy mean to you?"

Other people and organizations not being able to access their possessions or private life	28%
Control over information, possessions, self; deciding what's accessible to others	26
Themselves, their personal information and possessions, the desire to keep things to themselves	15
Having their information sold, third party involvement	4
General security references, i.e. "secure," "guarded," "protective"	3
Tracking, surveillance, monitoring, spying	2
Privacy is a myth/means nothing/doesn't exist	2
Crime, hacking, fraud, any threats of illicit activity	2
Threat from the government regarding themselves, possessions or private life	2
Personal information is only accessible with the person's knowledge or consent	1
Spam, unwanted calls or solicitations	<1
Other	4
Did not answer	17

Note: Verbatim responses have been coded into categories. Results may add to more than 100% because each response could have up to three codes.
Source: Survey conducted June 3-17, 2019.
"Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information"

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[193] *Id.*, p. 12.

Figure 7b: 2019 Pew Survey Question Regarding Definition of Digital Privacy [194]

% of U.S. adults who mention the following themes when asked "What does digital privacy mean to you?"

Themselves, their personal information and possessions, the desire to keep things to themselves	17%
Control over information, possessions, self; deciding what aspects of their lives are accessible to others	14
Other people and organizations not being able to access their possessions or private life	13
Privacy is a myth/means nothing/doesn't exist	9
Having their information sold, third party involvement	6
Crime, hacking, fraud, any threats of illicit activity	5
General security references, i.e. "secure," "guarded," "protective"	4
Tracking, surveillance, monitoring, spying	3
Company measures, how websites/companies should secure data, terms of service, privacy settings	2
Personal information is only accessible with the person's knowledge or consent	2
Threat from the government regarding themselves, possessions or private life	1
Other	4
Did not answer	31

Note: Verbatim responses have been coded into categories. Results may add to more than 100% because each response could have up to three codes.
Source: Survey conducted June 3-17, 2019.
"Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information"

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99. As Figures 7a and 7b indicate, the top three categories into which most of the verbatim responses were coded are extremely broad,[195] likely encompassing other concepts that do *not* relate to Dr. Turow's conceptualization, and would not apply to a product like CLEAR. For example, "personal information and possessions," "keep things to themselves," "control over information, possessions, self," and "other people and organizations" are ambiguous and could refer to any number of circumstances or situations, including many that are very different from a context such as Thomson Reuters's operation

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[194] *Id.*, p. 14.

[195] Indeed, the 2019 Pew Survey report denotes as much, stating that participants' "written answers were coded into broad categories"; *id.*, p. 12.

of CLEAR. The 2019 Pew Survey report does not provide a complete set of verbatim responses, precluding a more granular analysis.

100. It is noteworthy that even taken at face value, when asked what "privacy" meant to them, only 26% of participants mentioned anything about "control over information, possessions, self; deciding what aspects of their lives are accessible to others"—the category that maps most closely to Dr. Turow's conceptualization. Of arguably more relevance is participants' definition of "*digital* privacy"; as Figure 7b shows, *only 14%* of participants were coded into the same category implicating the concept of "control." That is, the *majority* of participants do *not* perceive the concept of controlling information about them as integral to privacy, if anything contradicting Assumption 1.

101. Further, Dr. Turow fails to acknowledge that the results from the aforementioned open-ended questions also demonstrates that: (*i*) 17% and 31% of participants who were asked to define "privacy" and "digital privacy", respectively, provided no answer, indicating that at least some consumers may not have any opinion about the terms at all; (*ii*) only 4% and 6% of participants who were asked to define "privacy" and "digital privacy," respectively, mentioned their information being "sold" or "third party involvement" (which could plausibly be connected to CLEAR);[196] and (*iii*) nearly 10% of participants asked to define "digital privacy" answered that "Privacy is a myth/means nothing/doesn't exist."

102. Although the 2019 Pew Survey found that many consumers purportedly express at least some "concern" about how their personal data is being used,[197] such results again stem from an extremely broad and abstract question that is *not* dispositive of Assumption 2 (*i.e.*, that consumers commonly are concerned about controlling

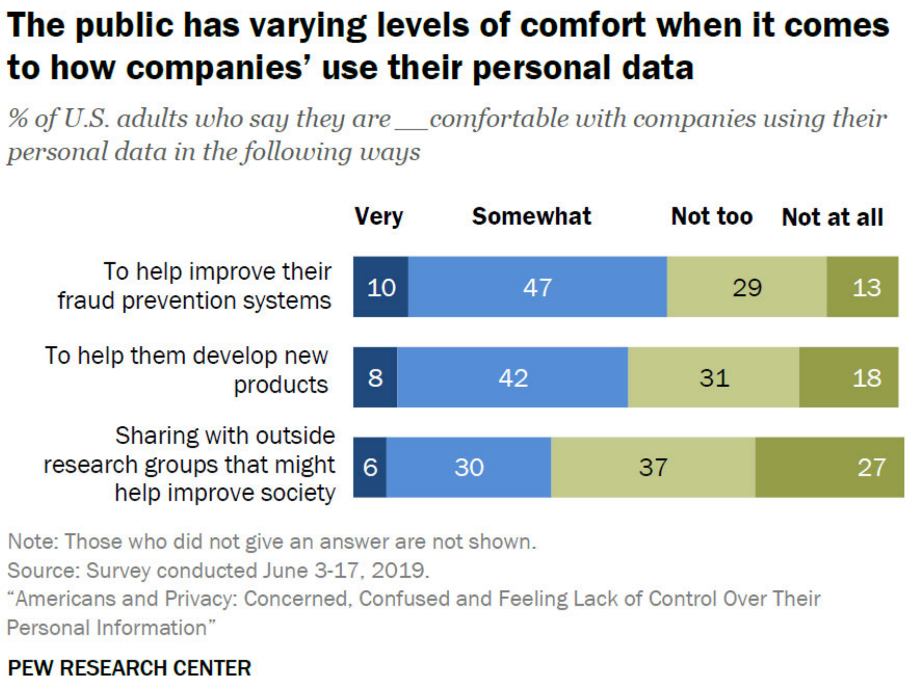
[196] *See ibid.* (indicating that "fewer participants mention third parties and the selling of their information, tracking or monitoring, crime and other threats of illicit activity, or interference from the government").
[197] *See id.*, p. 20 (indicating that 36% and 43% of participants are "very concerned" and "somewhat concerned," respectively, about how data collected about them is used by companies; 25% and 39% of participants are "very concerned" and "somewhat concerned," respectively, about how data collected about them is used by the government").

information about them and/or about others controlling that information via a CLEAR-like product). In fact, additional questions in this survey offer key caveats (ignored in the Turow Report) that further demonstrate the necessity of contextualizing consumers' general views about "privacy" and "personal information." Below, I highlight two questions whose results, if anything, *contradict* Dr. Turow's Assumption 3 by suggesting that consumers would *not* commonly perceive the alleged harm of CLEAR to outweigh its benefits.

103. *First*, as noted in the 2019 Pew Survey report, "Americans have varying levels of comfort with companies using their personal data in different ways."[198] Specifically, when asked to rate how comfortable they would be with companies using their personal data in each of three specific ways, 57% of participants indicated they would be very or somewhat comfortable with their data being used "[t]o help improve [companies'] fraud prevention systems"; 50% of participants indicated they would be very or somewhat comfortable with their data being used "[t]o help [companies] develop new products"; and 36% of participants indicated they would be very or somewhat comfortable with their data being used for the purpose of "[s]haring with outside research groups that might help improve society" (*see* Figure 8 below).[199] The report also states that the aforementioned perceptions varied across individuals based on age and political affiliation.[200]

[198] *See id.*, p. 40.
[199] *See id.*, p. 41.
[200] *See id.*, pp. 40 – 41 (*e.g.*, "Younger adults are generally more comfortable with these uses of their private data, while older adults are less comfortable"; "Democrats, including independents who lean to the Democratic Party, are more likely than Republicans and Republican-leaning independents to be comfortable with companies […] using their data to help improve their fraud prevention systems (61% vs. 54%).").

Figure 8: Americans' Comfort Levels With Companies Using Their Personal Data in Different Ways [201]



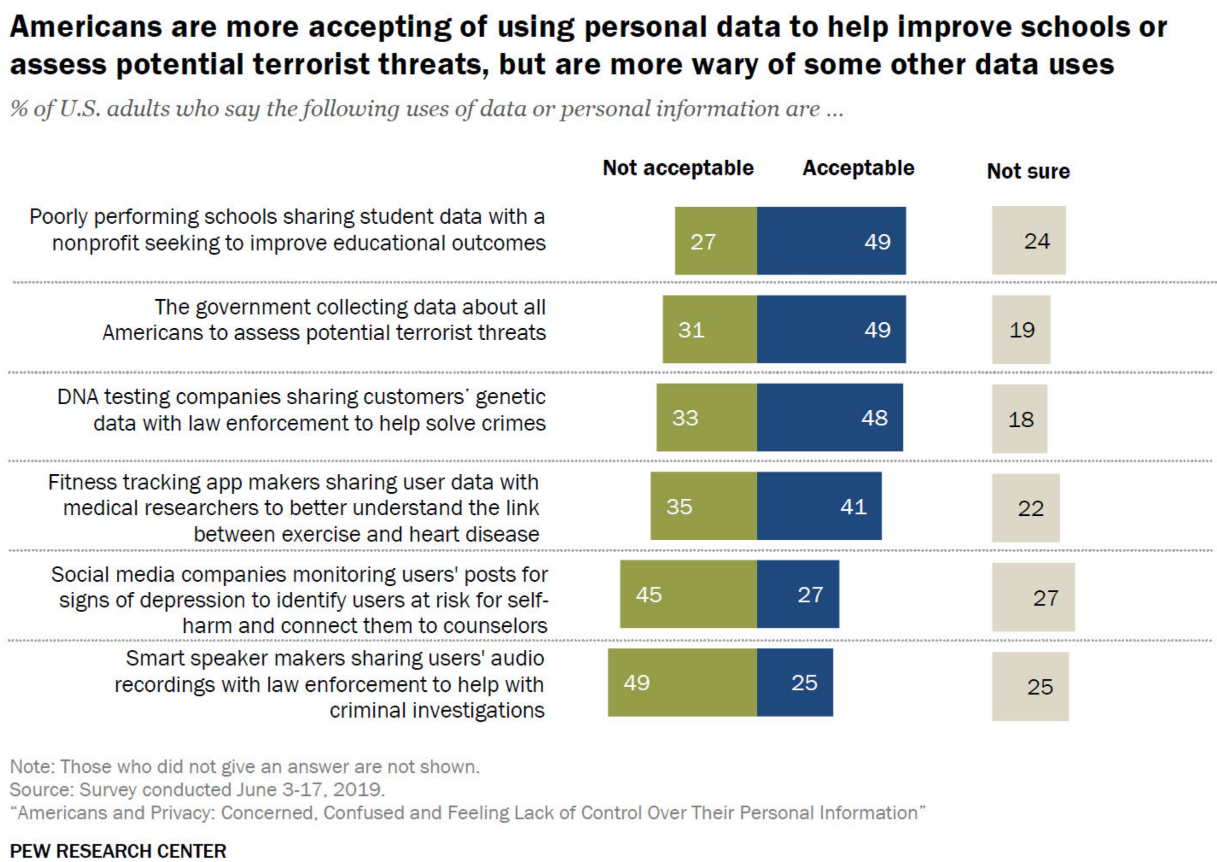
104. Of the three "use cases" listed above, the first ("To help improve [companies'] fraud prevention systems") relates to CLEAR, which is used in many instances for the exact purpose of helping companies detect and prevent fraud.[202] The results of the above question indicate that whether consumers would object to the access or use of information about them depends crucially on *how* or in what specific ways that information is used. Moreover, in the specific case of CLEAR, the finding that 57% of participants reported being comfortable with companies using their data to improve fraud prevention systems suggests that many putative class members may be amenable to information about them being collected or otherwise used in a product like CLEAR, and that such consumers would *not* perceive the alleged harm of CLEAR to outweigh the

[201] *See id.*, p. 41.
[202] *See, e.g.*, https://legal.thomsonreuters.com/en/products/clear-investigation-software (indicating "Prevent, detect, and investigate risk & fraud" as a heading at the top of the page, and listing "Healthcare fraud," "Insurance fraud," "Retail fraud investigations," and "Tax fraud prevention" as use cases at the bottom of the page). *See also* Subsection E.2 of this *Rebuttal Expert Report* for a discussion of CLEAR's use cases and potential benefits.

platform's benefits. Dr. Turow ignores such important and relevant factors in his analysis, instead leaping to the conclusion that all Californians were harmed simply by virtue of having their information made available and/or disseminated through CLEAR.

105. *Second*, in a subsequent question, participants in the 2019 Pew Survey were asked whether they would find acceptable or unacceptable each of six different potential uses of their personal data by private companies and government agencies. As Figure 9 below shows, pluralities of participants were willing to trade off their personal data *depending on different circumstances that could benefit society*.[203]

Figure 9: Americans' Perceptions on the Acceptability of Using Personal Data in Different Usage Scenarios [204]



[203] *See id.*, p. 8; *see also id.*, p. 7 ("Despite their broad concerns about data collection and use by companies and the government, pluralities of U.S. adults say it is acceptable for data to be used in some ways.").
[204] *See id.*, p. 8.

106. For example, 49% of participants indicated it was acceptable for the government to "collect[]data about all Americans to assess potential terrorist threats." Similarly, 48% of participants found it acceptable for "DNA testing companies [to share] customers' genetic data with law enforcement to help solve crimes." These two uses of personal data are the only ones from the list above that could potentially resemble CLEAR's "use cases," which in many instances serve the purpose of investigating criminal suspects and other threats to society.[205] Participants' openness to consider situations in which community or societal benefits can outweigh the alleged harm of sharing personal data indicates that it is *not* appropriate to assume classwide harm in the case of CLEAR, as Dr. Turow does, without measuring consumers' perceived tradeoffs between the product's potential risks and its potential benefits and advantages.

107. Instead of presenting consumers with information on the potential harm *and* potential benefits that could arise from CLEAR (or a CLEAR-like product), the Turow Report discounted the possibility of benefits altogether, asserting that all putative class members must have been harmed due to having their right to control "personal information" allegedly violated. Such an assumption is completely unsubstantiated. In fact, the results of the 2019 Pew Survey suggest that many members of the putative class would disagree with Dr. Turow's assessment of harm outweighing any benefits (*i.e.*, Assumption 3) if they were presented a full picture of CLEAR.

D.3.7. *Conclusion: Dr. Turow's Cited Research About Consumer Perceptions and Preferences Do* ***Not*** *Substantiate His Assumptions*

108. In summary, the sources cited in the Turow Report that ostensibly relate to consumer perceptions or preferences either are irrelevant to, directly refute, or are completely *non*-dispositive with respect to Dr. Turow's key assumptions and opinions. None of Dr. Turow's cited sources substantiate his assumptions that: (*i*) consumers

[205] *See, e.g.*, https://legal.thomsonreuters.com/en/products/clear-investigation-software/law-enforcement; *see also* Subsection E.2.

commonly conceive privacy as the right to control information about them; (*ii*) consumers are commonly concerned about controlling information about them and/or others using that information (through a CLEAR-like product); and (*iii*) consumers commonly agree that the harm from a product like CLEAR outweighs its benefits. On multiple occasions, Dr. Turow reports overgeneralized, inflated, and/or unrepresentative statistics regarding how privacy is conceptualized that are unsupported or even contradicted by his cited sources.

109. Contrary to the Turow Report's characterization of privacy, the aforementioned sources indicate considerable variation in how consumers understand and perceive privacy, with little to no consensus among consumers in terms of their concerns or preferences regarding the collection or use of information about them. Dr. Turow does *not* provide *any* scientific evidence for the notion that most putative class members, for example, would even agree that CLEAR "violates" their "privacy"; would have objected to their information being collected and/or disseminated through CLEAR (to serve CLEAR' various use cases); or would have expected or demanded recompense for usage of their data. Taken together, the studies cited in the Turow Report neither substantiate Dr. Turow's assertion that consumers' privacy rights have been violated nor demonstrate that CLEAR caused any harm to consumers.

D.4. Dr. Turow Fails to Provide Evidence of Any Concrete, Specific (Actual or Likely) Negative Outcome Suffered by a Single Putative Class Member, Let Alone Commonly Classwide

110. Instead of using empirical evidence and data to try and demonstrate that the putative class members suffered common injury due to CLEAR, Dr. Turow relies on legal and philosophical scholarship and overgeneralizes findings from articles that are either irrelevant to, or directly contradict, his assumptions and conclusions. Inexplicably, Dr. Turow fails to document or describe any concrete negative outcomes that occurred (or were likely to occur) due to an individual's information being collected and/or

disseminated through CLEAR.[206] In fact, Dr. Turow fails to specify what such harm *could* even look like.

111. Instead, the Turow Report's Section IV consists of a series of abstract and often subjective or speculative arguments. Specifically, Dr. Turow:

(*i*) describes his understanding of the CLEAR product[207] and the personal information available through the CLEAR platform,[208] stating that "[t]he breadth of information available in CLEAR, and the variety of uses for which Thomson Reuters permits business and governmental entities to access information through CLEAR, cover many aspects of Californians' lives";[209]

(*ii*) opines that regardless of the content of individual reports[210] or whether a customer's use of CLEAR is deemed "permissible,"[211] "every Californian whose information is accessible through CLEAR has suffered the same fundamental privacy harm of a lack of control and violation of their right to be let alone";[212]

(*iii*) asserts that Californians have no control over CLEAR's "dossiers"[213] about them and have not consented to the collection or sale of their data;[214]

(*iv*) claims that "discovery demonstrates that Thomson Reuters is disinterested in helping members of the public learn about the data Thomson Reuters amasses about them, who uses it, and whether or how they could stop it,"[215]

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[206] At his deposition, Dr. Turow disavowed the relevance of examining individuals, stating that his "[t]he issue is not an individual class member. The issue [is] the larger class of Californians" (Turow Deposition, pp. 148 – 149) and that he did not feel there is any need to "offer any methodology to distinguish among members of the putative class in this case in any way" (*id.*, p. 251).
[207] Turow Report, pp. 9 – 12. *See, e.g.*, p. 10 ("CLEAR, as marketed by Thomson Reuters, provides customers the ability to coalesce large numbers of data points about individuals quickly and seamlessly" [FN omitted]); p. 11 ("According to Thomson Reuters, CLEAR 'delivers a vast collection of public and proprietary records and brings all key content together into a single working environment to give [customers] a more streamlined, efficient search" [FN omitted]).
[208] *Id.*, pp. 12 – 13. Dr. Turow acknowledges that targeted "use cases" for CLEAR (*i.e.*, how a customer is using the CLEAR product) include "skip tracing, unemployment insurance, corporate security, fraud investigations of various types, contact tracing, risk-management, child and family services, and law enforcement investigations"; *id.*, p. 12.
[209] *Id.*, p. 13.
[210] *Ibid.*
[211] *Id.*, p. 14.
[212] *Id.*, p. 13.
[213] *Id.*, p. 18.
[214] *Id.*, pp. 14 – 15.
[215] *Id.*, p. 15.

pointing to the lack of a public campaign or attempt to inform Californians about CLEAR, including how to opt out or to control their information;[216]

(*v*) asserts that Thomson Reuters's Public Records Privacy Policy is "convoluted"[217] and cannot be considered protective of privacy, and that he "see[s] nothing in the policy to suggest that Californians are given a meaningful right to control their information";[218]

(*vi*) reiterates his opinion that "CLEAR deprives all Californians of the right to control their personal data," which Dr. Turow refers to as "an economically valuable commodity and a well-defined feature of individual privacy";[219]

(*vii*) claims that "dossiers"[220] such as those in CLEAR "inflict concrete privacy harms"[221] because they represent "a theft of a person's persona,"[222] one that deprives Californians of their right to control their information; according to the Turow Report, such a "theft" (and accompanying "harm") is "independent of what particular information has taken, when or how it is made available to others, or for what purposes Thomson Reuters makes that information available";[223]

(*viii*) claims that Thomson Reuters's use of CLEAR also causes "material harm"[224] by causing Californians to "lose the value the information would have retained, value they could have chosen to capture themselves";[225] and

(*ix*) opines that each of these harms (*i.e.*, "privacy harm" and "material harm") are caused regardless of the content of the data, the accuracy of the data, and whether the information is publicly available in disaggregated forms.[226]

112. The above sequence of arguments forms the basis for Dr. Turow's conclusion that Thomson Reuters's CLEAR product harmed all Californians in the same way by violating their right to privacy (specifically, their alleged rights to control their personal information and to be let alone). Crucially, however, the analyses and reasoning leading to Dr. Turow's conclusion are neither supported empirically nor substantiated in

[216] *Ibid*.
[217] *Id*., p. 16.
[218] *Ibid*.
[219] *Id*., p. 17.
[220] *Id*., p. 18.
[221] *Ibid*.
[222] *Ibid*.
[223] *Ibid*.
[224] *Ibid*.
[225] *Ibid*.
[226] *Id*., pp. 19 – 20.

any other way (or even adequately explained). For example, although Dr. Turow asserts multiple times that Thomson Reuters, through CLEAR, has inflicted "concrete"[227] injuries on all Californians—in the form of "privacy harms"[228] and "material harm" from the "lost value of the information"[229]—such a conceptualization of harm is *not* concrete but rather refers to an abstract concept[230] that does *not* (and cannot) constitute scientific evidence of any (actual, likely, or common) injury.

113. It is noteworthy that the sources cited by Dr. Turow in Section IV of his report consist of legal conceptual articles, deposition testimony from Thomson Reuters marketing executives, and various Thomson Reuters documents produced in this litigation. However, these materials are used to support statements regarding basic background or factual points (*e.g.*, the claim that Thomson Reuters collects information from "a variety of sources and sells (or otherwise permits access to) that information in a variety of forms, and to a variety of customers"[231]) or to introduce concepts that have not been empirically shown to be relevant to CLEAR. A review of these documents (some of which appear in Table 1 in Subsection D.1 of this *Rebuttal Expert Report*) reveals that *none* of them relate to or provide *any* scientific evidence regarding: (*i*) consumers' perceptions or preferences about privacy or how their information is used in the context of a product such as CLEAR; or (*ii*) how consumers are (or could be) specifically harmed by CLEAR.

114. In developing his hypothesis that common harms were inflicted on all Californians due to CLEAR, Dr. Turow attempts to connect several different abstract—and semantically "loaded" or "charged"—concepts (*e.g.*, "informational privacy," "privacy harms," "material harm," "lost value of information," "social importance," "theft of persona"), ultimately engaging in logical leaps and restating his key conclusion in

[227] *Id.*, p. 18.
[228] *Ibid*.
[229] *Id.*, p. 19.
[230] As previously noted, Dr. Turow testified that the nature of the privacy rights he is rendering an opinion on refers to "*ethical* and *social*" rights; Turow Deposition, p. 174.
[231] Turow Report, p. 10 & FN 17.

different ways. Examples of such speculative and imprecise reasoning, which suggest a lack of objectivity, include:

- Contending that regardless of the content of individual data contained in CLEAR, all Californians were harmed simply by virtue of having purportedly "fundamental" rights violated:[232]

> While the specific content of individual reports may vary, every Californian whose information is accessible through CLEAR has suffered **the same fundamental privacy harm** of a lack of control and violation of their right to be let alone. Regardless of how expansive an individual's report may be, **no Californian has control** over the information in or use of dossiers about them. In these critical ways, **all Californians face these same harms**.

- Asserting that Californians did not consent to having their information collected or "sold" through CLEAR, and that therefore all Californians suffered "privacy harms" (due to not having control or having their right to be let alone violated):[233]

> In any event, **whether a person has consented to the sale of their data has nothing to do with whether Thomson Reuters lists the use as permissible**. And so, whatever the function of a customer certifying a purportedly permissible use, **it does nothing to solve the privacy harms of lack of control or violation of the right to be let alone**. No Californian is given any control over the uses of dossiers about them. There is no use of CLEAR profiles that is permitted *by the Californians* [emphasis in the original] whose information is sold via CLEAR. To the contrary, Californians have not consented to the collection or sale of their information through Thomson Reuters' CLEAR platform, and largely do not know about it.

