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

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

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

Attorneys for Defendant
Thomson Reuters Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CAT BROOKS and RASHEED SHABAZZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THOMSON REUTERS CORPORATION,

Defendant.

Case No. 3:21-cv-01418-EMC

DEFENDANT THOMSON REUTERS' MOTION TO EXCLUDE TESTIMONY OF FINANCE SCHOLARS GROUP, INC. (DR. TERRY LLOYD)

REDACTED - PUBLICLY FILED
FILED VERSION OF DOC. 157-2
PURSUANT TO COURT ORDER,
DATED MARCH 21, 2023 (DOC. 179)

Date: April 20, 2023
Time: 1:30 p.m.
Place: Courtroom 5, 17th Floor
Judge: Hon. Edward M. Chen

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 20, 2023, at 1:30 p.m., or as soon thereafter as this Motion may be heard in this Court, Defendant Thomson Reuters Corporation ("TR"), by and through its counsel of record, will and hereby does move the Court for an order excluding the testimony of Finance Scholars Group, Inc. (Dr. Terry Lloyd), including the report filed as Doc. 127-12 ("Lloyd Rep."). This Motion is based on this Notice, the following Memorandum of Points and Authorities, the pleadings and papers on file in this action, any arguments and evidence to be presented at hearing, and any other matters that may properly come before the Court.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. Statement of Issue

Whether the testimony and report of Finance Scholars Group, Inc. (Dr. Terry Lloyd) should be excluded under Federal Rule of Evidence 702.

II. Introduction

Plaintiffs claim that Thomson Reuters ("TR") is unjustly enriched by the use of CLEAR, and they seek disgorgement of the profits resulting from TR's allegedly unjust conduct. Plaintiffs offer the report of Finance Scholars Group, Inc., authored by Dr. Terry Lloyd (the "Lloyd Report") as a proposed methodology to calculate the amount that TR should disgorge. But the Lloyd report is neither relevant nor reliable, and it should be excluded.

The Lloyd Report is not relevant because it does not measure the appropriate amount of disgorgement, which is limited to (1) net profits, that are (2) attributable to the alleged misconduct. First, Lloyd estimated not net profit, but gross profit, without regard to the costs that TR incurred in connection with CLEAR. Second, Lloyd himself admits that he did not distinguish between "just" and "unjust" aspects of CLEAR; he was asked to assume that all profit was "unjust." The Lloyd Report therefore bears no relation to the pertinent inquiry and should be stricken on that basis.

The Lloyd Report is not reliable because its reasoning is not scientifically valid. Even if *gross* profit were relevant, Lloyd does not calculate that using a methodology that is accepted in his field. Rather, Dr. Lloyd devised a new, *ad hoc* method for this case only. He based his calculation on inconsistent measures of revenues and costs, and the proxies he used to estimate the relevant revenues were plucked from thin air. Dr. Lloyd then compounded these errors by relying on incomplete data and making an arithmetic error applying one of those proxies.

The Lloyd Report presents a number that bears no relation to Plaintiffs' claim and presents that number as though it measures something relevant. It does not. The approach used by Dr. Lloyd would result in a punitive sanction for TR and a windfall for plaintiffs. The Lloyd Report is inadmissible and should be excluded.

III. Factual Background

A. Revenue and Costs of CLEAR

TR earns revenue from its CLEAR customers in two ways: from flat-rate subscriptions that allow customers to conduct an unlimited or a fixed number of searches, and from per-search charges. *See* Doc. 127-13 at 2. TR refers to the revenue from the flat-rate subscriptions as "recurring" revenue and the revenue from the per-search charges as "transactional" revenue. *Id.* Over the period Dr. Lloyd analyzed, recurring revenue made up more than [redacted] of TR's revenue from CLEAR, while transactional revenue accounted for just under [redacted] *See id.* at 3.

Like every business, TR incurs costs to generate revenue. Among the costs TR incurs are the cost of paying employees who support the functioning of the CLEAR platform, the compliance team who ensures that only legitimate entities with permitted use cases access CLEAR,[1] sales costs, and royalties for the third-party information available through CLEAR. *See* Lloyd Rep. at 16.

B. Dr. Lloyd's Analysis

1. Revenue Allocation

Dr. Lloyd first attempted to attribute TR's revenue to the presence of information about putative class members within CLEAR.[2] He proceeded in three steps. First, he estimated how much of TR's revenue from CLEAR over the past several years was attributable to the United States. *See* Lloyd Rep. at 11-12. Second, he estimated what portion of that revenue was attributable to California. *Id.* at 12-13. Third, he attempted to determine what portion of the California revenue resulted from the availability of information about natural persons in CLEAR, as opposed to information about businesses. *Id.* at 13-14. In the end, Dr. Lloyd's revenue apportionment proceeded as follows:

---

[1] *See, e.g.,* Doc. 152-8.

[2] As TR noted in its opposition to Plaintiffs' motion for class certification, precisely what information qualifies under Plaintiffs' class definition is not clear. *See* Doc. 150-4 at 15-16.