- Opining, vaguely and without evidence, that Thomson Reuters's CLEAR can be described as a "business interest[]" that "collect[s] and stockpile[s] unnecessary information about us and [] misus[es] information gathered for one purpose in order to serve other purposes," and further claiming that regardless of any "limitations" placed on the use of CLEAR, Californians are still harmed because Thomson Reuters "controls" their CLEAR profiles "for commercial purposes":[234]

> In addition, the right to be let alone, as mentioned, protects against "business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes." **That aptly describes Thomson Reuters' CLEAR, even if Thomson Reuters places certain**

[232] *Id.*, p. 13 (emphases added; FN omitted).
[233] *Id.*, p. 14 (emphases added).
[234] *Id.*, p. 15 (emphases added; FNs omitted).

> **limitations on the use of its product**. **Ultimately, Californians are harmed in these ways,** whether their profiles are used for what Thomson Reuters deems a permissible use or not, because Thomson Reuters controls the CLEAR profiles of Californians for its own commercial purposes.

- Speculating that Thomson Reuters does not follow an undefined "social importance" standard, and assuming, without evidence, that Californians would be "blindsided" by the "unknown and unwanted collection and use of information about themselves":[235]

> With its CLEAR product, Thomson Reuters **fails to follow the social importance of ensuring individuals are not blindsided by the unknown and unwanted collection and use of information about themselves**. In fact, discovery demonstrates that Thomson Reuters is disinterested in helping members of the public learn about the data Thomson Reuters amasses about them, who uses it, and whether or how they could stop it.

- Restating that Thomson Reuters's "collection and connection of data" harms all Californians after purporting to describe CLEAR's business model and how CLEAR is presented to customers:[236]

> **CLEAR's very business model** is to allow companies to take for granted that huge numbers of datapoints about Californians are compiled, connected, updated (including, for certain data, in real-time) and made available for Thomson Reuters' customers at the touch of a button. Some of the individual data points are proprietary and some are public, but the collection and connection of that data (its analytics) is how Thomson Reuters markets CLEAR to its customers. **And that collection and connection of data inflicts harms on all Californians**.

- Presuming, without evidence, that California citizens would not know about, understand, and accept CLEAR, and concluding that CLEAR deprives Californians the right to control their information, a right that is presumed to be an "economically valuable commodity" and a "well-defined feature of individual privacy":[237]

> With CLEAR, Thomson Reuters **exploits the contemporary ease** of collecting, transferring, and accessing data, along with the financial incentive of public and private entities to sell or license that data, to create extensive private dossiers about people. **The availability, creation, and use of these dossiers take place without the knowledge, understanding, or acceptance of California citizens**, who are the topics of many of CLEAR's dossiers. **CLEAR deprives all Californians of the right to**

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[235] *Ibid.* (emphasis added; FN omitted).
[236] *Id.*, p. 17 (emphases added; FN omitted).
[237] *Ibid.* (emphases added).

> **control their personal data, an economically valuable commodity and a well-defined feature of individual privacy**.

- Claiming that CLEAR's data causes "concrete privacy harms" in the form of a "theft of a person's persona" akin to "theft of personal property," while speculating that the "dossiers" portray every Californian in a way they have not approved and that "might well be at odds" with an (undefined) image every Californian "has been trying to create, or has actually created […] of herself or himself within society":[238]

> Dossiers or profiles of individuals such as those Thomson Reuters makes available through CLEAR **inflict concrete privacy harms, amounting to a theft of a person's persona** in that **information taken from that individual is exploited to create a data-picture of the individual that is not sanctioned by the person and might well be at odds with the picture the individual has been trying to create, or has actually created if all accurate facts were included in CLEAR's dossiers, of herself or himself within society**. Akin to theft of personal property, the theft of one's persona in this way works such a harm upon the taking, connecting, or making available of the data; stripping the person of their right to control their own information even if they have not yet realized that it has occurred, and **independent of what particular information has been taken, when or how it is made available to others, or for what purposes Thomson Reuters makes that information available**.

- Asserting that CLEAR's "dossiers" harm Californians by costing them the value of information they would have obtained and "could have chosen to capture themselves," and further assuming that the economic value discussed by "privacy scholars" map specifically to CLEAR:[239]

> Privacy scholars have long discussed how **the kind of information contained within CLEAR itself has economic value**. By taking disaggregated sources of information, compiling dossiers, and selling those dossiers for profit (without giving Californians the opportunity to control or profit from that practice), **Californians lose the value the information would have retained, value they could have chosen to capture themselves**.

115. At his deposition, Dr. Turow failed to clarify or provide any further details about how such "privacy harms" could manifest (*e.g.*, in terms of physical consequences, financial consequences, or loss of property), asserting only that the "[t]he harm is in the lack of control over information and the possibility of sharing with other companies."[240]

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[238] *Ibid.* (emphases added).
[239] *Id.*, p. 19 (emphases added; FNs omitted).
[240] Turow Deposition, p. 177.

When asked why he did not think conducting a survey was necessary in this litigation, Dr. Turow did not appeal to any scientific evidence regarding consumers' perceptions or preferences but rather replied that "it is so clear what CLEAR is doing"[241] and that "the company is clearly harming Californians by taking away their ability to control their information, not even really telling them what's going on, and offering their data to other companies without serious recourse."[242]

116. Dr. Turow also testified that his methodology does not distinguish between potential differences in the *magnitude* of harm inflicted on different putative class members, stating, for example:[243]

> A. Beyond the idea that many, many people suffer the harm, virtually all Californians I haven't quantified the amount of harm per person, no, that was not part of my mandate.
>
> […]
>
> Q. In your opinion, could different individuals experience different amounts of harm due to the CLEAR platform?
> A. That is not anything that I was asked to opine about or write about or do research on.
> Q. I see. So do – you have no opinion with respect to that in this case?
> A. I have no systematic opinion.

Hence, the Turow Report presumes that common injury has occurred classwide, *without* having done any analysis of or investigation into whether some putative class members may have suffered injury to a greater (or lesser) extent than others. Such a presumption of commonality is not only unscientific but is also at odds with Dr. Turow's own cited

[241] *Id.*, p. 72.
[242] *Ibid.*
[243] *Id.*, pp. 187 – 188. Nor did Dr. Turow attempt to parse out levels of harm inflicted based on information being *collected*, versus *disseminated*, versus *sold*; *see, e.g., id.*, p. 210 ("Q. If the – if all Thomson Reuters did was collect information about a person without any – without doing anything else, without sharing it, without selling it, without doing anything else, in your view, is it correct to say that that would cause the privacy harms that are at – that are the subject of your opinion in this case? A. Yes. I've said that before, yeah."). Relatedly, when asked about CLEAR's various restrictions regarding its permissible uses (*e.g.*, whereby marketing or solicitation is prohibited), Dr. Turow agreed that the "data it takes out of circulation […] have some value in providing a benefit to California residents"; *id.*, p. 296. However, despite this acknowledgment, when subsequently asked whether CLEAR's restrictions "have any value in reducing the harm from CLEAR," Dr. Turow testified: "My report was not to quantify particular aspects of CLEAR harm so I really don't want to speak to that aspect of it"; *ibid.*

sources (*see* Subsection D.3), as well as with other academic research and the named Plaintiffs' deposition testimonies (*see* Subsection E.1).

117. Notably, during his deposition, Dr. Turow speculated (on three occasions) that consumers would "freak out" if they knew about CLEAR, based on his "sense" and "surveys" cited in his report—despite the fact that, as established in Subsection D.3, such research did *not* test consumers' perceptions or preferences regarding any product resembling CLEAR:[244]

> Q. And, in fact, you are not offering an opinion in this case with respect to actual people in California; and more specifically, you're not offering an opinion in this case that every person in California would object to their information being available in CLEAR; is that fair?
>
> A. I am offering the opinion based on research that the huge proportion of Americans including Californians want to control the information companies have about them. In the case of CLEAR, people don't even know of its existence my sense is that **if you told people what – what is in my report, they would freak out**; because that – that is what we've seen in some of our surveys. So you can tell me about individuals who – who have particular responses, but that's not what we find. [Emphasis added]

And:[245]

> Q. I understand. Is it also possible that some people in California might have no objection to their information being made available in CLEAR? Is that possible?
>
> THE WITNESS. Yeah, I'd have to know what the context would be. You know, you can make up stories about anything. My – my general sense, given what we've learned in our surveys, is that **when people found about – would find out about CLEAR, they would, as I said before, freak out**. The company is doing stuff, which is beyond the pale of – of what most Americans and Californians would accept. [Emphasis added]

And:[246]

> Q. Okay. Let's just talk about the present. Is it your testimony that everyone has tried to sell their information and gotten a lower price due to CLEAR? Let's just –
>
> A. You're misrepresenting what I'm saying. I'm saying that the very idea that CLEAR has this information diminishes the value of other – of the ability – if a person want to sell that information. I'm not saying that people do. I – they don't even know about CLEAR. Let's be clear.
>
> CLEAR should be called opaque. People don't know about CLEAR, so they're – basically, this is a total hypothetical. **If people knew about CLEAR, they'd be**

[244] *Id*., pp. 152 – 153.
[245] *Id*., pp.190 – 191.
[246] *Id*., pp. 231 – 232.

> **so freaked out that they wouldn't even think about the idea**. The – the – the whole notion is – is pathetic. […] [Emphasis added]

118. In summary, the aforementioned statements and testimony suggest that Dr. Turow presupposed the Plaintiffs' allegations without any relevant empirical evidence. A great deal of research on social cognition has demonstrated that people often exhibit "confirmation bias," particularly when they are motivated to confirm a particular hypothesis.[247] Overall, the Turow Report's discussion of classwide harm allegedly suffered by the putative class members attributable to CLEAR is fundamentally *unscientific*, lacks any empirical basis or analyses, and suggests a lack of objectivity.

D.5. Dr. Turow's Claim that CLEAR is Not Journalism is Irrelevant to His Opinions About the Alleged Classwide (or Individualized) Harm or About Consumers' Supposed Perceptions or Preferences Regarding Privacy in the Context of CLEAR

119. As outlined in Section C of this *Rebuttal Expert Report*, the Turow Report's last (substantive) section contends that Thomson Reuters's CLEAR product is "not journalism."[248] According to Dr. Turow, this is because CLEAR does not conform with two "principles" that purportedly govern good journalism, namely: (*i*) that "journalists '[t]ake responsibility for the accuracy of their work[, and v]erify information before releasing it'";[249] and (*ii*) that journalists "'diligently seek subjects…to allow them to respond.'"[250]

120. Critically, however, whether CLEAR follows journalistic practices is *irrelevant* to Dr. Turow's key conclusion that all Californians have been harmed in the same manner. In particular, Dr. Turow's opinion is completely untethered from any empirical evidence that *even a single* putative class member has been harmed, let alone

[247] *See, e.g.*, Kivetz and Simonson (2000); Kunda, Ziva (1990), "The Case for Motivated Reasoning," *Psychological Bulletin,* 108(3), 480 – 498; Lord, Charles G., Lee Ross, and Mark R. Lepper (1979), "Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence," *Journal of Personality and Social Psychology*, 37, 2098 – 2109; Wason (1960), "On the Failure to Eliminate Hypotheses in a Conceptual Task," *Quarterly Journal Experimental Psychology,* 12, pp. 129-140.
[248] *Id.*, p. 20.
[249] *Ibid*. (citing to the "SPJ [Society of Professional Journalists] Code of Ethics").
[250] *Id.*, pp. 20 – 21 (citing again to the "SPJ Code of Ethics").

the putative class members have been *commonly* harmed, by virtue of their information being collected and/or disseminated through CLEAR. Nor does Dr. Turow's opinion that CLEAR is not journalism relate to how consumers would perceive privacy or the collection and/or dissemination of information about them through a product like CLEAR. Indeed, even Dr. Turow himself does *not* attempt to connect his "journalism" opinion to any of his report's previous conclusions, including the supposed existence of common economic damages allegedly suffered by the putative class members.

E. THE TUROW REPORT IGNORES RELEVANT EMPIRICAL RESEARCH, AS WELL AS FACTS ABOUT CLEAR AND THE MARKETPLACE, WHICH INDICATE A *LACK* OF COMMON CLASSWIDE INJURY DUE TO CLEAR

121. As the preceding section demonstrates, Dr. Turow fails to show any causal, empirical nexus linking alleged consumer harm to Thomson Reuters's CLEAR product. If anything, the few "empirical" sources that are cited in the Turow Report indicate a *lack* of commonality in consumers' perceptions and preferences regarding privacy and the collection or use of information about themselves. As I explain next, the Turow Report ignores a variety of other relevant evidence in this litigation; such evidence further indicates that the putative class members are likely to be highly varied with respect to their opinions and valuation of CLEAR—and therefore in the existence and degree of injury they allegedly suffered (or benefit they incurred). Specifically, when he concludes that the putative class members were commonly injured, Dr. Turow: (*i*) fails to account for relevant contextual factors and empirical research that indicate a *lack* of commonality in consumers' preferences and preferences regarding privacy and information about themselves in the context of a product like CLEAR; (*ii*) fails to account for CLEAR's various use cases and potential benefits; (*iii*) fails to account for CLEAR's various safeguards; and (*iv*) fails to consider consumers' likely expectations and perceptions given the existence in the marketplace of many products analogous to CLEAR.

E.1. <u>When Concluding that the Putative Class Members Were Commonly Injured, the Turow Report Fails to Account for Relevant Contextual Factors and Empirical Evidence that Indicate a *Lack* of Commonality in Consumers' Perceptions and Preferences Regarding Privacy and Information About Themselves</u>

122. Contrary to the Turow Report's (unsubstantiated) assumption that all putative class members have suffered "privacy harms"[251] *irrespective* of other product-specific factors (*e.g.*, the type and scale of information collected and/or disseminated; the purposes for which such information was used), empirical academic research, as well as the named Plaintiffs' deposition testimonies, indicate a *lack* of commonality in how consumers would view or react to a product like CLEAR. Such evidence is diametrically opposed to Dr. Turow's "blanket" assertions of common classwide harm regardless of individual circumstances .

123. *First*, as discussed in Subsection D.2, it is important to reiterate that *most* (*i.e.*, five) of the six articles cited in the Turow Report that relate to consumer perceptions indicate variation (*i.e.*, a lack of commonality) in consumers' perceptions or preferences regarding privacy or the collection and use of information about them by companies. Critically, *none* of these articles measured consumers' interpretations *in the context* of a product resembling CLEAR. Further, a recurring theme across the Turow Report's own cited sources is the highly context-dependent, idiosyncratic, and subjective nature of privacy (both with respect to consumers' and scholars' perceptions thereof). The fact that even scholars disagree about what privacy is highlights an even greater need to assess *consumers'* perceptions and preferences given the specific circumstances and context at issue in this litigation. Dr. Turow failed to follow this approach, one advocated by the same sources he cited.

124. *Second*, it is noteworthy that even the two named Plaintiffs in this litigation held perceptions and preferences that differed, both from each other as well as from Dr. Turow's position. For example, Plaintiff Brooks and Plaintiff Shabazz: considered

[251] *E.g., id.*, p. 14.

different types of information to be "personal";[252] had different conceptions of how they were harmed by CLEAR;[253] expressed different views regarding potential benefits of CLEAR and its use cases;[254] and voiced different opinions about how much compensation they would be willing to accept or not accept from Thomson Reuters.[255] Unlike Plaintiff Brooks, Plaintiff Shabazz testified that he believed whether consent should be required for collecting information depends on various factors, such as form of collection, the intention, and the purpose.[256] Mr. Shabazz also acknowledged that just as

[252] Plaintiff Brooks believed that *all* information except for her name constituted her "personal information" that "belongs to [her]" and that she should be able to "control"; August 10, 2022 Deposition of Cat Brooks (hereinafter, "Brooks Deposition"), pp. 69 – 71. Plaintiff Shabazz believed some kinds of information to be personal but not necessarily others; *e.g.*, August 19, 2022 Deposition of Rasheed Shabazz (hereinafter, "Shabazz Deposition"), pp. 126 – 128 ("Q. Do you consider race, gender, et cetera, to be personal information? A. I think depending on the scale. […] Q. So race, gender, et cetera, might be personal information for some people but not for other people? A. Perhaps."). Note that at his deposition, Dr. Turow testified that a company having even a name would be "problematical" [*sic*] and constitute a "privacy harm"; Turow Deposition, p. 199.

[253] Whereas Plaintiff Brooks conceived of her harm as an "invasion of privacy" (*see, e.g.*, Brooks Deposition, pp. 186 – 187), Plaintiff Shabazz testified that he would *not* describe how he was harmed in those terms ("Q. How would you describe how you were harmed? Do you describe it as your privacy was invaded? A. No"; Shabazz Deposition, pp.291 – 292). Mr. Shabazz further stated: "A. […] I feel like my identity's being flipped to make money. Q. And how does that harm you? A. Hurts my feelings.").

[254] For example, unlike Plaintiff Brooks, Plaintiff Shabazz admitted that certain uses of CLEAR were beneficial, such as "providing safety net services and benefits to people" (Shabazz Deposition, p. 59) and "send[ing] replacement Medicare cards to recipients" to those who need medical services (*ibid.*). Further, Mr. Shabazz testified that some consumers may have experienced benefits from CLEAR ("Q. Do you think it's possible that someone would have received a benefit from the use of CLEAR? A. I think it's possible that – with the examples you've given, if some of those happened, oh, yeah, someone may have gotten some benefit."); p. 66 and agreed that "how much a person benefits might be different for different people" (*id.*, p. 72).

[255] Plaintiff Brooks testified that she would not be willing to accept *any* amount for Thomson Reuters to collect and store her information in CLEAR; Brooks Deposition, pp. 282 – 283. Plaintiff Shabazz testified in less certain terms: "Q. And what is the payment for exactly? A. Collecting information about me and selling it without my consent. Q. And how much should Thomson Reuters pay? A. I don't know. I'm thinking just a couple – like maybe like – I'm not sure what letter of the alphabet in front of it, but probably a lot of zeros or something. Q. Oh. A. I don't know how much – I don't know an amount that can compensate for what's all been stolen or taken from me and sold without my permission. It's kind of like I don't know how to quantify the fairness thing. I don't know how much it would cost to – not make me feel better, but to repair the harm that's being done."); p. 42 – 43. Dr. Turow testified that he has "no view" as to whether he should be paid by Thomson Reuters for its use of his information ("A. The larger issue stands. I have no view on that and I think what Thomson Reuters is doing is repugnant to the point of paying for the use of information is not the point.").

[256] Shabazz Deposition, p. 266 – 267.

"some punches hurt more than others," the level of harm experienced by individuals may vary depending on what information is contained in a CLEAR report and how that information is used.[257]

125. Further, Plaintiffs Brooks and Shabazz conceded (either directly or implicitly) that individuals can or are likely to vary along multiple dimensions. For example, Ms. Brooks agreed that different people may hold different perspectives regarding privacy,[258] such as what a privacy violation entails[259] and "whether, when and how much somebody should control information about them."[260] Both Plaintiffs Brooks and Shabazz testified that consumers may experience varying levels of harm, including based on their demographics (*e.g.*, race, gender),[261] and that the amount of compensation owed to a consumer would, or should, vary depending on an individual basis.[262] Neither

[257] *Id.*, p. 248 ("Q. – some punches hurt more than others. Can the harm vary depending on what is in a person's CLEAR report? A. Yes. Q. Can the harm vary depending on how it's used? A. Potentially, yeah.").

[258] Brooks Deposition, pp. 67 – 68 ("Q. Do you think there are different interpretations by different people of what the right to privacy means? A. Yes. Q. Why? A. I feel like my answers will be very abstract, right? Q. That's okay. A. I mean, because – because people are different.").

[259] *Id.*, p. 280.

[260] *Id.*, p. 127.

[261] *Id.*, pp. 11 ("Q. Fair to say communities of color benefit less from police work? THE WITNESS: Yes" [objections omitted]), 27 ("A. That said, it is not solely communities of colors that are impacted negatively by the way we do policing in this country. Q. Uh-huh. But it is disproportionately communities of color, correct? A. Yes."), & 124 ("Q. Just to make it concrete, you say something on social media that's public. That thing you say, do you think that you should control whether someone just repeats that – repeats that information? Do you think you should control that or not? A. It's not that simple of an answer. Q. Interesting .Why not? A. It – that – it always belongs to me. Q. Okay. A. So I'm going to continue to lead with that. Information never stops belonging to me if it's about me -- Q. Okay. A. – right? Because there's varying levels of harm."). *See also* Shabazz Deposition, pp. 70 – 71 ("A. […] I think people are situated differently and could be potentially – I mean, again, I think the main thing is like the – the harm of this information being collected and sold. And I think some people are just more at risk because – like gender is an example or perceived gender. And so this information being in there, you know, people might just threaten women – people threaten – I think people threaten women more. […]") & p. 72 ("Q. And the other way that people can be harmed differently is if they're more vulnerable to risks associated with other people knowing their information – A. That's – Q. – like women? A. Yes. I think there's a law in California, can't like tweet the address of an elected official and that's because it's assumed that people might do more harm to these public – quote-unquote, public figures than us laypeople.").

[262] When asked who should set the price for how much compensation to receive, Plaintiff Brookes agreed that "the person whose information is involved should get to set that price"; Brooks Deposition, p. 284. *See also* Shabazz Deposition, p. 43.

of the named Plaintiffs identified specific or concrete manifestations of harm (*e.g.*, threats, physical injury, financial consequences, or property loss) attributable to CLEAR.[263] Overall, the aforementioned deposition testimonies suggest that, contrary to Dr. Turow's assumptions, the putative class members are likely to hold divergent views regarding privacy and perceived harm (vs. benefit); such views, importantly, would likely depend on a number of relevant factors, including the specific nature of the information collected or used through CLEAR.

126. *Third*, other empirical academic research—*not* cited in the Turow Report—reaffirms the context-dependency of privacy perceptions and related constructs (*e.g.*, privacy concerns/preferences). In a 2011 article published in *MIS Quarterly*, Smith and colleagues[264] evaluate the information privacy literature, including both normative theories and empirically descriptive studies,[265] in relation to three central research questions: (*i*) what is (vs. is not) privacy?; (*ii*) what is the relationship between privacy and other constructs (variables)?; and (*iii*) to what extent does context matter in the relationships between privacy and other constructs?[266] With respect to the first question, and consistent with the (conceptual) sources cited by Dr. Turow, the authors identify a variety of different conceptualizations of privacy.[267] Although, as the article itself notes, such definitions are not empirically grounded but rather appear to be based on theoretical

[263] *See, e.g.*, Brooke Deposition, pp. 36 – 37, 269 – 274, & 276 (*e.g.*, confirming three "buckets" of harm allegedly caused by CLEAR: "Q. Okay. Is there any other way in which you think you have been injured by the CLEAR platform other than the three that we have discussed already. That is, that it invades your privacy and that it might, in the future, cause you, potentially, an invasion of privacy depending on who uses the platform, what they use the platform for, and that is takes away your right to decide who sees your information, even as to public information. Other than those three harms, can you think of any other harm that the CLEAR platform cause – causes you? A. I think those are the three big buckets."). *See also* Shabazz Deposition, pp. 153 ("Q. Do you have any reason to believe that any of the threats you experienced were the result of CLEAR or Thompson Reuters? A. No.") & pp. 289 – 290.
[264] Smith, H. Jeff, Tamara Dinev, and Heng Xu (2011), "Information Privacy Research: An Interdisciplinary Review," *MIS Quarterly*, 35(4), 989 – 1015.
[265] Empirically descriptive" studies are defined as "tests of theories/frameworks utilizing positivist, scientific methods"; *id*., p. 991.
[266] *Id*., p. 992.
[267] *Id*., pp. 994 – 995 (*e.g.*, "General privacy as a right"; "Privacy as a commodity"; "General privacy as a state"; and "General privacy as control").

discourse (*e.g.*, philosophical and legal debates), the lack of consensus among even privacy scholars is nevertheless at odds with the notion that *consumers* would have a common understanding of privacy. The authors write:[268]

> [I]t is widely recognized that, as a concept, privacy "is in disarray [and n]obody can articulate what it means." Numerous attempts have been made by social and legal scholars to bring together the different perspectives found in different fields. However, the picture that emerges is fragmented with concepts, definitions, and relationships that are inconsistent and neither fully developed nor empirically validated. [Citation omitted]

127. In considering how privacy relates to other constructs, Smith and colleagues (2011) summarize the various antecedents[269] and outcomes associated with individuals' "privacy concerns," what they consider the central concept in their model (reproduced in Figure 10 below).

(*Continues on next page*)

[268] *Ibid*. The excerpt quotes from a legal article by Daniel Solove (who is also cited in multiple conceptual sources referenced in the Turow Report), which opens: "Privacy is a concept in disarray. Nobody can articulate what it means. As one commentator has observed, privacy suffers from 'an embarrassment of meanings.' Privacy is far too vague a concept to guide adjudication and lawmaking, as abstract incantations of the importance of 'privacy' do not fare well when pitted against more concretely stated countervailing interests"; Solove, Daniel J. (2006), "A Taxonomy of Privacy," *University of Pennsylvania Law Review*, 477 – 564 (pp. 477 – 478). Solove (2006) then proceeds to outline a framework by which to understand privacy that focuses on more concrete, specific kinds of activities that violate privacy (*e.g.*, "I endeavor to shift focus away from the vague term 'privacy' and toward the specific activities that pose privacy problems. Although various attempts at explicating the meaning of 'privacy' have been made, few have attempted to identify privacy problems in a comprehensive and concrete manner.'"); *id*., pp. 481 – 482.
[269] That is, a variable that occurs before the independent variable being studied, which may help explain the relationship between the two variables.

Figure 10: Relationships Between Privacy and Other Constructs (Smith, Dinev, & Xu 2011) [270]

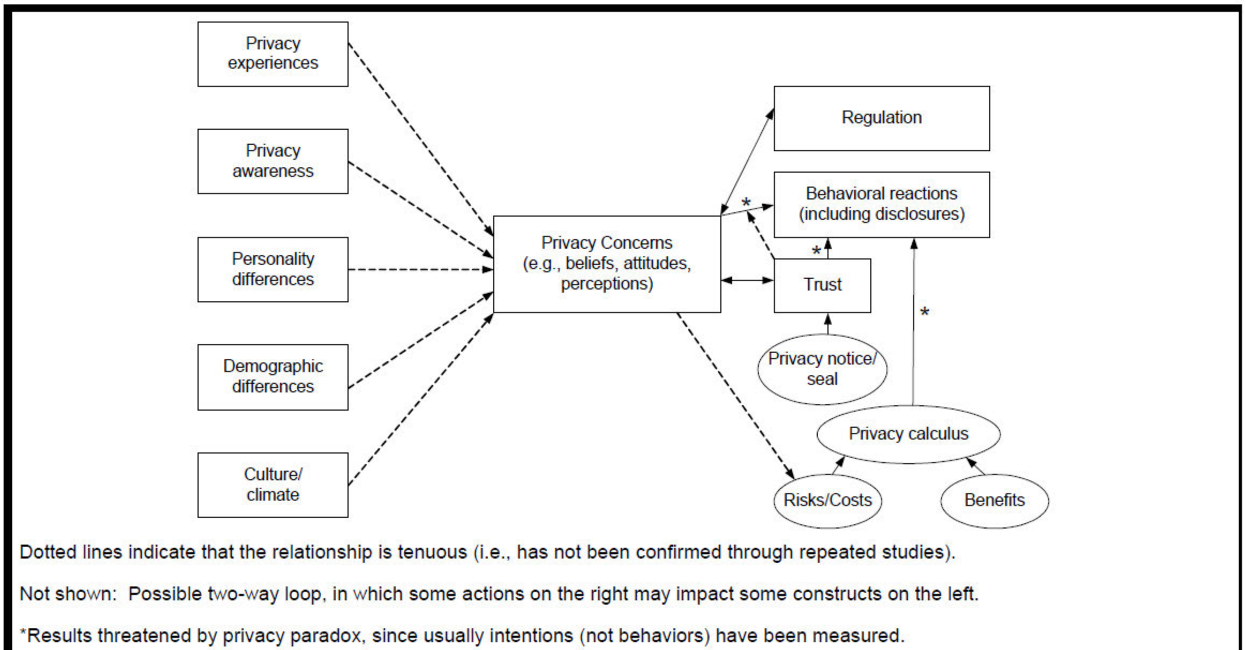

Figure 3. Relationships Between Privacy and Other Constructs: Antecedents → Privacy Concerns → Outcomes (APCO Macro Model)

128. As Figure 10 illustrates, the academic literature has identified a variety of different factors that affect consumers' perceptions, beliefs, and attitudes regarding privacy (*i.e.*, referred to in the figure as "privacy concerns"). Such factors range from individual-level personality, demographic, and cultural differences to the level of trust a person might have toward a focal entity.[271] For example, consumers who trust a firm or organization "are less concerned about their privacy and more willing to provide personal information."[272] Even when studied in the context of direct marketing activities (*i.e.*, a different context from that of CLEAR), Wang and Petrison (1993)[273] surveyed 1,000

[270] *See* Smith, Dinev, and Xu (2011), p. 8.
[271] *E.g.*, Sheehan, Kim Bartel (1999), "An Investigation of Gender Differences in Online Privacy Concerns and Resultant Behaviors," *Journal of Interactive Marketing*, 13(4), 24 – 38; Schoenbachler, Denise D. and Geoffrey L. Gordon (2002), "Trust and Customer Willingness to Provide Information in Database-Driven Relationship Marketing," *Journal of Interactive Marketing*, 16(3), 2 – 16.
[272] Smith, Dinev, and Xu (2011), p. 1000, citing to Schoenbachler and Gordon (2002).
[273] Wang, Paul and Lisa A. Petrison (1993), "Direct Marketing Activities and Personal Privacy: A Consumer Survey," *Journal of Direct Marketing*, 7(1), 7 – 19.

consumers and found evidence of considerable variation in perceptions, including attitudes about the use of information.[274]

129. The Turow Report fails to even acknowledge that individuals may differ in their beliefs or concerns about privacy based on such factors as those identified above (and others identified in Figure 10), let alone discuss how such factors may affect perceptions and preferences in the context of CLEAR.

130. As to Smith and colleagues' (2011) third research question of how much does "context" matter in the relationship between privacy and the other constructs shown in Figure 10, the authors proceed to directly review literature that focuses on the context-dependent nature of "privacy concerns." They begin by stating:[275]

> [M]any legal and social scholars (Altman 1975, 1977; Hirshleifer 1980; Laufer and Wolfe 1977; Lederer et al. 2004; Malhotra et al. 2004; Margulis 1977a, 2003a; Solove 2004, 2006, 2008; Waldo et al. 2007; Westin 1967, 2001, 2003) believe that general privacy—its conceptual understanding, rigorous definition, and the intensity of the individual and cultural beliefs it informs—is so dependent on the specific context that it is impossible to develop a one-size-fits-all conceptualization of general privacy. **Scholars have tended to conclude that it can mean different things to different individuals and, hence, the roots and consequences of its violation are also contextual** (Bennett 1992).
>
> […] Context could be related to the type or domain of the research construct (discipline), time (when), location (where), occupation (who), culture (with whom), and rationale (why).

131. The authors then review examples from privacy research in which different contexts, such as the type of information collected (*e.g.*, behavioral, financial, medical, biometric) and the use of information by sector (*e.g.*, healthcare, marketing, finance), have been found to differentially affect individuals' privacy-related beliefs.[276] Lastly, the article concludes with a discussion of overarching themes, including, inter alia, the

[274] *See, e.g., id*., pp. 7 ("A survey of 1,000 Chicago-area consumers suggests that concerns about privacy issues varies depending on the situation, the company conducting the marketing activities, and the consumer's own personal need for the products being sold. In addition, the survey found that certain kinds of consumers are more negative about potential threats to their privacy than are others.") & 12 ("These results appear to confirm the hypothesis that consumer attitudes about privacy are not black-and-white, and depend heavily on the issue being measured."). The article concludes that perceiving a *benefit* is key to consumers becoming more willing for marketers to use information about them; *see* p. 18.
[275] Smith, Dinev, and Xu (2011), p. 1002 [emphasis added].
[276] *See id.*, p. 1003 (noting that "consumers' beliefs and behavioral responses to privacy threats depend on the type of information requested").

benefits in transitioning from a "normative" to more "empirical" approach within privacy research. For example, the authors write:[277]

> A large body of normative studies of privacy has accumulated. Many of these offerings are politically engaging or emotionally charged with strong beliefs about the ethics and norms that underlie democratic societies. […] [R]igorous *empirically descriptive* studies that either trace processes with, or test implied assertions from, these value-laden arguments could add great value.

And:[278]

> [T]o the extent that the normative conclusions are viewed as enlightening and motivating events for empirical studies that *trace processes associated with the implementation of these normative conclusions or that test the impact on different outcomes*, their value rises enormously. For example, **an emotionally charged assertion such as "there is war on privacy" (e.g., Sobel 1976) or "the system is broken" (Turow 2003), or a lengthy normative debate regarding whether privacy should be viewed as a right or as a commodity will yield little additional insight**. The normative debates *themselves* are unlikely to inform us further in terms of privacy protection, but an examination of the positivist nomological models that link the normative conclusions to different outcomes, or the processes through which that linkage occurs, could prove quite instructive. [Emphasis added]

132. Taken together, empirical evidence—both cited and uncited in the Turow Report—show that conceptualizing privacy in a narrow, abstract, and prescriptive manner (as Dr. Turow does) fails to reliably describe and predict consumers' multi-faceted and context-specific perceptions and preferences in the real world. Instead, individuals' attitudes, beliefs, concerns, and valuations regarding privacy and the use of information about the self are often directly influenced by a range of factors, which must be carefully considered when seeking to apply to a particular circumstance (*e.g.*, the specific aspects that characterize CLEAR). The research reviewed above suggests that the putative class members are likely to harbor a diverse range of opinions and preferences about privacy and the collection or use of information about the self, including in the context of CLEAR, and would therefore be highly *unlikely* to experience any common, classwide harm due to CLEAR.[279]

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[277] *Id.*, p. 1005.
[278] *Id.*, p. 1006.
[279] In fact, Dr. Turow admitted at his deposition that there may be cases in which no "privacy harm" is inflicted; Turow Deposition, p. 105 ("[I]f a person allows for their data to be used, and that use is very

E.2. When Concluding that the Putative Class Members Were Commonly Injured, the Turow Report Fails to Account for How CLEAR's Various Use Cases (and Potential Benefits) Can Affect Consumers' Perceptions and Preferences

133. A key assumption in the Turow Report is that the harm done by CLEAR—through allegedly violating all Californians' privacy—outweighs the benefits (*i.e.*, Assumption 3 in Subsection D.2). Although Dr. Turow has focused on what he claims to be the (ill-defined) "harms" that arise from CLEAR, he does not mention, let alone analyze, any benefits that consumers could derive from the platform. In evaluating whether CLEAR has caused common classwide injury or harm, however, as even Dr. Turow appears to acknowledge in his report,[280] *both* sides of the equation—harm and benefit—must be considered. This is because consumers who are informed about CLEAR's use cases and possible benefits are highly likely to hold different and varying perceptions and preferences about CLEAR, including with respect to allowing their information to be collected and/or disseminated through CLEAR.

134. Dr. Turow evidently recognizes the various purposes for which CLEAR is used, stating the following:[281]

> The CLEAR home page lists a range of targeted 'use cases' for CLEAR (meaning how a particular customer is using the CLEAR product), including skip tracing, unemployment insurance, corporate security, fraud investigations of various types, contact tracing, risk-management, child and family services, and law enforcement investigations.

However, rather than attempt to discuss or dissect in any meaningful way these use cases, Dr. Turow merely proceeds to opine that "[t]he breadth of information available in CLEAR, and the variety of uses for which Thomson Reuters permits business and

specific and understood by the person and the parties involved, and used only in that situation, I would say there's no privacy harm, yes.").

[280] Turow Report, p. 4 ("I am further informed that in order to evaluate whether a business practice violates California's Unfair Competition Law, a court must weigh the harm to Californians **against the utility of the challenged business practice**" [emphasis added]).

[281] *Id.*, p. 12. Note that Dr. Turow conceded at his deposition that identity protection products benefit consumers; Turow Deposition, p. 240.

governmental entities to access information through CLEAR, cover many aspects of Californians' lives."[282]

135. Exhibit D to this *Rebuttal Expert Report* tabulates selected examples of CLEAR's use cases, including the type of customer using CLEAR and a brief description of the relevant outcome. As Exhibit D shows, the benefits derived from CLEAR can be broadly categorized into those affecting three groups: government agencies, corporate or business entities, and individuals. In the interest of brevity, I highlight below only a few examples in each category; importantly, the Turow Report fails to discuss or incorporate *any* such examples.[283]

136. *First*, various documents produced by Thomson Reuters indicate that at the government level, CLEAR has led to positive outcomes (and therefore has arguably benefited) a variety of agencies, including, but not limited to, law enforcement, child protective services, and veteran services. Given the richness of CLEAR's platform, investigators and government employees can use information relating to, for example, an

(*Continues on next page*)

[282] Turow Report, p. 13.
[283] At his deposition, Dr. Turow claimed, without substantiation, that "[p]otential benefits of the CLEAR platform are totally a hypothetical"; Turow Deposition, p. 270.

individual's phone number,[284] address,[285] geolocation,[286] and/or "known associates"[287] to identify and contact persons of interest. In fact, the data collected by CLEAR has been documented in multiple instances as being instrumental to law enforcement officers, who have used the platform to assist with many serious cases, including child abduction,[288]

(*Continues on next page*)

[284] *See, e.g.*, TR-BROOKS048964 ("A small Kentucky town was facing a rash of laced heroin overdoses. Authorities were able to target the courier, but not the supplier."; "Police were going to go undercover, but because the courier provided two phone numbers, they leveraged CLEAR and located an associate to the supplier. They located the supplier, arrested him and found he had possession of carfentanil, a highly potent opioid. Police were kept out of harm's way and they were able to successfully arrest multiple individuals who were responsible for this.").

[285] *See, e.g.*, TR-BROOKS048964 ("A homicide occurred in the city of Cheyenne, and the suspect fled the scene. They were able to reach her by phone, but couldn't triangulate her position well."; "Using CLEAR, they ran a search on her and reviewed her associate's addresses – one fell within the phone tower that the carrier provided. Surveillance was set to be established at the property, however the suspect and another person left the property, causing a mobile surveillance to occur. A traffic stop was conducted and the suspect was taken into custody without incident 4 hours after the crime was committed.").

[286] *See, e.g.*, TR-BROOKS046643 ("[redacted], who is a federal criminal investigator, was tipped off about an individual who was physically and sexually harming a child under the age of thirteen, for five years. By only having an image with latitude and longitude coordinates, [redacted] and her colleagues used CLEAR to geo-locate the subject and his various residences. Once the addresses were established, they performed a reverse address search to identify the subject and other family members. [redacted] also used CLEAR to locate the minor.").

[287] *See, e.g.*, TR-BROOKS046652 ("A fugitive was wanted for two separate homicides that occurred 15 years ago. They assumed a new alias and was nearly impossible to locate."; "Using CLEAR's associate analytics [redacted] identified that the fugitive's brother had a new address (though he was also currently incarcerated). With this information, [redacted] and his team was able to locate the fugitive and are starting the extradition process."). "Associates" are defined as "persons who are linked to one or more of the search subject's addresses"; *see* Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, p. 7.

[288] *See, e.g.*, TR-BROOKS060419 ("An 11 month old child with sickle cell anemia was at a physician's office with her foster mother. The biological mother, who is a reported narcotics user, also attended the visit, but then abducted the child."; "Within 3 hours of being notified, Jason and his team used CLEAR to locate the abductor's home, and arrested her. The child was brought to the hospital, treated and given necessary medication, and returned to her foster mother.").

sexual exploitation of children,[289] rape and sexual assault,[290] criminal investigations,[291] and financial scams.[292] Were consumers made aware of the multiple ways in which CLEAR assisted law enforcement officers with their efforts to apprehend (often dangerous) criminals, at least some putative class members would likely perceive benefits due to the product, including indirect benefits in the form of improved community safety.

137. In addition to law enforcement, CLEAR has been widely used by a variety of government organizations to help vulnerable individuals. For example, child and family services organizations such as the [redacted] have used information from the platform to locate absentee parents and/or parents who owe child support.[293] Similarly, the [redacted] has used CLEAR to find the most current address of children who might be in an abusive household, so that social workers can check on them and potentially save them before the

[289] *See, e.g.*, TR-BROOKS102898 ("John and his team conducted a two-year investigation of a doctor who was using Yahoo to communicate with others regarding sexual exploitation of minors via Skype chat."; "The team used CLEAR Web Analytics to identify the people behind the Yahoo user ids, which has led to the arrest of two men for sexually exploiting minors.").

[290] *See, e.g.*, TR-BROOKS046650 ("Attempting to identify a suspect who held a woman against her will and raped her with very limited information."; "Analysts shared their information with the detective bureau. The lead detective agreed that the information was compelling and brought the victim in to look at a photo array. As soon as the victim saw his photo, she pointed right to him and exclaimed, 'That's him!' He was arrested and charged with kidnapping, assault and battery, aggravated rape, and indecent assault and battery.").

[291] *See, e.g.*, TR-BROOKS049908 ("As the Criminal Investigator for the [redacted] I was asked to review and work on a March 25, 1969 Homicide cold case."; "I was able to interview and re-interview witness's [*sic*] many of whom came forward with new and pertinent information about our living suspect. I have been able to follow this suspect through many different states, marriages and keep up on current information about this suspect. The information gained through Clear also allow our office to forward the case with a current witness list on to our State Attorney Generals [*sic*] office for possible future prosecution.").

[292] *See, e.g.*, TR-BROOKS044782 ("I had 2 elderly woman who worked their entire lives as civil servants. All they had to show for their hard work was a home. A man who only gave a nickname showed up at their door with promises and cash in a paper bag. He gave them hope to save their home from foreclosure but instead stole their title and then moved to evict them. They had lost everything. The home they worked so hard for and the 15k in cash they had deposited to the new home in Mississippi. All but gone!"; "I found 'Alex,' gathered enough evidence to make an arrest and he was indicted and found guilty of all charges. One of the conditions the prosecutors asked for was the return of property title to the 2 very frail elderly woman or financial restitution of over one million dollars to compensate the true value of the home he had stolen from them.").

[293] *See, e.g.*, TR-BROOKS046655; TR-BROOKS046633; TR-BROOKS046636; TR-BROOKS049566.

abuse worsens.[294] Likewise, the Department of Veterans Affairs has used CLEAR to locate veterans who are missing their financial support due to a change of address. In one particular case, the Department of Veterans Affairs successfully used CLEAR to locate a veteran who was missing $31,317 in disability compensation.[295]

138. *Second*, beyond benefits for the government, various documents in this litigation provide examples of how CLEAR can help corporations prevent financial crimes, verify customers, and protect employees. Financial institutions such as commercial banks are required to conduct due diligence on customers to ensure that the sources of their money are not from illicit activities.[296] Using CLEAR, banks can conduct background checks on individuals and their associates to, for example, verify that their customers are not sourcing their funds from money laundering activities, or to enforce sanctions on prohibited businesses.[297] As a result, corporate use of CLEAR can also be perceived by consumers as benefitting society by helping the government enforce laws against, or even directly preventing, financial crimes.

139. In addition to due diligence, businesses use CLEAR to ensure that they are not selling to the wrong individuals. Because of restrictions on certain types of products, businesses frequently need to verify the identity of their customers, so that the products are not sold to someone who is underage or resides in a state where the product is outlawed. For example, online alcohol vendors can use CLEAR to verify that the buyer is of legal age, and online cannabis distributors can use CLEAR to ascertain the age and residence of the customer to ensure that they are compliant with state laws.[298]

140. Lastly, organizations can also use CLEAR for corporate security. For example, sports teams can use CLEAR to investigate threats made to players and staff

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[294] *See, e.g.*, TR-BROOKS049889; TR-BROOKS060418.
[295] TR-BROOKS046653.
[296] *See, e.g.*, https://legal.thomsonreuters.com/en/insights/articles/customer-due-diligence-rule-the-financial-industrys-new-role-of-law-enforcement.
[297] *See, e.g.*, TR-BROOKS055751; TR-BROOKS055760; TR-BROOKS055762.
[298] TR-BROOKS055702.

members as well as to conduct due diligence on venues like away game hotels and transportation companies to ensure the safety of their players.[299] Similarly, churches can use CLEAR to investigate threats made against pastors and to enhance their safety when they travel by verifying partner organizations.[300]

141. *Third*, and importantly, evidence in this litigation indicates that CLEAR not only provides benefits for government and corporate use, but can also improve the well-being of individuals. In one case, a member of the military noticed that his high school friend, who was recently discharged from the Marines, published a suicide note on his Facebook account. Knowing only his friend's last name and hometown, the military member contacted the [redacted], which then used CLEAR to locate the friend.[301] According to the [redacted] agent who handled this case, "I was able to ascertain [the friend's] current location, a local VA Hospital where he was a patient, and contacted the local police who responded and stopped the member from taking his own life."[302]

142. Consumers who are provided a complete picture of CLEAR may perceive indirect benefits to individuals (including themselves) by the product's ability to assist with catching "bad actors" in a neighborhood or community, as well as to "clear" from suspicion and further investigation or scrutiny individuals who are not engaged in wrongdoing. That is, by helping law enforcement and other government agencies identify and apprehend violent criminals, child molesters, and rapists, CLEAR may be viewed as a mechanism or tool to improve the overall safety of every member of that community. However, Dr. Turow ignored all beneficial aspects (either actual or potential) of CLEAR for consumers when forming his conclusion that the product commonly harmed the putative class members.

[299] TR-BROOKS055704.
[300] TR-BROOKS055706.
[301] TR-BROOKS060413.
[302] *Ibid*.

143. *Finally*, it is important to note that what is considered harmful and beneficial due to CLEAR is dependent upon the subject (or putative class member). For example, some individuals who would be "harmed" by CLEAR are sex traffickers, child molesters, fugitives, other criminals, and bad actors in society; such individuals would presumably not "consent" to having their information collected and/or disseminated through CLEAR. In this sense, the "harm" afflicted on those individuals can serve as—and be perceived by putative class members as serving—a benefit to the rest of the community and society at large.

E.3. <u>When Concluding that the Putative Class Members Were Commonly Injured, the Turow Report Fails to Account for How CLEAR's Various Safeguards Can Affect Consumers' Perceptions and Preferences</u>

144. In addition to ignoring *all* of CLEAR's benefits (even potential benefits), Dr. Turow overlooks the numerous safeguards put in place by Thomson Reuters to mitigate potential harm in connection with CLEAR. The existence of such safeguards is highly relevant in evaluating whether the putative class members commonly suffered harm on a classwide basis, as such information can directly inform and guide consumers' perceptions and preferences regarding privacy and the collection and/or dissemination, of information about them. That is, consumers who are provided a proper description of CLEAR—including not only its potential benefits but also its various safeguards—are unlikely to commonly object to, be concerned with, or expect specific compensation from the inclusion and/or dissemination of their information through CLEAR.

145. Dr. Turow asserts, when summarizing his opinions, that he has considered "the protections in place (or lack thereof) regarding the use of information for 'permissible' purposes."[303] However, he subsequently challenges the notion that CLEAR has safeguards to ensure permissible use, stating only that "[he has] seen no evidence that

[303] Turow Report, p. 5.

Thomson Reuters investigates that a customer's use is, in fact, permissible."[304] Similarly, Dr. Turow writes that CLEAR has "rules about client data use that are not difficult to circumvent."[305] The Turow Report fails to provide any accompanying substantiation or examples for either of the above claims. Nor does Dr. Turow define any objective standard or criteria that he followed to reach the conclusion that CLEAR's rules are "not difficult to circumvent." By contrast, as I highlight below, the documents produced in this matter detail several mechanisms that are designed—and are routinely used—as "checks" against misuse of CLEAR.