	2017*	2018	2019	2020	2021
Revenues	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
US Allocation	99.0%	99.0%	99.0%	99.0%	99.0%
CLEAR US Revenues	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
California Allocation	14.0%	14.0%	14.0%	14.0%	14.0%
CLEAR California Revenues	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
California Natural Persons	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CLEAR California Revenues/Persons	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Id. at 18.

Only Dr. Lloyd's second step–the "California Allocation"–is relevant to this Motion. To estimate what portion of CLEAR revenues were "attributable" to California (again, the meaning of that attribution remains unclear), Dr. Lloyd took a simple mean of California's share of U.S. GDP from 2021 (14.6%) and California's share of U.S. arrests from 2018 (13.4%), and decided that the resultant 14% sufficed to estimate the portion of TR's revenue from CLEAR attributable to California *Id.* at 12-13. He did not explain why he chose 2021 and 2018, respectively, as the appropriate benchmarks or why he did not use a weighted average across all four years or another measure beyond a simple arithmetic mean of two numbers.

Dr. Lloyd acknowledged that relying on California's share of the United States population (11.8% in 2021) would be a "workable" method of apportioning revenue to California. *Id.* But Dr. Lloyd asserted that California's arrest share and GDP share are better measures of the revenue attributable to information about putative class members in CLEAR because CLEAR is often used by law enforcement and "as a tool related to economic activity." *Id.* He did not explain the supposed connection between these figures and TR's revenue any further.

As shown, Dr. Lloyd assumed that all of TR's revenue from searches relating to individuals in California was attributable to the availability of information about putative class members in CLEAR. *See id.* at 12-14. He did not make any effort to determine what portion of that revenue was attributable to other factors, like TR's processing and organization of the information, CLEAR's search function and user interface, TR's brand recognition and reputation within the market, the availability of customer support services like research support and a library of quality training materials,[3] its proprietary Risk Inform scores, or any other factors that differentiate CLEAR from competitors that offer similar products containing much of the same information. *See* Declaration of Hayden Schottlaender, Ex. 1, Deposition of Terry Lloyd ("Lloyd Dep.") at 168:8-173:12, 179:7-180:7; Doc. 125-20 (Declaration of Andre Mura in Support of Plaintiffs' Motion for Class Certification, Ex. 37) (touting CLEAR's transparency of data sources over competitors, its customizable dashboard, and its "cutting edge public records technology"); Doc. 152-3 (Declaration of Kevin Appold in Support of Thomson Reuters' Opposition to Plaintiffs' Motion for Class Certification, Ex. B-3) (quoting CLEAR customer assertion that "the interface [of CLEAR] is more user friendly" than competitors).

2. Cost Allocation

As with revenue, TR produced–and Dr. Lloyd reviewed–data showing TR's costs of offering CLEAR. *See* Lloyd Rep. at 16 & App'x A at 9 (acknowledging that he reviewed "Product Profitability – Consolidation for CLEAR by year Feb 2022"). But when estimating what portions of CLEAR's costs are attributable to California, Dr. Lloyd employed an entirely different method than he did for revenue. Instead of allocating 14% of CLEAR's costs to California (as he did for CLEAR's revenue), Dr. Lloyd attempted to estimate the "incremental cost" or "marginal cost" to TR of offering information pertaining to putative class members through CLEAR. *Id.* at 14-17. Dr. Lloyd described this measure as "the added cost to [TR to] bundle and deliver . . . information to a new . . . customer" after TR has "acquire[d] data and package[d] it for sale" and as "costs that . . . vary for each additional data point included within CLEAR." *Id.* at 15-16. The *only* costs that met Dr. Lloyd's criteria are the transactional royalties TR pays to license some of

[3] *See, e.g.*, CLEAR training and support, https://legal.thomsonreuters.com/en/support/clear/training-materials#training-resources (last

the information in CLEAR. *Id.* at 17. Dr. Lloyd determined that these transactional royalties are fees that TR pays to certain data providers "based on the usage of the data being licensed," as opposed to the flat-rate royalties it pays for all of the other information in CLEAR. *Id.* at 16.

Aside from transactional royalties, Dr. Lloyd did not subtract any other cost from his revenue calculation, meaning he did not deduct *a single penny* for flat-rate royalty costs TR paid to license information in CLEAR, employee salaries, sales costs, or any other costs. *See id.* In the end, Dr. Lloyd therefore concluded that plaintiffs are entitled to [redacted] of his calculated revenue figure. *Id.* at 17-18.

IV. Legal Standard

Before admitting expert testimony, the Court must conclude that the testimony is both relevant and reliable. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993).