146. *First*, as one layer of attempting to ensure responsible use of CLEAR, Thomson Reuters only makes CLEAR available to government organizations and businesses who are credentialed and who certify, for every search they conduct, a "permissible purpose" (or permissible use) under applicable regulations.[306] Customers are prohibited from using CLEAR for marketing purposes (*e.g.*, creating mailing lists, soliciting clients, or other activities)[307] or for any purpose "authorized under the FCRA [Fair Credit Reporting Act],"[308] such as "pre- and post-employment screening, consumer credit, housing, including ongoing eligibility, insurance, or eligibility for government benefits."[309]

147. Beginning with the onboarding process, potential customers must first complete an "Account Validation and Credentialing" application, where they describe how they plan to use the platform.[310] If a reviewer suspects the applicant could misuse the platform, the application is subject to rejection by the Public Records Compliance Team.[311]

[304] *Id.* p. 14.
[305] *Id.* p. 22.
[306] *See, e.g.*, Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 1 – 2.
[307] *Id.*, p. 3.
[308] *Ibid.*
[309] *Id.*., pp. 3 – 4.
[310] *See* TR-BROOKS018645 for an example of an approved form.
[311] TR-BROOKS305113 ("The primary goal of the Public Records Compliance Team's is to ensure that our investigative products are used by LEGITIMATE ENTITIES with a PERMITTED USE CASE with a demonstrable PERMISSIBLE USE under the applicable regulations. The Team accomplishes this goal

In fact, based on the Public Records Compliance Overview reports that are published on a monthly basis, Thomson Reuters regularly rejects new applications. During the one-year period between October 2020 and September 2021, CLEAR's reviewers have denied new data requests in 10 out of 12 months.[312]

148. *Second*, after completing the review process, customers who are approved must then undergo training to, among other things, learn what are the permissible and non-permissible uses of the CLEAR platform.[313] These customers are further required to sign a contract promising not to violate CLEAR's guidelines and are periodically required to reaffirm their commitment.[314] In fact, every time a customer conducts a search using CLEAR, they are reminded of the appropriate use of the platform.[315] Thomson Reuters's

through a variety of activities such as training sessions, documented guidance, and conducting investigations of alleged misuse. More and more, they conduct a variety of proactive reviews on both new and existing customers.").

[312] [redacted]

[313] TR-BROOKS001363, p. 8 ("1. Marketing solicitation: No use of this information for creating mailing lists, soliciting clients, or any other marketing efforts; 2. FCRA (Fair Credit Reporting Act): No personal background checks, including but not limited to: Pre- and post-employment screening, including screening for volunteers, consumer credit, housing eligibility, insurance, eligibility for government benefits; 3. Sharing passwords: All searches are connected to your account, so you are ultimately responsible for anyone searching with your password; 4. Automated searching (Scripting): No automated or mechanical searching, product is intended for use by a person performing one search at a time; 5. Unauthorized searching for people: A permissible use under the law and a legitimate business purposes are required").

[314] *See Kidd v. Thomson Reuters Corporation*, 925 F.3d 99 (2019), p. 9.

[315] *See, e.g.*, Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, pp. 1 – 2.

compliance program also includes "employee mandatory compliance training at least every two years and regular ongoing training"[316] and "a re-credentialing process where, every two years, customers must reaffirm their legitimate use case and recertify that they will not use CLEAR for any FCRA or other prohibited purpose."[317]

149. *Third*, as an added safeguard, Thomson Reuters proactively reviews past data requests to ensure that existing customers are continuously compliant with the guidelines. Specifically, auditors select past data requests randomly or by customer type to investigate potential misuses of the platform.[318] With limited exceptions (*e.g.*, local, state, and federal law enforcement agents with arrest powers), customers are required to have onsite inspections as part of the credentialing and auditing process.[319] Customers who have misused CLEAR, such as searching for individuals beyond the scope of their request, are subject to termination of their account. According to a compliance report for 2020 ("Public Records Compliance 2020 Review"), the audit team declined over [redacted] in contract revenues based on the results of their proactive reviews.[320]

150. *Fourth*, in addition to screening and reviewing compliance among new and existing customers, Thomson Reuters has a Privacy Office dedicated to tracking changes in laws and regulations to ensure that its guidelines are compliant and up to date.[321] CLEAR

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[316] *Id.*, p. 5.
[317] *Ibid.*
[318] TR-BROOKS304709, p. 1 ("The purpose of the Public Records Customer Audit Program is to: Provide an extra level of oversight and monitoring over the entire customer lifecycle to ensure customers are using our Public Records Products appropriately and in accordance with all contractual and regulatory requirements; Protect the data we are entrusted with; Ensure customers are not using the products for prohibited purposes; and Enhance our current re-credentialing and Real Time Monitoring processes where we re-validate customers are who they say they are and proactively monitor customers' usage.").
[319] *See* TR-BROOKS276443, p. 24. *See also* Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, p. 1.
[320] TR-BROOKS305113. The report also states: "Though we have declined [redacted] in contracts we believe that is a small price to pay relative to the potential damage that could have resulted from allowing those accounts to have or continue access"; *id.*, p. 4. *See also* TR-BROOKS295350 (Public Records 2020 Review), documenting on a monthly basis new accounts (and corresponding revenues) that were approved or denied, existing customers (and corresponding revenues) who were approved or terminated, as well as entry logs explaining the reason for escalation and describing the compliance outcome.
[321] TR-BROOKS290121, p. 8 ("Thomson Reuters has a global team of certified security and privacy

not only has general compliance requirements, but also vendor-specific (*e.g.,* Google Maps)[322] as well as state-specific (*e.g.*, California Sex Offender Registry)[323] requirements to ensure that the platform and its customers are compliant with all changes in privacy law.

151. *Fifth*, the information itself that is available through CLEAR is subject to various limitations, license agreement terms, and internal security protocols. For example, customers could view different types of information depending on a range of different factors.[324] Further, information available in CLEAR that is obtained by Thomson Reuters from third parties is further subject to the terms of data license agreements, which may "further address confidentiality and treatment of data that is the subject of those licenses."[325] Those data fields associated with [redacted] are encrypted by Thomson Reuters with its own key.[326] More generally, the CLEAR software is subject to Thomson Reuters's encryption procedures and other information security practices (*e.g.*, the use for multi-factor authentication for user login).[327]

152. In his report, Dr. Turow raises the possibility of conducting a search that results in viewing information about individuals unrelated to the purpose of one's

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subject matter experts dedicated to the security of Thomson Reuters products and services. This extended team is committed to our Information Security Risk Management program, which is endorsed by the Thomson Reuters Executive Committee. Our strategy is to use a risk-based approach aligned with the International Organization for Standardization (ISO) Framework to address our compliance requirements.").

[322] TR-BROOKS000610, p. 8 ("You understand and agree that your use of any Google mapping functionality will at all time comply with Google's Terms of Service (http://maps.google.com/help/terms_maps.html) and all applicable Google legal notices (http://maps.google.com/help/legalnotices_maps.html)").

[323] *Id.*, p. 4 ("Data from California Sex Offender Registry may only be used to protect a person at risk and may not be used as the basis to take any adverse action against a person, including without limitation, using the data for purposes related to: (a) health insurance, (b) insurance, (c) loans, (d) credit, (e) employment, (f) education, scholarships, or fellowships, (g) housing or accommodations, or (h) benefits, privileges, or services provided by any business establishment.").

[324] Thomson Reuters's Responses to First Set of Interrogatories, Attachment A, p. 6.

[325] *Id.*, p. 8.

[326] *Ibid.*

[327] *Ibid.*; *see also, e.g.*, TR-BROOKS020809; Godlewski Deposition, p. 179; TR-BROOKS030530; TR-BROOKS070585.

investigation, which he argues is both unrelated to the original permissible use and creates privacy concerns for all Californians whose information is available via the CLEAR platform.[328] However, Dr. Turow's scenario is not only hypothetical and speculative but also ignores the fact that depending on the specific parameters entered into a search, the process of narrowing down the individual of interest may inevitably involve viewing information from more than one individual (*e.g.*, a search to identify a suspect named "John Smith" will likely yield multiple such "John Smith"s). Moreover, given the aforementioned multiple layers of CLEAR's safeguards and checks, activities whereby customers perform "impermissible" searches (*i.e.*, that are determined to not relate to their selected permissible use) are *unlikely* to occur. Considered in light of the various checks along different steps of a customer's onboarding and usage of CLEAR, customers who intentionally violate CLEAR's guidelines, such as by conducting a search that does not relate to their selected permissible use or that does not comply with applicable regulations, would likely be discovered in the proactive review process and would accordingly have their accounts terminated.[329]

153. Overall, the numerous safeguards and checks placed by Thomson Reuters on *which* customers can access CLEAR and *how* they can use CLEAR mean that an accurate assessment of consumers' perceptions and preferences regarding privacy must evaluate such perceptions and preferences *in the context* of these safeguards. The Turow Report

[328] Turow Report, p. 14 ("In addition, although it seems that the 'permissible use' may be tied to the person the customer initially looks up, a customer may nevertheless run a 'person search' in a way that results in that customer viewing information that pertains to other individuals unrelated to the target of their investigation (and accordingly, unrelated to the customer's selected permissible use) [FNs omitted]."). Dr. Turow cites to deposition testimony from Steven Fox ("The end user has selected permissible uses that cover their investigation. And in the course of that investigation, they may – in the course of narrowing down to the subject of their investigation, they may encounter, you know, other descriptions of other entities until they get to the point of the subject of their investigation. But that session in CLEAR is per the permissible use selected by the end user when they went into the product and are running their search criteria"). However, this testimony merely describes a process of elimination in the course of an investigation and does *not* support Dr. Turow's claim that the hypothetical CLEAR customer in question would view information about individuals who are "unrelated to the customer's selected permissible use," and would therefore violate his/her permissible use.
[329] Based also on my September 1, 2022 Interview.

not only provides *no* substantiation for the opinion that Thomson Reuters's safeguards are "not difficult to circumvent"[330] but also Dr. Turow fails to even acknowledge, let alone analyze, the notion that the putative class members' reactions to CLEAR would vary with awareness of the product's multiple systems to prevent or counteract potential misuse. In fact, it is likely that at least some putative class members who are informed about CLEAR's various potential benefits and safeguards would *prefer* to (or even be willing to pay to) have information collected and/or disseminated through CLEAR. Dr. Turow did not empirically test, evaluate in some other manner, or even consider this possibility.[331]

E.4. <u>The Turow Report Ignores the Existence in the Marketplace of Many Products Analogous to CLEAR and the Likely Impact on Consumers' Perceptions, Expectations, and Preferences</u>

154. As the preceding two subsections indicate, CLEAR is not a platform that simply grants customers a "blank check" to conduct searches at their discretion and without regard for existing legal and regulatory protections. CLEAR also is not made available to marketers and does not commercialize individuals' information for advertising purposes. Rather, documents produced in this litigation indicate that CLEAR's use cases (designed to, as one of many examples, enhance security and safety for individuals and communities) and multiple safeguards (designed to mitigate and prevent potential misuse) are likely to lead many consumers to perceive the platform's benefits. Such consumers are less likely to object or react negatively to their information being collected and/or disseminated through CLEAR.

155. Not only does the Turow Report ignore the possibility that some putative class members are likely to believe that they benefited from (or could benefit from), rather than were harmed by, CLEAR, but Dr. Turow also assumes that all class members

[330] Turow Report, p. 22.
[331] When asked whether he took into account any of CLEAR's safeguards when forming his opinion, Dr. Turow testified that he "realized that from the standpoint of [his] theme, they were not relevant," but did not provide any substantiation for this claim; Turow Deposition, p. 306.

would be "blindsided by the unknown and unwanted collection and use of information about themselves"[332] and would, as he testified, "freak out"[333] upon learning about CLEAR. Such an unsubstantiated assertion is at odds with both the evidence reviewed previously and with many consumers' likely expectations about the use of their information in the current digital marketplace and era of "Big Data."[334] Even if consumers do not know about CLEAR, they are likely to have encountered analogous data aggregation platforms that are targeted to consumers and businesses (*see* Table 3 below for examples). Note that two of the platforms listed below, Equifax and TransUnion, are also vendors that supply data to Thomson Reuters for inclusion in CLEAR (subject to licensing agreements).[335]

Table 3: Examples of Data Aggregation Platforms Targeted to Consumers and Businesses

Name	Website	Type/Description
Equifax	www.equifax.com	Credit Report Agency
PeekYou	www.peekyou.com	People Search Engine
Peoplefinders	www.peoplefinders.com	Public Records Database
PeopleSmart	www.peoplesmart.com	B2B Database
Publicrecords	www.publicrecords.com	Public Records Database
RocketReach	www.rocketreach.co	B2B Database
TransUnion	www.transunion.com	Credit Report Agency
USsearch	www.ussearch.com	Public Records Database
Whitepages	www.whitepages.com	Public Records Database
ZoomInfo	www.zoominfo.com	B2B Database

156. Companies like ZoomInfo and RocketReach frequently appear at the top of Google results when searching for the names of business professionals. These platforms market themselves as helping users find the contact information of relevant individuals

[332] Turow Report, p. 15.
[333] Turow Deposition, p. 153.
[334] *See, e.g.*, Matz, Sandra C. and Oded Netzer (2017), "Using Big Data as a Window into Consumers' Psychology," *Current Opinion in Behavioral Sciences*, 18, 7 – 12.
[335] *See, e.g.*, TR-BROOKS037466 (Data License Agreement – Equifax); TR-BROOKS039253 (Data License Agreement – TransUnion). I understand that TransUnion's TLOxp platform (*see* https://www.tlo.com/) is considered by Thomson Reuters as offering a similar or comparable platform in terms of data aggregation; September 1, 2022 Interview.

within an organization, so that users can learn whom to contact in order to conduct business with a potential vendor or customer.

157. For example, ZoomInfo collects and aggregates the name, email, phone number, work address, and company name of individuals to create searchable profiles on their platform.[336] Part of the data collection process involves automated machine learning that scrapes publicly available information of individuals from "corporate websites, press releases, news articles, Security and Exchange Commission filings, job postings, and other online sources for data about industries, locations, revenue, and other company attributes."[337]

158. Similarly, RocketReach collects the contact information of working professionals by collecting publicly-available information on search engines.[338] According to the company's disclosure page: "Professional profiles are generated by tying together 100s of pieces of data using learning algorithms. By connecting the dots in this fashion, we're able to derive an accurate composite profile to allow opportunities to find you."[339]

159. In addition, consumers are also likely to be familiar with credit reporting agencies, such as Equifax and TransUnion. These services aggregate information on consumers to calculate credit scores and provide credit reports. Such information not only includes demographic information like age, race, ethnicity, religion, marital status, political

[336] "ZoomInfo creates profiles of business people and companies, which we call 'Public Profiles,' from different sources. Once we have collected business information about a person or company, we combine multiple mentions of the same person or company into a Public Profile. The resulting directory of Public Profiles is then made available to the users of the site and our customers and strategic partners."; https://www.zoominfo.com/b2b/faqs/data/how-does-zoominfo-get-my-info.
[337] *Ibid.*
[338] "Our service used by professionals to find other professionals. It is designed to open opportunities for you by connecting you with your next job, career opportunity or customer. To this end, we've created a professionally focused search index which you are a part of. This index is generated from publicly sourced data in a similar fashion to search engines like Google and Bing."; https://knowledgebase.rocketreach.co/hc/en-us/articles/234810007-How-did-my-profile-get-on-RocketReach-.
[339] *Ibid.*

party affiliation, country of origin, spoken language, and gender, but also identifying information, such as name, social security number, and device IP address.[340]

160. Notably, some types of information are collected directly from consumers, while some are collected indirectly, *without* explicit consent. For example, Equifax uses indirect collection methods using devices, browsers, third-party data providers, and public records.[341] Similarly, TransUnion collects some information indirectly including IP address, geographical information, domain information, and internet service provider.[342]

161. Indeed, as Dr. Turow repeatedly testified to during his deposition, activities such as aggregating data and "connect[ing] huge numbers of data points about people"[343] are pervasive and practiced by "millions" of companies.[344] Dr. Turow further testified:[345]

> Q. So is it true that it is lawful and common for websites to trade most types of information about us without asking?
> A. Yes.
> Q. And does that diminish a person's right to control their information?
> A. It does.
> Q. And also, it diminishes a person's right to be let alone?
> A. By extension.

162. The prevalence of data aggregation companies in the marketplace suggests that at least some of the putative class members would be aware of the existence of businesses that gather data about them and/or disseminate such data without paying them. Such knowledge would reduce the likelihood that the putative class members would be commonly surprised or "blindsided" with, dissatisfied with, or would expect

[340] *See, e.g.*, https://www.transunion.com/privacy/transunion.
[341] "We collect information that identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or device ('personal information')"; https://www.equifax.com/privacy/privacy-statement/#CaliforniaResidents.
[342] *See* https://www.transunion.com/privacy/transunion.
[343] Turow Deposition, p. 65.
[344] *Id.*, p. 66 ("Q. And is this a common practice? A. It happens every minute. It's happening as we speak. Q. By how many companies? A. Millions. Q. And this interferes with people's right to control their information? A. Yes, it does. Q. And it violates their right to be let alone? A. Yes, it does."). *See also id.*, p. 68 ("Q. […] How common is [marketing discrimination] now? A. With some – some caveats, very common. Q. What do you mean by 'very common'? A. This happens every day, all the time. Q. And it violates people's right to control their information? A. It has that implication, yes. Q. And it violates their right to be let alone? A. Uh-huh. Yes.").
[345] *Id.*, p. 82.

compensation for having information about them collected and/or disseminated through data aggregators like CLEAR.

F. FSG'S MODEL TO ASSESS MONETARY RELIEF IS *NOT* RELATED TO DR. TUROW'S OPINIONS, AND FSG FAILS TO PROPOSE ANY METHODOLOGY FOR APPORTIONING MONETARY RELIEF ACROSS THE PUTATIVE CLASS

163. I have reviewed FSG's report in this matter and was asked to evaluate: (*i*) whether it relates to the opinions set forth in the Turow Report; and (*ii*) whether the FSG Report proposes any methodology that could be used to apportion monetary relief across the putative class members.[346]

164. The FSG's report was prepared by Mr. Lloyd, who writes the following regarding his assignment:[347]

> On behalf of FSG, I have been asked to evaluate the feasibility of calculating the total net profits that Thomson Reuters has derived since December 3, 2017, in connection with making information about California residents available through CLEAR.
>
> As detailed below, I have concluded that it is possible to calculate Thomson Reuters's net profits attributable to using and selling Californians' data through CLEAR. […]

165. Based on his "net profit" calculations,[348] Mr. Lloyd opines:[349]

> I have concluded that it is possible to calculate Thomson Reuters's net profits attributable to using and selling Californians' data through CLEAR. Based on publicly available information and discovery produced to date, I have structured a calculation, consistent with standard methodology, for determining these net profits dating back to December 2017, which shows total net profits of approximately [redacted] million as of the end of 2021.

166. In the next two subsections, I substantiate and explain each of my conclusions regarding the FSG Report: (*i*) the FSG Report fails to relate an assessment of monetary relief to any opinions in the Turow Report; and (*ii*) the FSG report does *not* specify any methodology for apportioning monetary relief across the putative class

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[346] Although my professional opinion is that the FSG Report is flawed in multiple other respects, I focus my evaluation on these two questions.
[347] FSG Report, p. 1.
[348] Note that according to Mr. Lloyd, the term "net profit" used throughout his report is "what an accountant or financial analyst would more likely call 'gross margin,' 'gross profit,' or 'incremental profit'" [FN omitted]; *id*., pp. 7 – 8.
[349] *Ibid*.

members, and in fact does not appear to speak to damage to putative class members at all, only to "net profits."

F.1. The FSG Report Fails to Relate an Assessment of Monetary Relief to Any Opinions Outlined in the Turow Report

167. My analysis of the FSG Report indicates that Mr. Lloyd did *not* make any attempt to relate his assessment of monetary relief to any of the opinions, conclusions, or assumptions set forth in the Turow Report. Although Mr. Lloyd notes in passing that his understanding of Thomson Reuters's operation of CLEAR comes from various materials reviewed in this litigation, including "the report of Professor Turow,"[350] he does not otherwise cite to or rely on *any* of Dr. Turow's conclusions when calculating his estimate.[351] Instead, Mr. Lloyd arrives at a "total net profits" figure of [redacted] million (from December 2017 to the end of 2021)[352] by performing the following series of "calculations" or "analyses" (while making various assumptions[353] along the way):

- listing Thomson Reuters's total reported (global) revenues generated from CLEAR between 2017 to 2021;[354]
- narrowing down Thomson Reuters's global revenues (from CLEAR) into those attributable to "natural persons [living] in California,"[355] and arriving at the conclusion (after various assumptions) that California accounts for

[350] *Id.*, p. 5 & FN 14.
[351] At his deposition, Mr. Lloyd testified that the Turow Report was "contextual" with respect to better understanding the issues underlying this litigation; August 22, 2022 Deposition of Terry Lloyd (hereinafter, "Lloyd Deposition"), p. 262 ("Q. How does your report relate to this report from Professor Turow? A. This report provides some context that addresses the issues that you and I discussed a few minutes ago. It's contextual for me. We were assigned to do different things. But I found it informative at least as it relates to the case and data and privacy and those issues."). Mr. Lloyd could not summarize the opinions reflected in the Turow Report; *ibid.*, ("Q. Can you summarize the opinions that you believe are reflected in Mr. Turow's report? A. No. Q. 'No' you can't or 'no' you won't? A. No, I can't. I think the document would speak for itself and any attempt to have me characterize it or summarize would not be useful.").
[352] *See, e.g.*, FSG Report, p. 1.
[353] The FSG Report makes a number of unsubstantiated, flawed assumptions; although I do not discuss them in this *Expert Report*, I reserve the right to opine on these assumptions if called upon to testify at a deposition or hearing.
[354] *See* FSG Report, p. 10.
[355] *Id.*, p. 11.

[redacted] of U.S. CLEAR revenues[356] and that [redacted] of CLEAR searches relate to individuals;[357]

- using [redacted] (ostensibly based on various discovery documents) as the figure for "relevant marginal costs incurred by Thomson Reuters on CLEAR"[358] (after claiming that "the only marginal costs for CLEAR are royalties that Thomson Reuters pays to other vendors for data made available through CLEAR,[359] and that Thomson Reuters's "flat fee royalty costs" cannot be considered marginal costs);[360]
- multiplying the gross revenues (*i.e.*, based on California natural persons) by the supposed [redacted] profit margin (*i.e.*, 100% minus the [redacted] "marginal cost" estimate) to obtain "net profits";[361] and
- calculating a "cumulative total" by adding up the net profits for 2017 through 2021,[362] which adds up to [redacted] million.[363]

168. In the present litigation, Mr. Lloyd himself admits that the "net profits" that the Plaintiffs may recover must be *attributable to the alleged misconduct*:[364]

> I am informed that California law generally allows plaintiffs to recover the net profits of the defendant that are attributable to the alleged misconduct. [FN omitted]

169. However, in assessing monetary relief, Mr. Lloyd does *not* rely on any empirical findings that common, classwide harm has in fact been inflicted (as the Turow Report argues was the case for CLEAR). The FSG Report, for example, does not even mention the words "privacy" or "control" (*e.g.*, control of "one's personal information") once, despite the fact that both concepts were central to Dr. Turow's argument that the

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[356] *Id.*, p. 10.
[357] *Id.*, p. 14.
[358] *Id.*, p. 17.
[359] *Id.*, p. 16.
[360] *Id.*, p. 17.
[361] *Ibid.*
[362] *Id.*, p. 18.
[363] *Id.*, pp. 18 – 19.
[364] *Id.*, p. 2.

putative class members suffered common harm because their privacy rights were violated by CLEAR. Instead, with only a brief reference to the Plaintiffs' *Complaint* and general allegations,[365] the FSG Report does *not* offer any opinion as to whether the putative class members have suffered any harm at all. Overall, the FSG Report essentially ignores the Turow Report and does *not* rely on Dr. Turow's opinions.

F.2. <u>The FSG Report Does *Not* Specify Any Methodology for Apportioning Monetary Relief Across the Putative Class Members</u>

170. As Mr. Lloyd testified at his deposition, his report does *not* address the question of how to ultimately allocate or apportion monetary relief (*i.e.*, the revenues to be "disgorged" from CLEAR) across the putative class members.[366] If Mr. Lloyd were to try to apportion damages, as explained below, the Plaintiffs would need to conduct an investigation into *individual* putative class members to determine whether a given class member in fact suffered a bad outcome or perceived that they were harmed in any way as a result of information about them being collected and/or disseminated through CLEAR.[367] More specifically, to apportion damages requires an individualized investigation of putative class member's perceptions and preferences with respect to the collection and/or dissemination of information through CLEAR. This is because it would *not* be appropriate to assume common classwide harm (as Dr. Turow does in his report),

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[365] *See ibid*. ("I have reviewed the complaint that the Plaintiffs filed in this case, and I am generally familiar with their allegations against Thomson Reuters, namely that through CLEAR, Thomson Reuters collects personal data about Californians, without their consent, and profits by making that personal information available for sale to Thomson Reuters's customers. Thomson Reuters has not shared those profits with the Californians whose information may be accessible through CLEAR at any given time.").

[366] Lloyd Deposition, p. 96 ("Q. Were you asked to form an opinion about how to divide up the revenues to be disgorged from CLEAR? A. No. Q. And your opinion expresses no opinion on that? A. My opinion expresses no opinion about the division of revenues at all.").

[367] At his deposition, Mr. Lloyd indicated that his model would not distinguish between data that was collected, disseminated or accessed, versus sold through CLEAR; *id.*, p. 278 ("Q. […] Your model doesn't account for whether Californians' data was sold or accessed. It accounts for whether Californians' data is included in the platform? A. Customers are paying for access to the data. Whether or not they surface anything in a specific search or if an individual never appears is a separate detailed specific question we did not attempt to answer.").

given that the putative class members are highly likely to be varied in their perceptions and preferences as they relate to Thomson Reuters's operation of CLEAR.

171. As established in Sections D and E of this *Rebuttal Expert Report*, the evidence I have reviewed in this matter—including scientific academic literature, industry research, deposition testimony, and the particular facts of this litigation—individually and collectively indicate that there is considerable heterogeneity (or lack of commonality) in consumers' perceptions and preferences regarding privacy and the collection or use of information about consumers. Such variation is especially evident when considering the relevant context—that is, how consumers (and the putative class members) would perceive and respond to CLEAR or a product like CLEAR. That is, while some putative class members might believe their privacy to be violated and might expect compensation from Thomson Reuters, others may be less concerned, and still others may not care at all. In fact, multiple academic, industry, and other sources that I have reviewed, including ones cited by Dr. Turow himself, indicate that many putative class members are likely to perceive benefits of the CLEAR product and hence assign *positive value* to information about them being made accessible through CLEAR. Such consumers would derive "negative injury" and may even be willing to support a platform such as CLEAR existing in the marketplace.

172. Mr. Lloyd has neither opined on the issue of lack of commonality nor mentioned *any* method, if it even exists, that could plausibly apportion damages classwide or address the challenges posed by an individualized inquiry. In fact, the FSG Report does not even acknowledge that there may be perceived benefits (from putative class members' perspectives) attached to the product at issue, and evidently did not intend to parse (or "net") out such benefits when calculating "net profits" due to Thomson Reuters's operation of CLEAR.[368] Consequently, any estimates relying on Mr.

[368] *See also id.*, pp. 96 – 97 ("Q. Did you understand a component of your task in this case to be calculating damages attributable to just versus unjust components of CLEAR? A. That's a legal question,

Lloyd's methodology would *not* be able to "recover the net profits of [Thomson Reuters] that are attributable to the alleged misconduct."[369]

173. I reserve the right to further supplement and/or revise my opinion and this *Rebuttal Expert Report* in response to any further information provided by the parties and/or in light of additional documents, which may be brought to my attention after the date of my signature below.

174. This *Rebuttal Expert Report* is to be used only for the purpose of this litigation and may not be published, distributed, or used for any other purpose without my prior written consent.

September 7, 2022 R. Kivetz

Date Dr. Ran Kivetz, Ph.D.

and I was not asked to address any legal issues here. My assignment related to the economics. Q. Are you aware of there being any just uses or CLEAR? […] A. I'm not a lawyer I couldn't tell you how the Court might or might not view those differences, if they exist" [objections omitted]).

[369] FSG Report, p. 2.

EXHIBIT A: CURRICULUM VITAE OF DR. RAN KIVETZ

Dr. Ran Kivetz
Academic Curriculum Vitae – September 2022

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Marketing, September 1996 – June 2000

M.A., Stanford University, Department of Psychology
Psychology, June 2000

B.A., Tel Aviv University
Economics and Psychology, June 1995

Academic Employment:

Philip H. Geier, Jr., Professor of Marketing, Columbia University Business School, 2008 – present

Professor of Business, Columbia University Business School, 2006 – 2008

Sidney Taurel Associate Professor of Business, Columbia University Business School, 2004 - 2006

Associate Professor, Columbia University Business School, 2003 – 2004

Assistant Professor, Columbia University Business School, 2000 – 2003

Publications:

Weiss, Liad and Ran Kivetz (2019), "Opportunity Cost Overestimation," *Journal of Marketing Research*, 56(3), 518-533.

Simonson, Itamar and Ran Kivetz (2018), "Bringing (Contingent) Loss Aversion Down to Earth – A Comment on Gal & Rucker's Rejection of "Losses Loom Larger Than Gains," *Journal of Consumer Psychology*, 28(3), 517-522.

Kivetz, Ran, Rachel Meng, and Daniel He (2017), "Hyperopia: A Theory of Reverse Self-Control," in *Handbook of Self-Control in Health and Well-Being*, de Ridder, Denise, Marieke Adriaanse, and Kentaro Fujita (eds), Routledge.

Kivetz, Ran and Yuhuang Zheng (2017), "The Effects of Promotions on Hedonic versus Utilitarian Purchases," *Journal of Consumer Psychology*, 27(1), 59-68.

Publications: (continued)

Keinan, Anat, Ran Kivetz, and Oded Netzer (2016), "The Functional Alibi," *Journal of the Association for Consumer Research*, Special Issue on the Science of Hedonistic Consumption, 1(4), 479-496. (Lead article)

Rom Schrift, Ran Kivetz, and Oded Netzer (2016), "Complicating Decisions: The Work Ethic Heuristic and the Construction of Effortful Decisions," *Journal of Experimental Psychology: General*, 145(7), 807-829. (Lead article)

Sela, Aner, Itamar Simonson, and Ran Kivetz (2013), "Beating the Market: The Allure of Unintended Value," *Journal of Marketing Research*, 50(6), 691-705.

Gershoff, Andrew, Ran Kivetz, and Anat Keinan (2012), "Consumer Response to Versioning: How Brands' Production Methods Affect Perceptions of Unfairness," *Journal of Consumer Research*, 39(2), 382–398.

Simonson, Itamar and Ran Kivetz (2012), "Demand Effects in Likelihood of Confusion Surveys," in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*, Diamond, Shari S. and Jerre B. Swann (eds), Chicago, IL: American Bar Association, pp. 243-259.

Keinan, Anat and Ran Kivetz (2011), "Productivity Mindset and the Consumption of Collectable Experiences," *Journal of Consumer Research*, 37(6), 935-950. (*Winner*, 2011 *Ferber Award*)

Schrift, Rom, Oded Netzer, and Ran Kivetz (2011), "Complicating Choice," *Journal of Marketing Research*, 48(2), 308-326. (*Winner*, 2010 *Best Competitive Paper Award*, *Society of Consumer Psychology*)

Urminsky, Oleg and Ran Kivetz (2011), "Scope Insensitivity and the 'Mere Token' Effect," *Journal of Marketing Research*, 48(2), 282-295.

Levav, Jonathan, Ran Kivetz, and K. Cecile Cho (2010), "Motivational Compatibility and Choice Conflict," *Journal of Consumer Research*, 37(3), 429-442.

Keinan, Anat and Ran Kivetz (2008), "Remedying Hyperopia: The Effects of Self-Control Regret on Consumer Behavior," *Journal of Marketing Research*, 45(6), 676-689.

Kivetz, Ran, Oded Netzer, and Rom Schrift (2008), "The Synthesis of Preference: Bridging Behavioral Decision Research and Marketing Science," *Journal of Consumer Psychology*, 18(3), 179-186.

Keinan, Anat and Ran Kivetz (2008), "When Virtue Is a Vice," *Harvard Business Review*, July-August.

Publications: (continued)

Kivetz, Ran, "Farsightedness (2007)," in *International Encyclopedia of the Social Sciences*, 2nd Edition, Darity Jr., William (ed.), Detroit: Macmillan/Thomson Gale.

Kivetz, Ran, Oleg Urminsky, and Yuhuang Zheng (2006), "The Goal-Gradient Hypothesis Resurrected: Purchase Acceleration, Illusionary Goal Progress, and Customer Retention," *Journal of Marketing Research*, 43(1), 39-58. (*Finalist*, 2011 *William O'Dell Award*; *Finalist*, 2007 *Paul Green Award*)

Kivetz, Ran and Anat Keinan (2006), "Repenting Hyperopia: An Analysis of Self-Control Regrets," *Journal of Consumer Research*, 33(2), 273-282. (*Finalist*, 2009 *Best Article Award* for a paper published in *JCR* in 2006)

Kivetz, Ran, and Yuhuang Zheng (2006), "Determinants of Justification and Self-Control," *Journal of Experimental Psychology: General*, 135(4), 572-587.

Rottenstreich, Yuval, and Ran Kivetz (2006), "On Decision Making without Likelihood Judgment," *Organizational Behavior and Human Decision Processes*, 101(1), 74-88.

Kivetz, Ran (2005), "Promotion Reactance: The Role of Effort-Reward Congruity," *Journal of Consumer Research*, 31(4), 725-736. (*Winner*, 2005 *Ferber Award*)

Kivetz, Ran, Oded Netzer, and V. Srinivasan (2004), "Alternative Models for Capturing the Compromise Effect," *Journal of Marketing Research*, 41(3), 237-257. (Lead article) (*Finalist*, 2009 *William O'Dell Award*; *Finalist*, 2005 *Paul Green Award*)

Kivetz, Ran, Oded Netzer, and V. Srinivasan (2004), "Extending Compromise Effect Models to Complex Buying Situations and Other Context Effects," *Journal of Marketing Research*, 41(3), 262-268.

Kivetz, Ran (2003), "The Effects of Effort and Intrinsic Motivation on Risky Choice," *Marketing Science*, 22(4), 477-502.

Kivetz, Ran and Itamar Simonson (2003), "The Idiosyncratic Fit Heuristic: Effort Advantage as a Determinant of Consumer Response to Loyalty Programs," *Journal of Marketing Research*, 40(4), 454-467.

Kivetz, Ran and Itamar Simonson (2002b), "Self-Control for the Righteous: Toward A Theory of Pre-Commitment to Indulgence," *Journal of Consumer Research*, 29(2), 199-217. (*Finalist*, 2005 *Best Article Award* for a paper published in *JCR* in 2002)

Kivetz, Ran and Itamar Simonson (2002a), "Earning the Right to Indulge: Effort as a Determinant of Customer Preferences Toward Frequency Program Rewards," *Journal of Marketing Research*, 39(2), 155-170. (*Finalist*, 2007 *William O'Dell Award*)

Publications: (continued)

Kivetz, Ran and Itamar Simonson (2000), "The Effects of Incomplete Information on Consumer Choice," *Journal of Marketing Research*, 37(4), 427-448. (*Finalist*, 2005 *William O'Dell Award*)

Kivetz, Ran (1999), "Advances in Research on Mental Accounting and Reason-Based Choice," *Marketing Letters*, 10(3), 249-266.

Work Under Review or Under Revision in Peer-Reviewed Journals:

Kivetz, Ran and Rachel Meng, "Circular Self-Rewards vs. Cash (Dis)Incentives: Motivating Effort, Goal Pursuit, and Positive Habits."

Pocheptsova, Anastasiya, Ran Kivetz, and Ravi Dhar, "Consumer Decisions to Rent versus Buy."

Manuscripts in Preparation:

Danziger, Shai, Liat Hadar, Ran Kivetz, and Itzhak Gnizy, "Price Quote Format and Inferred Artisanship and Marketing Orientation."

He, Daniel and Ran Kivetz, "Being in the Moment: The Effects of Ephemeral Communication in Social Media."

Shamis, Asaf and Ran Kivetz, "From Colonialism to Networked Colonialism: Personalized Networked Communications and Habermas's Theory of Modern Society."

Working Papers:

"Democracy between Private Space, Public Space, and Cyberspace," with Asaf Shamis.

"The Behavioral Economics of Incentives."

"Exercising Self-Control Through Self-reward," with Rachel Meng.

Selected Research-In-Progress:

"The Surprising Robustness of Prospect Theory in the Long Run."

"The Effects of Reward Programs," with Ricardo Montoya and Oded Netzer.

"The Bounded Rationality of Effort-Reward Choices: When Principles Overshadow Expectancies," with Oleg Urminsky.

"The Intersection of Behavioral Economics and Political Science."

"A Republic of Selfies: Personalizing Public Messages in Digital Media," with Asaf Shamis & Daniel He.

"Tie Signaling in Social Media," with Daniel He.

"Consumer Search."

Academic Honors and Awards:

Finalist, 2016 William O'Dell Award for the Journal of Marketing Research article published in 2006 that "made the most significant long-term contribution to marketing theory, methodology, and/or practice"

Faculty Fellow of the Institute for Social and Economic Research and Policy, 2002-2015

Ranked by the American Marketing Association as one of the Top 50 most productive scholars in the premier marketing journals during 2010–2014

Finalist, 2014 Best Article Award for the Journal of Consumer Research article published in 2011

Ranked by the American Marketing Association as one of the Top 50 most productive scholars in the premier marketing journals during 2009-2013

Finalist, 2011 William O'Dell Award for the Journal of Marketing Research article published in 2006 that "made the most significant long-term contribution to marketing theory, methodology, and/or practice"

Winner of the 2010 Best Competitive Paper Award granted by the Society of Consumer Psychology

Academic Honors and Awards: (continued)

Rated as the third most prolific scholar in the leading marketing journals during 1982-2006 (Seggie, S. H. and D. A. Griffith, 2009; "What Does It Take to Get Promoted in Marketing Academia? Understanding Exceptional Publication Productivity in the Leading Marketing Journals," Journal of Marketing, 73(1), 122-132.)

Finalist, 2009 William O'Dell Award for the Journal of Marketing Research article published in 2004 that "made the most significant long-term contribution to marketing theory, methodology, and/or practice."

Finalist, 2009 Best Article Award for the Journal of Consumer Research article published in 2006

Winner of the 2007 Early Contribution Award from the Society of Consumer Psychology

Finalist, 2007 William O'Dell Award for the Journal of Marketing Research article published in 2002 that "made the most significant long-term contribution to marketing theory, methodology, and/or practice"

Finalist, 2007 Paul Green Award for the Journal of Marketing Research article published in 2004 that "demonstrates the most potential to contribute significantly to the practice of marketing research and research in marketing"

Winner of the 2005 Ferber Award granted to the "best interdisciplinary dissertation article published in the latest volume of the Journal of Consumer Research"

Finalist, 2005 William O'Dell Award for the Journal of Marketing Research article published in 2000 that "made the most significant long-term contribution to marketing theory, methodology, and/or practice"

Finalist, 2005 Best Article Award for the Journal of Consumer Research article published in 2002

Finalist, 2005 Paul Green Award for the Journal of Marketing Research article published in 2004 that "demonstrates the most potential to contribute significantly to the practice of marketing research and research in marketing."

Winner of the 2005 Columbia Business School Dean's Award for Innovation in the Curriculum

Lang Faculty Research Fellowship in Entrepreneurship, 2005

Lang Faculty Research Fellowship in Entrepreneurship, 2004

Outstanding Reviewer Award, Journal of Consumer Research, 2003-2004

Academic Honors and Awards: (continued)

Invited as Faculty Presenter, 2004 Association for Consumer Research Doctoral Symposium

Young Scholars Program, Marketing Science Institute, 2003

Research Grant, Columbia Center for Excellence in E-Business, 2003

Seed Grant, Institute for Social and Economic Research and Policy, 2001

Doctoral Consortium Fellow, American Marketing Association, 1999

Ph.D. Merit Award, Stanford Graduate School of Business, 1999

Graduate Fellow and Grant, Stanford Center on Conflict and Negotiation, 1997-1998

Jaedicke Award Scholar (in recognition of outstanding academic performance), Stanford Graduate School of Business, 1996-1997

Dean's Honor List with Distinction, Faculty of Social Sciences (Economics), Tel Aviv University, 1995

****

Teaching:

Winner of the Columbia Business School 2005 Dean's Award for Innovation in the Curriculum

Ph.D. Courses

Bridging Behavioral Economics with Marketing Science (Fall 2019)
Student Evaluation 4.9 on 5-point scale

Bridging Behavioral Economics with Marketing Science (Spring 2018)
Student Evaluation 5.0 on 5-point scale

Bridging Behavioral Economics with Marketing Science (Spring 2016)
Student Evaluation 4.2 on 5-point scale

Bridging Behavioral Decision Research with Marketing Science (Spring 2013)
Student Evaluation 5.0 on 5-point scale

Bridging Behavioral Decision Research with Marketing Science (Spring 2011)
Student Evaluation 4.7 on 5-point scale

Bridging Behavioral Decision Research with Marketing Science (Spring 2008)
Student Evaluation 5.0 on 5-point scale

Bridging Behavioral Decision Research with Marketing Science (Spring 2005)
Student Evaluation 4.8 on 5-point scale

Consumer Behavior – I (Fall 2005)
Student Evaluation 4.7 on 5-point scale

Multidisciplinary Approaches to Human Decision Making (Spring 2004)

Bridging Behavioral Decision Research with Marketing Science (Spring 2003)
Student Evaluation 4.8 on 5-point scale

Multidisciplinary Approaches to Human Decision Making (Spring 2002)

Totally Eclectic Seminar in Marketing (Spring 2001)
Student Evaluation 6.2 on 7-point scale

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Teaching: (continued)

High-Technology Entrepreneurship (Executive MBA Elective)

Spring 2019 (1 section)
Student Evaluation 4.5 on 5-point scale

Spring 2018 (1 section)
Student Evaluation 4.6 on 5-point scale

Spring 2017 (1 section)
Student Evaluation 4.5 on 5-point scale

High-Technology Entrepreneurship (Executive MBA & MBA Elective)

Spring 2016 (1 section)
Student Evaluation 4.6 on 5-point scale

Spring 2009 (Master Class: 1 section)
Student Evaluation 4.7 on 5-point scale

Spring 2008 (Master Class: 1 section)
Student Evaluation 4.4 on 5-point scale

High-Technology Marketing and Entrepreneurship (Executive MBA Elective)

Spring 2008 (1 section)
Student Evaluation 4.5 on 5-point scale

Spring 2006 (1 section)
Student Evaluation 4.5 on 5-point scale

Spring 2005 (1 section)
Student Evaluation 4.9 on 5-point scale

Spring 2004 (1 section)
Student Evaluation 5.0 on 5-point scale

Spring 2003 (1 section)
Student Evaluation 5.0 on 5-point scale

Spring 2001 (1 section)
Student Evaluation 6.5 on 7-point scale

High-Technology Marketing and Entrepreneurship (MBA Elective)

Spring 2007 (1 section)
Student Evaluation 4.3 on 5-point scale

Spring 2006 (1 section)
Student Evaluation 4.5 on 5-point scale

Spring 2004 (1 section)

Teaching: (continued)

Student Evaluation 4.9 on 5-point scale

Spring 2003 (1 section)
Student Evaluation 4.4 on 5-point scale

Spring 2002 (1 section)
Student Evaluation 6.4 on 7-point scale

Spring 2001 (1 section)
Student Evaluation 6.4 on 7-point scale

Marketing Strategy and Management (Core Executive MBA Course)

Spring 2022 (2 sections)
Student Evaluations 4.3 and 4.2 on 5-point scales

Spring 2021 (2 sections)
Student Evaluations 4.1 and 4.1 on 5-point scales

Fall 2020 (2 sections)
Student Evaluations 4.0 and 3.7 on 5-point scales

Spring 2020 (2 sections)
Student Evaluations 3.8 and 3.7 on 5-point scales

Fall 2019 (1 section)
Student Evaluation 4.9 on 5-point scale

Spring 2019 (2 sections)
Student Evaluations 4.2 and 3.2 on 5-point scales

Fall 2018 (1 section)
Student Evaluation 4.8 on 5-point scale

Spring 2016 (1 section)
Student Evaluation 5.0 on 5-point scale

Spring 2012 (2 sections)
Student Evaluations 4.7 and 4.9 on 5-point scales

Marketing Strategy (Core MBA Course)

Fall 2013 (3 sections)
Student Evaluations 4.1, 3.8, and 4.1 on 5-point scales

Fall 2012 (3 sections)
Student Evaluations 3.9, 3.1, and 3.2 on 5-point scales

Fall 2011 (3 sections)
Student Evaluations 4.4, 3.8, and 4.1 on 5-point scales

Teaching: (continued)

Marketing Strategy (Core MBA Course)

Fall 2010 (3 sections)
Student Evaluations 4.5, 3.7, and 4.2 on 5-point scales

Fall 2009 (3 sections)
Student Evaluations 4.4, 4.3, and 4.2 on 5-point scales

Marketing Management (Undergraduate Course)

Fall 2019 (1 section)
Student Evaluations 4.3 on 5-point scale

Spring 2019 (1 section)
Student Evaluations 4.4 on 5-point scale

Fall 2018 (1 section)
Student Evaluations 4.7 on 5-point scale

Spring 2017 (1 section)
Student Evaluations 4.8 on 5-point scale

Spring 2014 (1 section)
Student Evaluations 4.7 on 5-point scale

The Marketing of a Nation: Israel (Master Class)

Spring 2009 (1 section)
Student Evaluation 4.8 on 5-point scale

Columbia Business School Global Immersion Program

Global Immersion Israel: Leadership & Innovation (March 2018)

Columbia Business School Executive Education Program

Design Your Innovation Blueprint (March 2017)
Innovate on Demand (November 2014; November 2015)
Innovation and Entrepreneurship (IE) @Columbia (February 2013; February 2014)
Columbia Senior Executive Program (May 2010; October 2010; May 2011; July 2012)
Marketing and Innovation (June 2013; June 2014; November 2014)
Customer Centricity (May 2010; September 2010; October 2011; February 2012)
New Product Development and Innovation (October 2002; June 2003)
Marketing Management: Strategies, Processes & Tools for Today's Challenges (Sep. 02; Apr. '03)
Marketing Management (April 2002)
Marketing Management in the New Economy (April 2001)

Main Advisor for:

Daniel He, Assistant Professor at the National University of Singapore (NUS)

Anat Keinan, Associate Professor at Boston University (formerly Associate Professor at Harvard Business School)

Rachel Meng

Rom Schrift, Associate Professor at Indiana University (formerly Assistant Professor at Wharton; co-advisor with Oded Netzer)

Oleg Urminsky, Full Professor at Chicago Booth School of Business

Yuhuang Zheng, Associate Professor at Tsinghua University

Doctoral Committee Member for:

Tamar Avnet, University of Toronto

Josko Brakus, University of Rochester

Cecile Cho, University of California Riverside

Yael Karlinsky-Shichor, Northeastern University

Yaoli Mao, Autodesk, Inc.

Valentina Melnyk, Tilburg University

Anirban Mukhopadhyay, Hong Kong University of Science and Technology (HKUST)

Qitian Ren, Chinese University of Hong Kong (Shenzhen)

Aner Sela, University of Florida

Kavita Srivastava, Indian Institute of Technology

Liad Weiss, University of Wisconsin – Madison

Conference Publications:

Danziger, Shai, Liat Hadar, Ran Kivetz, and Itzhak Gnizy (2019), "Price Quote Format and Inferred Artisanship and Marketing Orientation," special session paper presented at Society for Consumer Psychology Conference (SCP), Savannah, GA.

He, Daniel and Ran Kivetz (2017), "Technology-Driven Consumption," special session presented at Society for Consumer Psychology Conference (SCP), San Francisco, CA.

He, Daniel and Ran Kivetz (2016), "Ephemeral Messaging: Intimacy, Spontaneity, and Creativity in Fleeting Experiences," competitive paper presented at Association for Consumer Research Conference (ACR), Berlin, Germany.

Conference Publications: (continued)

Meng, Rachel and Ran Kivetz (2016), "Motivating Choices and Performance: Beyond Monetary Incentives," Association for Consumer Research Conference (ACR), Berlin, Germany.

He, Daniel and Ran Kivetz (2015), "Tie Signaling," in *NA - Advances in Consumer Research* Volume 43, eds. Kristin Diehl and Carolyn Yoon, Duluth, MN: Association for Consumer Research.

Netzer, Oded, Ran Kivetz, and Rom Schrift (2015), "Complicating Decisions: the Effort-Outcome Link and the Construction of Effortful Decision Processes," in *NA - Advances in Consumer Research* Volume 43, eds. Kristin Diehl and Carolyn Yoon, Duluth, MN: Association for Consumer Research.

Weiss, Liad and Ran Kivetz (2014), "Following-Through Opportunities: the Effects of Incidental Versus Inherent Choices," in *NA - Advances in Consumer Research* Volume 42, eds. June Cotte and Stacy Wood, Duluth, MN: Association for Consumer Research.

Simonson, Itamar, Aner Sela, and Ran Kivetz (2013), "Beating the Market: Competitive Mindset and the Allure of Unintended Value," in *NA - Advances in Consumer Research* Volume 41, eds. Simona Botti and Aparna Labroo, Duluth, MN: Association for Consumer Research.

Weiss, Liad and Ran Kivetz (2011), "When Not Redeeming a Coupon Feels Like Missing More Than Its Value," in *E - European Advances in Consumer Research* Volume 9, eds. Alan Bradshaw, Chris Hackley, and Pauline Maclaran, Duluth, MN: Association for Consumer Research.

Schrift, Rom, Ran Kivetz, and Oded Netzer (2011), "Creating the Illusion of Choice Through Selective Information Search and Retrieval," in *NA - Advances in Consumer Research* Volume 39, eds. Rohini Ahluwalia, Tanya L. Chartrand, and Rebecca K. Ratner, Duluth, MN: Association for Consumer Research.

Schrift, Rom, Oded Netzer, and Ran Kivetz (2010), "Complicating Choice," in *NA - Advances in Consumer Research* Volume 37, eds. Margaret C. Campbell, Jeff Inman, and Rik Pieters, Duluth, MN: Association for Consumer Research.

Sela, Aner, Itamar Simonson, and Ran Kivetz (2010), "Negative Effects of Explicit Customization on Perceptions of Opportunity," in *NA - Advances in Consumer Research* Volume 37, eds. Margaret C. Campbell, Jeff Inman, and Rik Pieters, Duluth, MN: Association for Consumer Research.

Conference Publications: (continued)

Keinan, Anat, Ran Kivetz, and Oded Netzer (2009), "Functional Alibi," in *NA - Advances in Consumer Research* Volume 36, eds. Ann L. McGill and Sharon Shavitt, Duluth, MN: Association for Consumer Research.

Kivetz, Ran and Anat Keinan (2009), "Hyperopia: A Theory of Reverse Self-Control," in *NA - Advances in Consumer Research* Volume 36, eds. Ann L. McGill and Sharon Shavitt, Duluth, MN: Association for Consumer Research.

Zheng, Yuhuang and Ran Kivetz (2009), "The Differential Promotion Effectiveness on Hedonic Versus Utilitarian Products," in *NA - Advances in Consumer Research* Volume 36, eds. Ann L. McGill and Sharon Shavitt, Duluth, MN: Association for Consumer Research.

Pocheptsova, Anastasiya, Ran Kivetz, and Ravi Dhar (2008), "Consumer Decisions to Rent Vs. Buy," in *NA - Advances in Consumer Research* Volume 35, eds. Angela Y. Lee and Dilip Soman, Duluth, MN: Association for Consumer Research.

Keinan, Anat and Ran Kivetz (2008), "Productivity Mindset and the Consumption of Collectable Experiences," in *NA - Advances in Consumer Research* Volume 35, eds. Angela Y. Lee and Dilip Soman, Duluth, MN: Association for Consumer Research.

Levav, Jonathan, Ran Kivetz, and Cecile Cho (2008), "Too Much Fit? How Regulatory Fit Can Turn Us Into Buridan's Asses," in *NA - Advances in Consumer Research* Volume 35, eds. Angela Y. Lee and Dilip Soman, Duluth, MN: Association for Consumer Research.

Keinan, Anat and Ran Kivetz (2007), "Remedying Hyperopia: the Effects of Self-Control Regret on Consumer Behavior," in *NA - Advances in Consumer Research* Volume 34, eds. Gavan Fitzsimons and Vicki Morwitz, Duluth, MN: Association for Consumer Research.

Urminsky, Oleg and Ran Kivetz (2007), "Scope Insensitivity in the Service of the Rational Self: the 'Mere Token' Effect," in *NA - Advances in Consumer Research* Volume 34, eds. Gavan Fitzsimons and Vicki Morwitz, Duluth, MN: Association for Consumer Research.

Zheng, Yuhuang and Ran Kivetz (2007), "Effort, Excellence and Income Stinginess: How Do People Justify Self-Gratification?," in *E - European Advances in Consumer Research* Volume 8, eds. Stefania Borghini, Mary Ann McGrath, and Cele Otnes, Duluth, MN: Association for Consumer Research.

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Conference Publications: (continued)

Kivetz, Ran and Drazen Prelect (2006), "Goal Distance and Consumer Choice," in *NA - Advances in Consumer Research* Volume 33, eds. Connie Pechmann and Linda Price, Duluth, MN: Association for Consumer Research.

Kivetz, Ran and Klaus Wertenbroch (2006), "Emerging Perspectives on Self-Control," in *NA - Advances in Consumer Research* Volume 33, eds. Connie Pechmann and Linda Price, Duluth, MN: Association for Consumer Research.

Chernev, Alexander and Ran Kivetz (2005), "Goals and Mindsets in Consumer Choice," in *NA - Advances in Consumer Research*, eds. Gita Menon and Akshay Rao, Volume 32, Provo, UT: Association for Consumer Research.

Kivetz, Ran, Oded Netzer, and V. Srinivasan (2002), "Alternative Models for Capturing the Compromise Effect," in *NA - Advances in Consumer Research*, ed. Punam Anand Keller and Sowers Rook, Volume 30, Provo, UT: Association for Consumer Research.

Kivetz, Ran (2001), "Consumer Preferences Towards Frequency Programs," in *NA - Advances in Consumer Research* Volume 28, eds. Mary C. Gilly and Joan Meyers-Levy, Valdosta, GA : Association for Consumer Research.

Kivetz, Ran and Michal Strahilevitz (2001), "Factors Affecting Consumer Choices Between Hedonic and Utilitarian Options," in *NA - Advances in Consumer Research* Volume 28, eds. Mary C. Gilly and Joan Meyers-Levy, Valdosta, GA : Association for Consumer Research.

Kivetz, Ran (2000), "Hedonic and Utilitarian Motivations in Consumer Choice," in *NA - Advances in Consumer Research* Volume 27, eds. Stephen J. Hoch and Robert J. Meyer, Provo, UT: Association for Consumer Research.

Kivetz, Ran (1999), "Advances in Research on Mental Accounting and Reason-Based Choice," in HEC Symposium on *Advances in Choice Theory*, Conference Summary, Report No. 99-121, Gilles Laurent (ed.), Marketing Science Institute.

Chakravarti, Agnish, Susan Chiu, Ran Kivetz, and Itamar Simonson (1999), "Regret and Self-Congratulation From the Head and From the Heart," Advances in Consumer Research, ed. Eric J. Arnould and Linda M. Scott, Volume 26, Provo, UT: Association for Consumer Research.

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Selected Conference Presentations:

“Self-Rewards and Cash (Dis)Incentives,” with Rachel Meng, Marketing Analytics Symposium, Sydney, Australia, February 2020.

“Change – Attention – Shift,” with Rachel Meng, 11th Triennial Invitational Choice Symposium, May – June 2019.

“Self-Rewards and Cash (Dis)Incentives,” 4th Coller Conference on Behavioral Economics, Tel Aviv, Israel, June 2019.

“Self-Rewards and Cash (Dis)Incentives” with Rachel Meng, INFORMS Marketing Science Conference, Rome, Italy, June 2019.

“Technology-Driven Consumption,” with Daniel He, Society for Consumer Psychology Conference (SCP), San Francisco, CA, 2017.

“The Consumption of Digital Live Content: How Live Streaming Enhances Engagement in Uninteresting Content,” with Daniel He and Jonathan Hurwitz, Association for Consumer Research Conference (ACR), San Diego, CA, 2017.

“The Compensation-Driven Nature of Monetary Rewards,” with Rachel Meng, Society for Consumer Psychology Conference (SCP), San Francisco, CA, 2017.

“Ephemeral Messaging: Intimacy, Spontaneity, and Creativity in Fleeting Experiences,” with Daniel He, Association for Consumer Research Conference (ACR), Berlin, Germany, 2016.

“Motivating Choices and Performance: Beyond Monetary Incentives,” with Rachel Meng, Association for Consumer Research Conference (ACR), Berlin, Germany, 2016.

“Consumer Decisions to Rent versus Buy,” with Anastasiya Pocheptsova and Ravi Dhar, Association for Consumer Research Conference, Berlin, Germany, 2016.

“Motivating Choices and Performance: Beyond Monetary Incentives,” with Rachel Meng, Society for Judgment and Decision Making, Boston, Massachusetts, 2016.

“Opportunity Cost Overestimation in Choices among Opportunities versus Alternatives,” with Liad Weiss, Society for Judgment and Decision Making, Boston, Massachusetts, 2016.

“Consumer Behavior in Social Media” with Daniel He, Association for Consumer Research Conference, New Orleans, LA, October 2015.

“Illusions of Preference Construction,” with Rom Schrift and Oded Netzer, Association for Consumer Research Conference, New Orleans, LA, October 2015.

Selected Conference Presentations: (continued)

"Creating the Illusion of Choice through Selective Information Search and Retrieval," with Rom Schrift and Oded Netzer, Association for Consumer Research Conference, St. Louis, MO, October 2011.

"Seeing-Through Opportunities: The Effects of Incidental versus Inherent Choices" with Liad Weiss, Judgment and Decision Making Conference, Seattle, WA, November 2011.

"The Effects of Reward Programs" with Ricardo Montoya and Oded Netzer, INFORMS Marketing Science Conference, Rice University, Houston, TX, June 2011.

"Complicating Choice," with Rom Schrift and Oded Netzer, Society for Consumer Psychology Conference, St. Pete Beach, FL, February 2010.

"Complicating Choice," with Rom Schrift and Oded Netzer, Judgment and Decision Making Conference, Boston, MA, November 2009.

"Using Survey Controls Effectively," NAD Annual Conference: What's New in Comparative Advertising, Claim Support and Self-Regulation?, New York, NY, October 2009.

"Complicating Choice," with Rom Schrift and Oded Netzer, Association for Consumer Research Conference, Pittsburgh, PA, September 2009.

"Hyperopia: A Theory of Reverse Self-Control," with Anat Keinan, Association for Consumer Research Conference, San Francisco, CA, October, 2008.

"The Functional Alibi," with Anat Keinan and Oded Netzer, Association for Consumer Research Conference, San Francisco, CA, October 2008.

"The Impact of Marketing Promotions on Hedonic versus Utilitarian Purchases," with Yuhuang Zheng, Association for Consumer Research Conference, San Francisco, CA, October 2008.

"The Functional Alibi," with Anat Keinan and Oded Netzer, 11th Biennial Behavioral Decision Research in Management Conference, San Diego, CA, April 2008.

"From Diligence to Hindrance," with Rom Schrift and Oded Netzer, Marketing in Israel Conference, Tel Aviv University, Tel Aviv, Israel, December 2008.

"Hyperopia," University of Pennsylvania (Wharton), Philadelphia, PA, June 2007.

"Consumer Decisions to Rent versus Buy," with Anastasiya Pocheptsova and Ravi Dhar, Association for Consumer Research Conference, Memphis, TN, October 2007.

Selected Conference Presentations: (continued)

"Productivity Mindset and the Consumption of Collectable Experiences," with Anat Keinan, Association for Consumer Research Conference, Memphis, TN, October 2007.

"Too Much Fit? How Regulatory Fit Can Turn Us into Buridan's Asses," with Jonathan Levav and K. Cecile Cho, Association for Consumer Research Conference, Memphis, TN, October 2007.

"Remedying Hyperopia: The Effects of Self-Control Regret on Consumer Behavior," with Anat Keinan, 10th Biennial Behavioral Decision Research in Management Conference, Los Angeles, CA, June 2006.

"Scope Insensitivity and The Mere Token Effect," with Oleg Urminsky, 10th Biennial Behavioral Decision Research in Management Conference, Los Angeles, CA, June 2006.

"Hyperopia: A Theory of Reverse Self-Control", Symposium on "Self-Control Processes: New Theoretical and Empirical Directions," Society for Personality and Social Psychology Annual Meeting, Palm Springs, California, 2006.

"The Psychology of Rewards: Principles of Expectancies?," with Oleg Urminsky, Judgment and Decision Making Conference, Toronto, Canada, November 2005.

"Repenting Hyperopia: An Analysis of Self-Control Regrets," with Anat Keinan, Judgment and Decision Making Conference, Toronto, Canada, November 2005.

"Goal Distance and Consumer Choice" (Session Co-Chair), and "The Goal-Gradient Hypothesis Resurrected: Purchase Acceleration, Illusionary Goal Progress, and Customer Retention," with Oleg Urminsky and Yuhuang Zheng, Association for Consumer Research Conference, San Antonio, Texas, October 2005.

"Emerging Perspectives on Self-Control" (Session Co-Chair), and "Determinants of Justification and Self-Control," with Yuhuang Zheng, Association for Consumer Research Conference, San Antonio, Texas, October 2005.

"Repenting Hyperopia: An Analysis of Self-Control Regrets," with Anat Keinan, Association for Consumer Research Conference, San Antonio, Texas, October 2005.

"Inducing Hyperopia through Inconsequential Early Rewards: A Consumer-Welfare-Enhancing Violation of the Invariance Axiom," with Oleg Urminsky, Association for Consumer Research Conference, San Antonio, Texas, October 2005.

"The Effects of Effort and Intrinsic Motivation on Risky Choice," INFORMS Marketing Science Conference, Emory University, Atlanta, GA, June 2005.

Selected Conference Presentations: (continued)

"The Goal-Gradient Hypothesis Resurrected: Purchase Acceleration, Illusionary Goal Progress, and Customer Retention," with Oleg Urminsky and Yuhuang Zheng, INFORMS Marketing Science Conference, Emory University, Atlanta, GA, June 2005.

"The Goal-Gradient Hypothesis Resurrected: Purchase Acceleration, Illusionary Goal Progress, and Customer Retention," with Oleg Urminsky and Yuhuang Zheng, Judgment and Decision Making Conference, Minnesota, November 2004.

"The Effects of Effort and Intrinsic Motivation on Risky Choice," Judgment and Decision Making Conference, Minnesota, November 2004.

Invited to present in session on "Goals, Impulses, and Self-Control," Association for Consumer Research Doctoral Symposium, Portland, Oregon, October 2004.

Discussion Leader for special session on "Simple Payments and Complex Rewards…," Association for Consumer Research Conference, Portland, Oregon, October 2004.

"Promotion Reactance: The Role of Effort-Reward Congruity," Association for Consumer Research Conference, Portland, Oregon, October 2004.

"Principles or Probabilities: When Value Overshadows Expected Value," with Oleg Urminsky, Association for Consumer Research Conference, Portland, Oregon, October 2004.

"How do Promotion Programs Affect Consumers' Purchase Decisions: A Behavioral Perspective," with Yuhuang Zheng, INFORMS Marketing Science Conference, Erasmus University, Rotterdam, The Netherlands, June 2004.

Discussion Leader for special session on "Understanding the Evaluation of Future Events," Association for Consumer Research Conference, Toronto, Canada, October 2003.

"Consumer Self-Control and Time-Discounting," with Oleg Urminsky, Judgment and Decision Making Conference, Vancouver, Canada, November 2003.

"Mindsets of Decision Making," with Yuval Rottenstreich, Judgement and Decision Making Conference, Vancouver, Canada, November 2003.

"Consumer Self-Control and Time-Discounting," with Oleg Urminsky, Association for Consumer Research Conference, Toronto, Canada, October 2003.

"The Effects of Effort and Intrinsic Motivation on Risky Choice," Marketing Science Institute Young Scholars Program, Park City, UT, March 2003.

Selected Conference Presentations: (continued)

"Does the End Justify the Means? The Impact of Effort on Preferences toward the Certainty and Magnitude of Rewards," Association for Consumer Research Conference, Atlanta, GA, 2002.

"Alternative Models for Capturing the Compromise Effect," with Oded Netzer and V. Srinivasan, Association for Consumer Research Conference, Atlanta, GA, October 2002.

"Alternative Models for Capturing the Compromise Effect," with Oded Netzer and V. Srinivasan, Marketing Science Conference, Alberta, Canada, June 2002.

"Self-Control for the Righteous: Toward a Theory of Pre-Commitment to Indulgence," with Itamar Simonson, Four School Seminar, New York University, May 2002.

"Self-Control for the Righteous: Toward a Theory of Luxury Pre-commitment," with Itamar Simonson, Judgment and Decision Making Conference, Orlando, FL, November 2001.

"The Influence of Hedonic Concreteness on Mood Regulation versus Mood Congruency," with Yifat Kivetz, Association for Consumer Research Conference, Austin, TX, October 2001.

"Self-Control for the Righteous: Toward a Theory of Luxury Pre-commitment," with Itamar Simonson, UC Berkeley Choice Symposium, Monterey, CA, June 2001.

"Consumer Preferences Towards Frequency Programs" (Session Chair), and "The Effects of Effort and Idiosyncratic Fit on Preference Towards Frequency Programs," with Itamar Simonson, Association for Consumer Research Conference, Salt Lake City, Utah, October 2000.

"Consumer Choices between Hedonic and Utilitarian Options" (Session Co-Chair), and "Earning the Right to Indulge: Effort as a Determinant of Customer Preferences Towards Frequency Program Rewards," with Itamar Simonson, ACR Conference, Salt Lake City, Utah, October 2000.

"Hedonic and Utilitarian Motivations in Consumer Choice" (Session Chair), and "The Joyless Consumer: Using Self-Control Strategies to Increase Hedonic Consumption," with Itamar Simonson, Association for Consumer Research Conference, Columbus, Ohio, October 1999.

"The Effects of Incomplete Information on Consumer Choice," with Itamar Simonson, Association for Consumer Research Conference, Columbus, Ohio, October 1999.

Selected Conference Presentations: (continued)

"Regret and Self-Congratulation From the Head and From the Heart," with Chakravarti, Agnish, Susan Chiu, and Itamar Simonson, Association for Consumer Research Conference, Montreal, Canada, October 1998.

"Intransitive Consumer Choice: The Effects of Incomplete Information," with Itamar Simonson, HEC Choice Symposium, Groupe HEC, Jouy-en-Josas (Paris), France, July 1998.

"Intransitive Consumer Choice: The Effects of Incomplete Information," with Itamar Simonson, INFORMS Israel, Tel Aviv, Israel, June 1998.

"Intransitive Consumer Choice: The Effects of Incomplete Information," with Itamar Simonson, Boulder-Colorado Behavioral Decision Theory Camp, Boulder, Colorado, October 1997.

"The Psychology of Versioning: Counterfactual Thinking as a Determinant of Fairness Perceptions and Choice," with Andrew Gershoff, ACR Conference, Toronto, Canada, October 2003.

Selected Invited Talks:

Vienna University of Economics and Business, forthcoming

5th Coller Conference on Behavioral Economics, forthcoming, Tel Aviv

Marketing Analytics Symposium – Sydney (MASS), February 2020

11th Triennial Invitational Choice Symposium, May-June 2019

4th Coller Conference on Behavioral Economics, June 2019, Tel Aviv

"Marketing Israel," Israeli-American Council.

Licensing Executives Society (LES) 2012 Winter Meeting. March 2012

American Bar Association Section of Antitrust Law. November 2010

Tel Aviv University, Recanati Graduate School of Business Administration. August 2010

The 2009 NAD Annual Conference: What's New in Comparative Advertising, Claim Support and Self-Regulation? October 2009

New York University psychology department. March 2009

Israel Business Conference. December 2008

Selected Invited Talks: (continued)

Stanford University, Graduate School of Business, marketing department. October 2008

Olin Business School at Washington University. May 2008

Duke University marketing department. April 2008

Yale University marketing department. April 2007

MIT marketing department. September 2006

University of Chicago marketing department. January 2006

Arison School of Business, The Interdisciplinary Center Herzliya (IDC). January 2006

Tilburg University, Faculty of Economics and Business Administration and Tias Business School, Marketing Research Camp. December 2005

Northwestern University (Kellogg), Marketing Research Camp. September 2005

Stanford University, Graduate School of Business, marketing department. May 2005

University of Pennsylvania (Wharton), Philadelphia PA. November 2004

University of Florida marketing department, Winter Research Retreat. March 2004

Marketing Modellers Group, New York. March 2004

Center for the Decision Sciences, Columbia University. April 2003

Young Scholars Program, Marketing Science Institute. March 2003

MIT marketing department. February 2003

University of Chicago marketing department. January 2003

School of Business, Rutgers University – Camden Campus. November 2002

Arison School of Business, The Interdisciplinary Center Herzliya (IDC). June 2002

Social Psychology Network, Columbia University. May 2002

Center for the Decision Sciences, Columbia University. April 2002

NYU marketing department. March 2002

UC Berkeley marketing department. November 2001

2001 UC Berkeley Invitational Choice Symposium. June 2001

University of Texas at Austin, marketing research camp. April 2001

Selected Invited Talks: (continued)

MIT marketing department. April 2001

Center for the Decision Sciences, Columbia University. February 2001

Northwestern University, Evanston Illinois. December 1999

Duke University, Durham NC. November 1999

University of Chicago, Chicago Illinois. November 1999

Cornell University, Ithaca NY. November 1999

Dartmouth College, Hanover, New Hampshire. November 1999

University of California, Berkeley, Berkeley CA. October 1999

Yale University, New Haven Connecticut. October 1999

University of Pennsylvania (Wharton), Philadelphia PA. October 1999

Columbia University, New York NY. October 1999

University of Southern California, Los Angeles CA. October 1999

Stanford University Psychology Department, Stanford CA. November 1998

1998 Groupe HEC Invitational Choice Symposium. July 1998

Boulder-Colorado Behavioral Decision Theory Camp, Boulder, Colorado. October 1997.

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External Professional Activities & Service:

Guest Editor:
Journal of Marketing Research

Guest Area/Associate Editor:
Marketing Science
Management Science
Association for Consumer Research

Editorial Boards:
Journal of Marketing Research
Applied Economics Research Bulletin
Marketing Letters

Reviewer:
Marketing Science, Quantitative Marketing and Economics, Journal of Experimental Psychology: General, Psychological Science, Journal of Consumer Research, Journal of Consumer Psychology, Journal of Marketing, International Journal of Research in Marketing, Organizational Behavior and Human Decision Processes, Journal of Behavioral Decision Making, Journal of Service Research, Journal of Economic Psychology, Association for Consumer Research, Society for Consumer Psychology, Behavioral Decision Research in Management Conference, National Science Foundation.

Intel Science Talent Search, Advisor for:

Gregg Gefen, Great Neck North High School (Semi-finalist, 2002)

Jukay Hsu, Stuyvesant High School (Semi-finalist, 2001)

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Internal Professional Activities & Service:

Service to University:

M.S. in Entrepreneurship & Innovation Working Group, 2016

Co-chair of the Provost's Faculty Advisory Committee on Entrepreneurship, 2013-2014

Faculty Fellow of the Institute for Social and Economic Research and Policy (ISERP), 2002-2015

Guest Speaker, Columbia University & Columbia Business School Chicago Alumni Clubs

Panel Discussant, "The Psychology of Money," Columbia University Annual Alumni and Development Officers Retreat, July 15, 2009

Panel Discussant, "The Psychology of Money," GSAS Conversations with Alumni, Columbia University Graduate School of Arts and Sciences, April 20, 2009

Service to Business School:

Member of the Marketing Division Senior Faculty Recruiting Committee, 2018 – present

Junior Faculty Research Liaison Committee, 2015 - 2019

Columbia Business School's Conflict of Interest and Conflict of Commitment Policy Review Committee, 2017

Strategy Creation Committee, 2013 - 2014

Core-Coordinator Committee, 2012 - 2014

Committee on the Structure of the Core, 2012

Faculty Committee on the Core Curriculum, 2011-2012

Committee on Enhancing the Effectiveness of the Core Curriculum, 2011

Faculty Ad-Hoc Committee on Columbia Business School Budget Guidelines, 2009

Columbia Business School Green Committee, 2009

Project Adviser for MBA and Executive MBA Independent Projects, 2002-present

MBA Admissions Committee, 2002 - 2006

Finance (Real Estate) Division Faculty Search Committee, 2003-2004

Management Division Faculty Search Committee, 2001-2002

Student Faculty Academic Affairs Committee (SFAAC), 2000-2001

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Internal Professional Activities & Service: (continued)

Service to Marketing Division:

Member of the Marketing Division Senior Faculty Recruiting Committee, 2018 – present

Member of the Marketing Division Faculty Recruiting Committee, 2020 – present

Chair of the Marketing Division Communications and Outreach Committee, 2019 – present

Member of the Marketing Division Senior Faculty Recruiting Committee, 2018 – present

Junior Faculty Research Liaison for the Marketing Division, 2015 – 2019

Member of the Marketing Division Faculty Recruiting Committee, 2016 – 2018

Member of the Marketing Division Ph.D. Committee, 2016 – 2018

Chair of the Marketing Division Faculty Recruiting Committee, 2015

Coordinator of the Marketing Strategy Core Course, 2011 – 2014

Chair of the Marketing Division Ph.D. Committee, 2011 – 2013

Co-chair of the Marketing Division Faculty Recruiting Committee, 2010

Member of the Marketing Division Faculty Recruiting Committee, 2002 – 2008

Chair of the Marketing Division Ph.D. Committee, 2006 – 2007

Member of the Marketing Division Ph.D. Committee, 2004 – 2006

Various Sub-committees, 2007 – present

Organizer of Columbia Marketing Research Camp, 2001 and 2002

Selected Media Reports of Dr. Kivetz's Research (research covered by hundreds of print, electronic, and broadcast media outlets):

"Losses. Loom. Large. And That, in Short, Explains Your Loss Aversion," *Marketplace*, November 10, 2020.

"Why We're All So Worried About Having Too Little Time," *TIME*, January 30, 2020.

"Use this Simple Psychological Trick if Productivity Culture has Made it Impossible for You to Relax," *Fast Firm*, October 7, 2019.

"Five Below is a Wonderland of Things No One Needs. It's Also One of the Most Successful Retailers in America," *Washington Post*, December 20, 2018.

"New Research From Columbia Business School Sheds Light On Factors Affecting Luxury Versus Practical Purchases," *Markets Insider*, November 15, 2017.

"The Psychology Behind Spending Big," *BBC News*, October 9, 2017.

"There's Power in All Those User Reviews," *The New York Times*, December 7, 2013.

Selected Media Reports of Dr. Kivetz's Research: (continued)

"A Closet Filled With Regrets," *The Wall Street Journal*, April 17, 2013.

"Why We Blunder When We Buy," *Chicago Tribune*, July 22, 2011.

"The Business of Weird: Why People Pay for Bizarre Experiences," *TIME*, November 22, 2010.

"The New Abnormal," (Cover Story), *Bloomberg Businessweek*, August 2, 2010.

"Reward, Regret and Consumer Behaviour," *ABC Radio National (Australia)*, July 12, 2010.

"To Achieve Your Goals, Focus on Reasons," *U.S. News & World Report*, July 1, 2010.

"Can a Vacation Help Boost Your Portfolio?" *SmartMoney*, June 25, 2010.

"Reasons—and Ways—to Splurge This Summer," *U.S. News & World Report*, June 23, 2010.

"Field Guide To The Tightwad: Saving Spree," *Psychology Today*, January 1, 2010.

"Club Class," *The Wall Street Journal*, December 3, 2009.

"Don't Work All the Time — You'll Live to Regret It," *Wired Magazine*, July 15, 2009.

"When the Bride Says I Do – to Cash," *The Globe and Mail*, July 9, 2009.

"It Makes Them Sick to Spend - Literally," *The Globe and Mail*, June 8, 2009.

"The Gift-Card Economy," *The Atlantic*, May, 2009.

"Technology Can Save You From Yourself," *Marketplace Public Radio*, April 17, 2009.

"Regret Saving Money," *CNN*, March 26, 2009.

"Oversaving, a Burden for Our Times," *The New York Times*, March 23, 2009.

"Are You a Victim of Saver's Remorse?" *The New York Times*, March 23, 2009.

"Giving in to Temptation," *CNN*, September 20, 2008.

"Splurge Now, Feel Great Later," *ABC News*, July 2008.

"Splurging is Good for Your Health," *The Wall Street Journal*, July 2008.

"Putting a Price on Rewards," *U.S. News & World Report*, June 24, 2007.

"Incentives - Naughty But Nice," *Management Today*, April 1, 2007.

"Hyperopia," *The New York Times*—one of the "Best Ideas in 2006"—Annual Year in Ideas.

Selected Media Reports of Dr. Kivetz's Research: (continued)

"Delaying Pleasure Results in Regret," *United Press International*, June 27, 2006.

"Why Cash Incentives Fail," *SalesForceXP*, Feature Story, September Issue, 2005.

"Professors Discover Why Business Loyalty Programs Work," *Sacramento Business Journal*, 8.16.2004.

"An Economics Problem: Joyless Consumers," by Peter Martin, *THE AGE*, January, 2004, Australia.

"Consumers Work Hard for Loyalty Programs", *Newswise*, August 16, 2004.

"Studies Question Value of Mass Customization, Find Consumers Work Hard for Loyalty Programmes," *MadeForOne*, August 23, 2004.

"Consumers Prefer Loyalty Programmes that 'Fit'," *The Wise Marketer*, December 10, 2003.

"Indulgence," *Radio National*, with Geraldine Doogue, March 2, 2003, Australia.

"Betty Crocker Coupon Program Spry After More than 70 Years," by Karren Mills, *Dow Jones Interactive*, February 23, 2002.

"Once a Loyalty Craze, S&H Tries to Remake Magic in Digital Age," by Justin Pope, *The New York Times*, November, 2001.

"Earning the Right to Indulge: Guilt about Consuming Luxury Items Plays an Important Role in Consumer Preference Toward Rewards," *Stanford Business Magazine*, August 14, 2001.

"Study: Luxury Rewards Evoke Consumer Guilt," by Kimberly Hill, *CRM Daily*, August 1, 2001. Also reported in *E-Commerce Times*, *Yahoo! News*.

"Stanford Business School Research Shows Guilt Plays a Role in What Loyalty Program Rewards Consumers Choose," *Transport News*, July 27, 2001. Also reported in *Business Wire*, *Yahoo! Finance*, *Sharper Media*, *The Timeshare Beat*.

"Consumers Still Buy When Info Incomplete," *Marketing News*, October 9, 2000.

Professional Affiliations:

American Marketing Association

Association for Consumer Research

International Trademark Association

Society for Consumer Psychology

Society for Judgment & Decision Making

EXHIBIT B: LIST OF CASES IN WHICH DR. RAN KIVETZ PROVIDED SWORN TESTIMONY IN DEPOSITION AND/OR TRIAL DURING THE PAST FOUR YEARS

Boltex Manufacturing Company, L.P. and Weldbend Corporation vs. Galperti Inc. and Officine Nicola Galperti E Filgio S.P.A., Case No. 4:17-cv-01439 (S.D. Texas)

City of Wyoming, Minnesota; Village of Holmen, Wisconsin; City of Elk River, Minnesota; City of Mankato, Minnesota; City of Perham, Minnesota; City of Princeton, Minnesota; City of Fergus Falls, Minnesota; Sauk Centre Public Utilities Commission; and Chisago Lakes Joint Sewage Treatment Commission vs. Procter & Gamble Company; Kimberly-Clark Corporation; Nice-Pak Products, Inc.; Professional Disposables International, Inc.; Tufco Technologies Inc.; and Rockline Industries, Case No. 15-cv-02101-JRT/TNL (D. Minnesota)

Anne De Lacour, Andrea Wright, And Loree Moran v. Colgate-Palmolive Co., and Tom's Of Maine Inc., Case No. 16 Civ. 08364 (RA) (AJP) (S.D. Cal.)

Barry Allred and Mandy C. Allred v. Frito-Lay North America, Inc., and Frito-Lay, Inc., Case No. 3:17-cv-01345 (S.D. Cal.)

Sturm, Ruger & Co., Inc. v. American Outdoor Brands Corporation, Smith & Wesson Cosrp., and Thompson/Center Arms Company, LLC, Case No. 1:19-cv-00801-JL (D.N.H.)

Camille Cabrera v. Bayer Healthcare LLC and Bayer Corporation, Case No. 2:17-cv-08525 (C.D. Cal.)

Veda Woodard, Teresa Rizzo-Marino, and Diane Morrison v. Lee Labrada et al., Case No. 5:16-cv-00189-JGB-SP (C.D. Cal.)

JaM Cellars, Inc. v. The Wine Group LLC, Case No. 4:19-cv-01878-HSG (N.D. Cal.)

Hytera Communications Corp. Ltd. v. Motorola Solutions Inc., Case No. 1:17-cv-01794-DCN (N.D. Ohio Eastern Division)

The People of the State of California v. Kohl's Department Stores, Inc. et al., Case No. BC643037 (Superior Court of the State of California, County of Los Angeles)

American Customer Satisfaction Index, LLC v. ForeSee Results, Inc., Case No. 2:18-cv-13319 (E.D. Michigan Southern Division); and *CFI Group USA LLC v. Verint Americas Inc.*, Case No. 2:19-cv-12602 (E.D. Michigan)

NIKE, Inc. v. Vans, Inc., Opposition No. 91253064 (U.S. Patent and Trademark Office, TTAB)

Willis et al. v. Colgate-Palmolive Co., Case No. 2:19-cv-08542-JGB (C.D. Cal.)

In Re: Rock'n Play Sleeper Marketing, Sales Practices, and Products Liability Litigation, Case No. 1:19-md-2903 (W.D.N.Y.)

La Fosse et al. v. Sanderson Farms, Inc., Case No. 19-CV-06570-RS (N.D. Cal.)

In Re: KIND, LLC "Healthy and All Natural Litigation", Case No. 1:15-md-02645-NRB (S.D.N.Y.)

Ripple Analytics Inc. v. People Center, Inc. d/b/a Rippling, Case No. 2:20-cv-00894 (E.D. N.Y.)

Jerome's Furniture Warehouse v. Ashley Furniture Industries, Inc. et al., Case No. 20-cv-1765-RBM-BGS (S.D. Cal.)

EXHIBIT C: DOCUMENTS MADE AVAILABLE TO DR. RAN KIVETZ IN CONNECTION WITH PREPARATION OF THIS *REBUTTAL EXPERT REPORT*

In addition to academic research and articles, and other materials specifically referred to in the enclosed *Rebuttal Expert Report*, I received documents produced in the action, and other documents, including, without limitation, the following:

Filed Documents

- 2022-04-04 Verification for Defendant Thomson Reuters Corporation's Responses and Objections to Plaintiffs' First Set of Interrogatories to Defendant
- 2022-04-04 Defendant Thomson Reuters Corporation's Responses to Plaintiffs' First Set of Interrogatories to Defendant (with Attachment A)
- 2021-09-10 (Dkt 60) Defendant Thomson Reuters Corporation's Answer and Affirmative Defenses to Plaintiffs' Class Action Complaint
- 2021-08-26 (Dkt 59) Stipulation to Set Case Schedule and Order
- 2021-08-16 (Dkt 54) Order Granting in Part and Denying in Part Defendant's Motion to Dismiss
- 2021-04-05 (Dkt 28) Notice of Defendant's Motion to Dismiss Pursuant to FRCP 12(B)(6), and Motion to Strike Pursuant to Claifornia Code of Civil Procedure § 425.16, and Memorandum in Support
- 2020-12-03 (Dkt 1) Class Action Complaint

Expert Reports

- 2022-06-01 Report of Professor Joseph Turow
- 2022-06-01 Report of Finance Scholars Group, Inc. (Terry Lloyd)

Deposition Transcripts

- 2022-08-26 Joseph Turow Deposition Transcript (with Exhibits DX #1 – 10)
- 2022-08-22 Terry Lloyd (FSG) Deposition Transcript (with Exhibits DX #F1 – F7, F9; F13 – F18; F20 – F22)
- 2022-08-18 Plaintiff Rasheed Shabazz Deposition Transcript (with Exhibits DX #1 – 33)
- 2022-08-10 Cat Brooks Deposition Transcript (with Exhibits DX #1 – 17)
- 2022-05-18 Dorian Buckethal Deposition Transcript (with Exhibits DX #1 – 36)
- 2022-05-16 Steve Fox Deposition Transcript (with Exhibits DX #1 – 30)
- 2022-05-06 Paul Godlewski Deposition Transcript (with Exhibits DX #1 – 36)

Bates-Stamped Documents

- PLAINTIFFS_005538
- PLAINTIFFS_005548

- PLAINTIFFS_005581
- PLAINTIFFS_005608
- PLAINTIFFS_005618
- PLAINTIFFS_005653
- PLAINTIFFS_005662
- PLAINTIFFS_010275
- PLAINTIFFS_011040
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Other Documents

- *TransUnion LLC v Ramirez,* 141 S.Ct. 2190 (2021)
- *Kidd v Thomson Reuters Corporation,* 925 F.3d 99 (2019)
- *Kidd v. Thomson Reuters Corporation,* 299 F. Supp. 3d 400 (2017)

EXHIBIT D: EXAMPLES OF CLEAR USE CASES

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS000746; TR-BROOKS000896	June 14, 2021 – Everyday Heroes: How CLEAR Helped a Family in Trouble	Online article (TR)	Child support liaison	Child and family services (Assisting families)	Return of children to father; mother to get mental health assistance
TR-BROOKS000766; TR-BROOKS002251	November 2017 – Using CLEAR to Keep Children Out of Virginia's Foster Care System	Online article (TR)	Social services (DSS) investigators	Child and family services (Finding child's family members to avoid foster care)	Search for child's extended family/relatives to provide care before resorting to foster care
TR-BROOKS000876	Memorial Healthcare System/Information Management Consultants in Hollywood, Florida	Online article (TR)	Memorial Healthcare System (MHS) healthcare network	Healthcare fraud / Know your vendor (Detecting vendor red flags/fraud protection)	Installed VETTED system to proactively stop a vendor with convicted pedophile in its leadership from doing business with children's hospital
TR-BROOKS001097	March 2021 – Drug Cartel Money-Laundering Methods and the Capture of El Chapo	Online article (TR)	Law enforcement	Anti-money laundering (Money laundering and drug trafficking)	Did not describe concrete case where CLEAR was used to stop money laundering / drug trafficking
TR-BROOKS001168	June 2021 – Bank Investigator Uncovers Substantial Double Identity Plot	Online article (TR)	Bank hired ex-FBI investigator	Retail fraud investigations / Skip tracing (Uncovering financial fraud)	Found missing borrower and plot to defraud more than 10 banks and steal millions of dollars
TR-BROOKS001564	July 2021 – How CLEAR Helped Track Down a Fugitive Who Owed $63,000 in Unpaid Child Support	Online article (TR)	Federal investigation officer	Child and family services / Skip tracing (Locating individuals with child support delinquency)	Found fugitive who was prosecuted for "gross child neglect"
TR-BROOKS001688	March 2020 – Kinecta Federal Credit Union	Online article (TR)	Financial cooperative (Kinecta Federal Credit Union)	Retail fraud investigations (Investigating suspicious details, streamlining validation processes)	Kinecta Federal Credit Union's general use of CLEAR
TR-BROOKS001816	May 2017 – How CLEAR Helps Steer the Trucking Industry Straight	Online article (TR)	Transportation factoring (Outsource Financial Services Inc. – private lender)	Commercial lending (Verifying clients' identities to detect suspicious activities)	General use by OFS to make sure invoices purchased are backed by legitimate business entities

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS001872	June 2017 – Tax Assessors' Survey: Using CLEAR Has Helped Agencies Collect Additional Money & Resolve Investigations More Quickly	Online article (TR)	Tax Assessor Office / Tax Department	Tax fraud prevention / Skip tracing (Locating taxpayers, update addresses, verify new names/phone numbers)	General use by tax assessors/collections agencies to locate taxpayers/taxpayer information
TR-BROOKS001988	March 2020 – Providing Community Support	Online article (TR)	Code Enforcement Department	Child and family services (Identifying and contacting registered owner of abandoned car)	Identified records of registered car owner; located homeless family and connected with community support/resources
TR-BROOKS001991	September 2017 – Social Security/Bank Fraud	Online article (TR)	Bank hired ex-FBI investigator	Retail fraud investigations / Skip tracing (Identity verification: matching individual with missing borrower)	Identified missing borrower with false identity and false SSN
TR-BROOKS001995	April 2018 – Innovative Use of CLEAR Helps Find Absent Parents in Brown County, Wisconsin	Online article (TR)	Child support official	Child and family services / Skip tracing (Locating absent parents)	Located address of absent/missing parent; obtained contempt citation for nonpayment of child support
TR-BROOKS002003	August 2019 – Uncovering the Truth	Online article (TR)	County detective; federal agency special agent	Federal government (Identifying suspect of cyber tip: sexual exploitation of children, production and distribution of child pornography)	Identified suspects responsible for sexual exploitation of children, production and distribution of child pornography; opened way for federal investigation
TR-BROOKS002051	December 2019 – How Thomson Reuters Helped the Federal Government Verify Millions of Identities and Make the Nation's Healthcare System More Secure	Online article (TR)	Federal agency	Federal government (Verifying 60 million addresses)	Thomson Reuters CLEAR results superior to competitors in a pilot test, awarded government's contract by agency; used CLEAR ID Confirm
TR-BROOKS002101	July 2017 – Healthcare Fraud 101	Online article (TR)	Medicaid official (ex Medicaid General Inspector)	Healthcare fraud (Detecting and preventing healthcare fraud)	General description of use of CLEAR to combat healthcare fraud; make connections between individuals, incidents, activities, locations

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS002253	July 2017 – Using the Right Tools Helps Investigators in the Fight Against Medicaid Fraud	Online article (TR)	Medicaid fraud investigator and agency consultant	Healthcare fraud (Detecting and preventing healthcare fraud)	General interview describing use of CLEAR to combat healthcare fraud
TR-BROOKS002292	October 2020 – Indiana Child Support Bureau Chooses Thomson Reuters CLEAR	Online article (TR)	Indiana Child Support Bureau	Child and family services (Locating individuals with child support delinquency)	General adoption of CLEAR by Indiana Child Support Bureau
TR-BROOKS003259	September 2019 – Protecting Victims of Human Trafficking and Sexual Exploitation with CLEAR	Online article (TR)	Polaris (Nonprofit organization)	Anti-money laundering (Identifying and exposing crimes/networks of human traffickers)	General adoption and use of CLEAR by Polaris
TR-BROOKS055702	N/A	Use case template	Alcohol and marijuana distributors	Know your customer (Age and address verification to ensure legality of both the purchaser and the recipient)	N/A
TR-BROOKS055704	N/A	Use case template	Online gaming companies	Know your customer (Age verification, ID verification, fraud prevention around payment processing for people purchasing avatars, coins, upgrades, or entry payment for tournaments/e-sports events)	N/A
TR-BROOKS055706	N/A	Use case template	Churches	Corporate security (Investigating threats made against pastors, staff, church locations, and members as well as looking up license plate, callback phone numbers, alerting, and monitoring); Know your vendor (Due diligence for partner organizations and when pastors travel)	N/A

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS055707	N/A	Use case template	Sports teams and venues	Corporate security (Investigations into threats made to players, coaching staff, cheerleaders, and organizational staff as well as license plate look ups, reverse phone look ups, alerting, and monitoring); Know your vendor (due diligence on transportation and hotels as well as employee investigations/fraud or ticket/suite fraud)	N/A
TR-BROOKS055709	N/A	Use case template	Litigation support	Corporate security (Before process servers are deployed, it is necessary for the company's investigators to confirm recipient's best address, phone number, if there is a criminal history, or if the person is currently incarcerated and where, bankruptcies, and if they are alive)	N/A
TR-BROOKS055711	N/A	Use case template	Precious Metals	Anti -money laundering (FinCEN mandates that dealers in precious metals, stones, or jewels have an anti-money laundering program in place)	N/A
TR-BROOKS055715	N/A	Use case template	Retail	Corporate security (Investigating threats made against their staff, owners, locations, and brand); Know your vendor (Due diligence into other businesses a firm works with)	N/A

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS055717	N/A	Use case template	Healthcare	Know your vendor (Investigating currency and validity of health professionals' licenses as well as investigating criminal backgrounds along with associates/relatives); Corporate security (Investigations into safeguarding of vaccines as well as standard corporate security use cases)	N/A
TR-BROOKS055720	N/A	Use case template	Collection	Skip tracing (Best address, phone, relatives, associates, web analytics to conduct collection)	N/A
TR-BROOKS055722	N/A	Use case template	Oil, gas, and minerals companies	Know your vendor (Verifying who owns a piece of land before purchase)	N/A
TR-BROOKS055737	N/A	Use case template	Payment processors	Retail fraud investigation (ID verification and fraud prevention around people making purchases or transferring money using peer-to-peer money transfer or merchant payment processing)	N/A
TR-BROOKS055744	N/A	Use case template	Banks (crypto clients)	Know your customer (Conducting due diligence on corporate account applicants from bitcoin/cryptocurrency companies)	N/A
TR-BROOKS055746	N/A	Use case template	Banks (MRB clients)	Know your customer (Conducting due diligence on dispensaries and cultivators applying for corporate banking account)	N/A

Document	Date – Title	Document Type	CLEAR Customer	Use Case	Description/Outcome
TR-BROOKS055748	N/A	Use case template	Banks (Elders)	Fraud (30% of fraud within a bank is traced back to clients' friends, family, or connections. Combating "familiar" fraud, especially among vulnerable customers like elders)	N/A
TR-BROOKS055751	N/A	Use case template	Online banking	Know your customer (Verifying the identity of online applicants)	N/A
TR-BROOKS055760	N/A	Use case template	Merchant lending	Know your customer (Perform due diligence for underwriting loans)	N/A
TR-BROOKS055762	N/A	Use case template	Broker and dealers	Know your customer (Risk screening for new account onboarding)	N/A
TR-BROOKS055764	N/A	Use case template	Casinos	Anti-money laundering (Verifying clients and preventing money laundering)	N/A
TR-BROOKS055768	N/A	Use case template	Insurance	Insurance fraud (ID verification, age verification, death records, criminal history check, bankruptcies/liens/ judgments)	N/A
TR-BROOKS055775	N/A	Use case template	Investments and private equity	Know your customer (Complete due diligence on both the source of funds from investors and ensure the businesses they are investing in are not illegal, sanctioned, or illicit)	N/A
TR-BROOKS055777	N/A	Use case template	Crypto	Know your customer (Verifying the identity of customers for compliance)	N/A
TR-BROOKS055779	N/A	Use case template	Debt buyers	Know your vendor (Assessing risk of debt by looking for	N/A

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				liens, judgments, assets, and place of employment)	
TR-BROOKS055782	N/A	Use case template	Nonprofits	Know your vendor (Donor due diligence); Corporate security (Ensuring security of building/venue for charity events)	N/A
TR-BROOKS055784	N/A	Use case template	Factoring	Know your customer (Help factoring companies, which specialize in financing invoices from businesses with cash flow problems due to slow-paying customers, vet their customers)	N/A
TR-BROOKS055786	N/A	Use case template	Real estate	Know your customer (Due diligence is required on cash transactions to determine source of funding)	N/A
TR-BROOKS055789	N/A	Use case template	REITs	Corporate security (Preventing fraud/theft and fictitious vendors being set up in accounting)	N/A
TR-BROOKS055801	N/A	Use case template	Security, intelligence, and facilities services	Law enforcement (Assisting counter-narcotics, criminal and civil investigations, public safety, and national security)	N/A
TR-BROOKS055803	N/A	Use case template	Pharmaceuticals	Know your vendor (Ensuring consistency in compliance across supply chain through verification)	N/A
TR-BROOKS055805	N/A	Use case template	Logistics and transportation	Know your vendor (Due diligence on contractors); Corporate security (Combatting fraud, including falsified company or personal information provided,	N/A

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				shipments of illegal substances)	
TR-BROOKS055807	N/A	Use case template	Repos	Skip tracing (Finding most current phone numbers, addresses, and employment information)	N/A
TR-BROOKS055808	N/A	Use case template	Utilities and co-ops	Know your vendor (Verifying vendors/sub-contractor partners are legitimate and not in regulatory trouble)	N/A
TR-BROOKS055813	N/A	Use case template	Software and tech companies	Know your vendor (Vetting vendors and customers)	N/A
TR-BROOKS055817	N/A	Use case template	Auctions and museums	Anti-money laundering (Verifying identity of sellers to prevent fraud and money laundering)	N/A
Use case templateTR-BROOKS055824	N/A	Use case template	Accounting, audit, and tax firms	Tax fraud prevention (Assisting forensic accounting teams to evaluate suspicious financial activities within their clients' financials)	N/A
TR-BROOKS055827	N/A	Use case template	Automotive companies	Fraud prevention (Flagging loans that are suspicious); Skip tracing (Vehicle recovery on outstanding debts); Corporate security (Due diligence run on threats to staff)	N/A
TR-BROOKS055829	N/A	Use case template	Mortgage	Know your customer (Verifying identity and flagging suspicious loans)	N/A
TR-BROOKS055832	N/A	Use case template	Consulting and professional service firms	Know your customer (Due diligence on potential clients)	N/A

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TR-BROOKS055839	N/A	Use case template	Rentals (cars, homes, etc.)	Know your customer (Verification of prospective renters)	N/A
TR-BROOKS055844	N/A	Use case template	Manufacturing companies	Know your customer/vendor (Perform due diligence on customers and vendors to ensure they are solvent, reputable, and have clean backgrounds)	N/A
TR-BROOKS055855	N/A	Use case template	Credit card companies	Know your customer; Fraud prevention	N/A
TR-BROOKS055846	N/A	Testimonials/ Success Stories	Banks, debt collectors, healthcare, insurance, investigation, services	Know your customer; Fraud prevention, Corporate security	See, e.g., "Using Risk Inform brought multiple applicants to our attention that we were able to determine were applying for the sole purpose of committing fraud, helping us avoid well over $100,000 in fraud losses within the first 2 months."
TR-BROOKS055871	N/A	Testimonials/ Success Stories	*See, e.g.*, [redacted]	Law enforcement	*See, e.g.*, "Within 2 weeks of the sale closing and 1 week of access - the customer has recovered 25 of 29 stolen cars they have in their caseload. Along with the recovery, they uncovered the crime ring responsible for the thefts which were taking place at an airport rental facility."
TR-BROOKS030530; TR-BROOKS041418; TR-BROOKS070585; TR-BROOKS146612; TR-	2018-2019	White papers	*See, e.g.*, Medicare; Medicaid	Corporate Security; Know your customer; Healthcare fraud (Verifying the right patients are receiving their Medicare/Medicaid card)	*See, e.g.,* "Thomson Reuters had the highest rate of identifying the beneficiary in their system, had the highest match rate with the successfully delivered certified mailings, and offered the least expensive price for the pilot project."

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BROOKS148319; TR-BROOKS165057					
TR-BROOKS041734	9/15/2016	Testimonials/ Success Stories	[redacted]	Skip tracing ("The missing person stopped communications with everyone she knew, leaving very little clue as to whom she may be with, who she may have called etc. All I had to go on was her prior phone numbers from her last communication on her phone. I also needed to track those numbers to find out last known associates that may know of her disappearance.")	"Unfortunately, [redacted] was found deceased in her SUV after I received a tip at my office. At this time we do not know how [redacted] died as it is now a police investigation. There is no doubt that by using CLEAR and developing names and leads, those people that I called knew that we were actively looking for [redacted], and these calls may have assisted in locating her. It is also my belief that some of her associates that I located through my CLEAR searches assisted the police in their ongoing investigation. When I went to talk to Adams County Sheriff Detectives, they asked for my CLEAR reports to gather DOB's etc on any possible suspects."
TR-BROOKS044782	11/14/2016	Testimonials/ Success Stories	[redacted]	Law enforcement ("I had 2 elderly woman who worked their entire lives as civil servants. All they had to show for their hard work was a home. A man who only gave a nickname showed up at their door with promises and cash in a paper bag. He gave them hope to save their home from foreclosure but instead stole their title and them moved to	"I found "Alex," gathered enough evidence to make an arrest and he was indicted and found guilty of all charges. One of the conditions the prosecutors asked for was the return of property title to the 2 very frail elderly woman or financial restitution of over one million dollars to compensate the true value of the home he had stolen from them."

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				evict them. They had lost everything. The home they worked so hard for and the 15k in cash they had deposited to the new home in Mississippi. All but gone!")	
TR-BROOKS046629	6/12/2017	Testimonials/ Success Stories	Cendrowski Corp Advisors	Know your customer, Fraud prevention ("Cendrowski Corp Advisors was hired by a bank to investigate a customer who stopped communication and payments with the bank"; "Bank was faced with a customer who owed millions of dollars of a loan, customer was not paying and was not communicating with the bank")	"Through CLEAR I was able to determine that the bank customer was in fact using a SSN which was not assigned to him. When the bank initially lent him the millions of dollars they paid $100 to a company to verify his identity which came out fine. CLEAR showed me that in fact he caused losses in the millions with banks under his true SSAN, then he filed bankruptcy. He started using a false SSAN and obtained millions of dollars in loans from other banks. Now we knew why he was not communicating with the bank. We were able to notify Social Security Office of Inspector General as to the SSAN fraud."
TR-BROOKS046630	9/29/2017	Testimonials/ Success Stories	[redacted]	Skip tracing ("[redacted] was given the task to locate a truck that belonged to the company she worked for. While searching for the truck she discovered the truck had underwent title fraud and the person involved was recently released from Federal Prison for fraud, forgery, false	"Later, [redacted] uncovered the man was working at a tax return and credit repair business where he would have access to information that could be used for identity theft and tax return check fraud. These were all direct violations of this federal supervision. [redacted] contacted his probation officer and informed him of his illegal work. A police report was also filed."

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				documents, and identity theft—along with theft of tax return checks. With further research, [redacted] found that the individual transferred 8 other luxury vehicles to family and friends to wash the titles and defraud the banks. He opened a new business and purchased three new vehicles within the last few months and had been transferring titles for the last 4 years."	
TR-BROOKS046632	3/30/2017	Testimonials/ Success Stories	[redacted]	Skip tracing ("I try to locate individuals who have investment accounts, where the individuals have moved, but didn't notify us of their new address. If I cannot find them, I am required by state law to turn their investments over to the state of their last residency.")	"I am finding a high degree of positive results in finding lost account holders! When I speak with clients who have forgotten about their accounts, and they are reunited with thousands of dollars in investments, I know I am doing the right thing by helping them."
TR-BROOKS046633	9/27/2017	Testimonials/ Success Stories	Brown County Child Support	Child and family services ("Locating absent parents who owe child support or custodial parents who are due support.")	"This program has been one of the best resources I've used to locate absent parents who owe support. The address information we find, more often than not, is more current than what we have and once we confirm through a postal check, we can serve the individual or, in some cases, contact them about a jobs program we're offering. On the flip side, it has helped us locate custodial parents who may not have updated

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					their address with us to whom we can send funds that have been collected on their case."
TR-BROOKS046634	9/27/2017	Testimonials/ Success Stories	[redacted]	Skip tracing ("[redacted] was suspicious about a client's payment of minimal amounts and income reported from rental properties. Year after year [redacted] and his colleagues were unable to determine why the client was receiving rental income without actually owning a property—he claimed to be the property manager. By using CLEAR, [redacted] was able to run a report that revealed the client had previously owned these properties which were all nominal transfers to his children.")	"The CLEAR Person Search results allowed us to pursue Nominee Liens against all of the properties, in order to protect The States interest. These nominee liens placed a cloud on all the properties, preventing any transfer or future financing which in turn forced our customer pay off the liability in full in order to remove the clouds."
TR-BROOKS046636	3/30/2017	Testimonials/ Success Stories	[redacted]	Child and family services ("Tracking down untold numbers of absent parents.")	"Since 1998, CLEAR has helped [the organization] locate 27,709 absent parents and get the children the assistance they deserve."

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TR-BROOKS046639	9/28/2017	Testimonials/ Success Stories	[redacted]	Skip tracing ("[redacted] is a criminal defense investigator for the Innocence Program. He was informed of an individual who had information regarding a wrongfully convicted man. [redacted] used the reverse phone look-up search to locate and eventually interview the witness."	"On August 8, 2017 the client walked out of Suffolk County Superior Court a free man after serving 38 years in prison for a crime he didn't commit."
TR-BROOKS046640	3/31/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("An arrested individual fled while out on bond for very serious sexual assault charges. Many years had passed and L/E was unable to locate the wanted subject. Many years later the wanted individual was applying for citizenship very far from our jurisdiction. The individual had to be fingerprinted & when he was fingerprinted the active warrant showed up & he was taken into custody.")	"We were able to get accurate, concise contact info for the victim. The victim was now a US soldier. We were finally able to make contact with the victim and receive their input. This victim was serving our country in the armed forces, protecting our freedom and it was rewarding to help one of America's soldiers see justice, closure & finally be at peace knowing this dangerous individual would be held accountable & not have an opportunity to become a US citizen!"
TR-BROOKS046641	12/12/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("[redacted] were alerted to a missing person and were provided a phone number.")	"Using CLEAR, they were able to identify the carrier and was able to identify a subject. They were able to recover the body in 37 days and the suspect was charged on multiple accounts."
TR-BROOKS046642	12/5/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("The [redacted] was faced with a live explosive in a vehicle with no evidence to the perp.")	"Using CLEAR, they were able to obtain the data on the phone and identify that the suspect did in fact drive to the location and place the bomb. The suspect was off the streets in 48 hours."

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TR-BROOKS046643	9/28/2017	Testimonials/ Success Stories	[redacted]	Child and family services ("[redacted] who is a federal criminal investigator, was tipped off about an individual who was physically and sexually harming a child under the age of thirteen, for five years. By only having an image with latitude and longitude coordinates, [redacted] and her colleagues used CLEAR to geo-locate the subject and his various residences. Once the addresses were established, they performed a reverse address search to identify the subject and other family members. [redacted] also used CLEAR to locate the minor.")	"The subject is now incarcerated for federal and local charges related to molesting a minor, and the possession, receipt, and distribution of child pornography."
TR-BROOKS046645	10/5/2017	Testimonials/ Success Stories	[redacted]	Tax fraud prevention ("[redacted] works in the [redacted] She was looking for a man who was marked deceased but did not have a published obituary.")	"With CLEAR, they were able to identify that he was arrested 3 years after his death' because he did not register in Texas as a sex offender. They leveraged the lineup images to tie him to his driver's license and transfer the debt to a collections agency."
TR-BROOKS046647	9/28/2017	Testimonials/ Success Stories	[redacted]	Child and family services ([redacted] was assigned to an investigation involving an abduction of an 11 month old child. She had little information pertaining to the abductor and the possible	"The abductor was arrested and charged with 1st degree kidnapping and the child was safely returned to the mother."

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				location they were traveling to. By utilizing CLEAR, Erin was able to piece together some of the puzzle and obtain information about the abductor's telephone which led to a full name and pedigree info. Batch phone results led her to identify accomplices and the location of the child.")	
TR-BROOKS046649	6/12/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("A man was sending nude pictures of himself to many people, including children.")	"Using the phone search tool in CLEAR, Marilyn was able to locate the Perp's wife, who complied with the investigation. The perp is undocumented, and a warrant has been put out for his arrest."
TR-BROOKS046650	10/20/2017	Testimonials/ Success Stories	Springfield Police Department	Law enforcement ("Attempting to identify a suspect who held a woman against her will and raped her with very limited information.")	"Analysts shared their information with the detective bureau. The lead detective agreed that the information was compelling and brought the victim in to look at a photo array. As soon as the victim saw his photo, she pointed right to him and exclaimed, "That's him!" He was arrested and charged with kidnapping, assault and battery, aggravated rape, and indecent assault and battery."
TR-BROOKS046652	12/18/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("A fugitive was wanted for two separate homicides that occurred 15 years ago. They assumed a new alias and was nearly impossible to locate.")	"Using CLEAR's associate analytics [redacted] identified that the fugitive's brother had a new address (though he was also currently incarcerated). With this information, [redacted] and his team was able to locate the fugitive and are starting the extradition process."

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TR-BROOKS046653	4/10/2017	Testimonials/ Success Stories	Department of Veterans Affairs	Skip tracing ("A veteran who was receiving disability compensation moved without informing the VA. Due to this, he didn't receive payments for 11 months, and missed out on $31,317 that was due to him.")	"The VA was in a bind, and with CLEAR they were able to locate him and get him the money he was due."
TR-BROOKS046654	6/19/2017	Testimonials/ Success Stories	[redacted]	Skip tracing ("The [redacted] needed to track down veterans who were owed money and are hard to find.")	"Using CLEAR's address report, they located family members or neighbors who could get them in contact with the Veterans and paid out 10s of thousands of dollars."
TR-BROOKS046655	6/2/2017	Testimonials/ Success Stories	[redacted]	Child and family services ("In our Department, the situation we face every single day, is to locate absent, or non-custodial parents and putative parents.")	"The outcome is that we can now file for Court ordered Paternity for a child who otherwise may have never been sure who their fathers were. We can also obtain court orders for Child Support. This can be life changing for these children and their mothers as a partial source of income."
TR-BROOKS048964	5/9/2018	Testimonials/ Success Stories	Cheyenne Police Department	Law enforcement ("A homicide occurred in the city of Cheyenne, and the suspect fled the scene. They were able to reach her by phone, but couldn't triangulate her position well.")	"Using CLEAR, they ran a search on her and reviewed her associate's addresses - one fell within the phone tower that the carrier provided. Surveillance was set to be established at the property, however the suspect and another person left the property, causing a mobile surveillance to occur. A traffic stop was conducted and the suspect was taken into custody without incident 4 hours after the crime was committed."

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TR-BROOKS049564	9/10/2019	Testimonials/ Success Stories	[redacted]	Child and family services ("[redacted] is a detective with the [redacted] and he is responsible for cases involving sexually abused children. One specific case involved two little girls who were sexually assaulted by a family-friend when he was in town visiting the family. After the girls' mother passed away, they were taken from their father and placed in CPS custody; that's when they made their outcry.")	"With just a possible first and last name, and the town the girls lived in, [redacted] turned to CLEAR to help find their abuser. [redacted] was able to find three names and addresses that could be the potential suspect. With the help of a local Texas Ranger, they were able to contact the first person on their list and bring him in for questioning. This individual confessed to sexually assaulting both girls. He is currently waiting for trial."
TR-BROOKS049566	9/9/2019	Testimonials/ Success Stories	[redacted]	Child and family services ("Trying to locate non-custodial parents who have an obligation to support their children.")	"In many cases we are able to locate the non-custodial parents, so we can enforce the child support orders and send them to court if necessary in order to enforce those orders. This ultimately provides much needed support for children."
TR-BROOKS049886	12/2/2019	Testimonials/ Success Stories	[redacted]	Skip tracing ("Finding people that were involved in court process"	"[redacted] works for the [redacted] where he leverages CLEAR to find individuals that are evading the court process. With the help of the Person Search feature in CLEAR, he is able to locate those people and bring them to court."
TR-BROOKS049889	12/3/2019	Testimonials/ Success Stories	[redacted]	Child and family services ("Daily we face children who are put into dangerous situations with neglectful and abusive parents. A lot of times we don't have a name or	"CLEAR helps [redacted] and her team locate those caretakers so the child protective services team can help protect the children. Because of the up-to-date information CLEAR

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				address of those caretakers, so we have to search daily for people in the state of GA to get our child protective services team to go out and find the children to help protect and save them.")	provides, they are able to save the children before the abuse worsens."
TR-BROOKS049907	12/11/2019	Testimonials/ Success Stories	[redacted]	Skip tracing ("[redacted] works for the [redacted] and utilizes CLEAR to find missing people. Since there aren't many tools available to help law enforcement find people, they rely heavily on CLEAR to make those connections.")	"During the holiday season, the [redacted] receives many inquiries about missing individuals. With the help from CLEAR, the department can bring families together."
TR-BROOKS049908	12/10/2019	Testimonials/ Success Stories	Saunders County Attorney Office	Law enforcement ("As the Criminal Investigator for the Saunders County Attorney's office I was asked to review and work on a March 25, 1969 Homicide cold case.")	"I was able to interview and re-interview witness's many of whom came forward with new and pertinent information about our living suspect. I have been able to follow this suspect through many different states, marriages and keep up on current information about this suspect. The information gained through Clear also allow our office to forward the case with a current witness list on to our State Attorney Generals office for possible future prosecution."
TR-BROOKS060413	11/30/2016	Testimonials/ Success Stories	[redacted]	Skip tracing ("I received a call from a military member relaying a recently discharged Marine he had went to high school with had placed a suicide post on his Facebook account. All we had was his	"I was able to ascertain his current location, a local VA Hospital where he was a patient, and contacted the local police who responded and stopped the member from taking his own life."

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				last name and a town he had grown up in.")	
TR-BROOKS060414	10/26/2016	Testimonials/ Success Stories	[redacted]	Law enforcement ("Our department played a huge role in a multi county investigation seizing 22,400 pounds of marijuana,")	"Seizing 11 tons of marijuana. The case is still ongoing, but with the help of CLEAR, it saved countless hours of investigative work. One name turned into 30 more names helping connect the dots of this large case."
TR-BROOKS060416	9/26/2016	Testimonials/ Success Stories	[redacted]	Law enforcement ("A small Kentucky town was facing a rash of laced heroin overdoses. Authorities were able to target the courier, but not the supplier.")	"Police were going to go undercover, but because the courier provided two phone numbers, they leveraged CLEAR and located an associate to the supplier. They located the supplier, arrested him and found he had possession of carfentanil, a highly potent opioid. Police were kept out of harm's way and they were able to successfully arrest multiple individuals who were responsible for this."
TR-BROOKS060418	11/18/2016	Testimonials/ Success Stories	[redacted]	Child and family services ("Searching for a parent to give them a change before their parental rights get terminated, so the kids can get placed in the foster care system or to be adoptive.")	"Using both CLEAR and an internal system, Virginia searches for parents to give them a chance to take care of their child, otherwise the child is placed in foster care or adopted. DMV and SS search have been fruitful."
TR-BROOKS060419	11/16/2016	Testimonials/ Success Stories	Detroit Police Department	Law enforcement ("An 11 month old child with sickle cell anemia was at a physician's office with her foster mother. The biological mother, who is a reported narcotics user, also	"Within 3 hours of being notified, Jason and his team used CLEAR to locate the abductor's home, and arrested her. The child was brought to the hospital, treated and given necessary medication, and returned to her foster mother."

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				attended the visit, but then abducted the child.")	
TR-BROOKS060422	11/15/2016	Testimonials/ Success Stories	State of Michigan Office of Child Support	Skip tracing ("Stephanie assisted an associate in Kentucky who had a deceased client and needed to locate a minor child in another state.")	"By using CLEAR, she used the birth certificate name and cross referenced it with a state to locate the child within 30 minutes. The child will now receive $882 in social security each month until he turns 18, which he may not have received without her work."
TR-BROOKS060426	11/17/2016	Testimonials/ Success Stories	[redacted]	Skip tracing ("A friend of mine was trying to find her daughter after the daughter's father had passed away. I'm the Probate Specialist for an American Indian Tribe.")	"Using a maiden name, DOB and old address and CLEAR, she was able to track down the correct person. Because of [redacted], the daughter was able to attend the funeral and has since reconnected with the family."
TR-BROOKS060428	11/18/2016	Testimonials/ Success Stories	[redacted]	Law enforcement ("Missing persons complaint that had been reported 3 days prior to officers of this agency.")	"Resulted in locating victim deceased and arrest of person responsible for homicide within 48 hours of investigation.")
TR-BROOKS060431	9/19/2016	Testimonials/ Success Stories	[redacted]	Skip tracing ("A debtor had filed bankruptcy using a different social security number than one she had used previously in Mississippi. She had been moving from state to state, creating a new social security number, using it for financing, and then filing bankruptcy using that number. This was found to be a 16 year lifestyle for her. She was active	"Using CLEAR, they identified that the person had done this in many different states for over 16 years. Because of the information stored in the product, [redacted] was able to get an indictment on this individual."

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				in Mississippi, Alabama, Alaska, and Tennessee.")	
TR-BROOKS060437	11/22/2016	Testimonials/ Success Stories	Reed Smith	Skip tracing ("Attorney Kelley Miller, along with 20 law students are working on a Pro Bono project along with the Innocence Project. The goal is to help wrongfully incarcerated people obtain their full tax refunds. The team was tasked with locating affected individuals to educate them and offer free legal services.")	"The project is currently in progress, started on November 11, 2016. We will update the results as they are received. I would anticipate a December 19, 2016 update. Thomson Reuters was their last hope to find the affected people and offer services."
TR-BROOKS061525	2/3/2016	Testimonials/ Success Stories	[redacted]	Law enforcement ("I was assigned an arrest warrant for a fugitive that was wanted for Aggravated Assault with a Deadly Weapon on a Police Officer. The charges stemmed from an incident where the suspect attempted to run over a police officer in her vehicle after a botched theft attempt.")	"The fugitive was arrested for Aggravated Assault with a Deadly Weapon on a Police Officer without incident."
TR-BROOKS064293	12/20/2017	Testimonials/ Success Stories	[redacted]	Law enforcement ("An online sale meeting was established in a public place, where the subject was then robbed from the buyer at semi-automatic gun point. [redacted] and her team had descriptions of the robbers and their vehicle, including a license plate.")	"Using CLEAR to establish a new photo for the subject, she was able to call off surveillance to allow the team to search further and within 7 hours they located and arrested the robbers."

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TR-BROOKS064312	12/27/2017	Testimonials/ Success Stories	Prior Lake Police Department	Law enforcement ("Suspicious person at a McDonald's Restaurant in our city. Male was being evasive with his answers and officers suspected he was supplying a false name and date of birth.")	"Upon further conversation, an address was provided which proved that the person was in fact lying, and was wanted for a $100,000 warrant in Missouri. He is booked & being extradited to MO."
TR-BROOKS102898	7/19/2018	Testimonials/ Success Stories	Davis County Sheriff's Office	Law enforcement ("John and his team conducted a two-year investigation of a doctor who was using Yahoo to communicate with others regarding sexual exploitation of minors via Skype chat.")	"The team used CLEAR Web Analytics to identify the people behind the Yahoo user ids, which has led to the arrest of two men for sexually exploiting minors."
TR-BROOKS102900	7/16/2018	Testimonials/ Success Stories	[redacted]	Law enforcement ("[redacted] conducted a fraud investigation for over 150 victims throughout Wisconsin via evidence identification.")	"He used CLEAR to locate victims and was able to link the suspects to 3 addresses. These addresses led [redacted] to identify two suspects, who are now being processed for committing fraud for over two years."