Expert testimony is relevant if it is helpful to the factfinder "to understand or determine a fact in issue." *Id.* at 592. To determine whether expert testimony is relevant, the court must first analyze the governing substantive law, *Daubert v. Merrell Dow Pharms., Inc.* (*Daubert II*), 43 F.3d 1311, 1320 (9th Cir. 1995), and then must determine whether the expert's opinion bears "a valid scientific connection to the pertinent inquiry," *Daubert*, 509 U.S. at 591-92. *Daubert's* relevancy requirement "is more stringent than the relevancy requirement of Rule 402 of the Federal Rules of Evidence." *Senne v. Kan. City Royals Baseball Corp.*, 591 F. Supp. 3d 453, 479 (N.D. Cal. 2022). Because expert testimony "can be both powerful and quite misleading" federal courts "must . . . exclude [it] unless they are convinced that it speaks clearly and directly to an issue in dispute in the case, and that it will not mislead the [factfinder]." *Daubert II*, 43 F.3d at 1321 n.17 (citation omitted).

In addition to being relevant, an expert's testimony also must be reliable. *Daubert*, 509 U.S. at 589. To determine reliability, the court must conduct "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid." *Id.* at 592-93. An expert witness's credentials and claims that his methods are reliable do not suffice.

---

visited Feb. 6, 2023).

Daubert II, 43 F.3d at 1315-16. Instead, experts must "point to some objective source . . . to show that they have followed [a valid] method, as it is practiced by (at least) a recognized minority of [experts] in their field." *Id.* at 1319. Plaintiffs bear the burden of establishing both prerequisites by a preponderance of the evidence. *Daubert*, 509 U.S. at 592 n.10.

V. Dr. Lloyd's opinion is inadmissible because he calculated gross profit instead of net and because he failed to exclude CLEAR revenues having nothing to do with Plaintiffs' theories of liability.

Disgorgement is an equitable remedy, the object of which "is to eliminate profit from wrongdoing while avoiding, so far as possible, the imposition of a penalty." Restatement (Third) of Restitution and Unjust Enrichment § 51(4) (Am. L. Inst. 2011); *see also Liu v. SEC*, 140 S. Ct. 1936, 1944 (2020) (recognizing that because equity courts lack authority to impose punitive remedies, they have always "circumscribe[d] the [disgorgement] award in multiple ways to avoid transforming it into a penalty outside their equitable powers"). To avoid the imposition of a penalty, disgorgement has always been limited to (1) a defendant's *net* profit, (2) attributable to the alleged wrong. Dr. Lloyd's calculation in this case respects neither limit and should therefore be excluded.

A. Dr. Lloyd's opinion is inadmissible because he did not calculate *net* profit.

Net profit is the appropriate measure of disgorgement in California. *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451, 1491 (2014) (citing Restatement § 51(4)), *as modified* (May 27, 2014). Net profit is "[t]otal sales revenue less the cost of the goods sold and *all* additional expenses." *Net Profit*, *Black's Law Dictionary* (11th ed. 2019) (emphasis added); *see also Carrey v. Boyes Hot Springs Resort, Inc.*, 245 Cal. App. 2d 618, 622 (1966) ("It is the general rule that, in calculating the net profit of a business *all* of the costs of producing the gross income should be deducted.") (emphasis added); *Coates v. Lake View Oil & Ref. Co.*, 20 Cal. App. 2d 113, 119 (1937) ("Net profits are the gains made from sales 'after deducting the value of the labor, materials, rents, and *all* expenses, together with the interest of the capital employed.'") (emphasis added) (citation omitted).

As Dr. Lloyd admits, "gross profit and net profit are different things." Lloyd Dep. at 56:12-13. Net profit requires the deduction of *all* expenses incurred in producing the revenue, while gross profit requires only the cost of goods sold to be deducted. *See Gross Profit, Black's Law Dictionary* (11th ed. 2019) (defining gross profit as "total sales revenue less the cost of the goods sold, no adjustment being made for additional expenses and taxes"); *see also Coates*, 20 Cal. App. 2d at 119 ("Gross profits are really not profits at all" because they do not "deduct[] the expenses of resale and other costs of doing business."); Doc. 151-17 ("Kidder Rep.") at 24-25.

But Dr. Lloyd calculated gross profit, not net profit. Lloyd Dep. at 57:21-58:2 ("Q: And in this case, did you calculate gross profits for CLEAR or net profits for CLEAR? A: We calculated the gross profits as I describe."); Lloyd Rep. at 7-8. Because he calculated gross profit, the *only* cost Dr. Lloyd deducted from Thomson Reuters' revenue from CLEAR was (a small fraction of) the costs of goods sold, i.e., a small fraction of the royalties Thomson Reuters paid to license the information available in CLEAR. Lloyd Rep. at 17. Dr. Lloyd did not deduct any other costs that were necessary to produce the revenue, like money TR spent on "compensation," "marketing," "sales," "editorial," or any number of other cost figures that were available to Dr. Lloyd. *See id.* at 16.

Dr. Lloyd ignored all of these costs because he concluded that although the Restatement (and decades of precedent) uses the term "net profit," it actually meant gross profit. Lloyd Dep. at 62:4-6 ("[W]hat the Restatement defines as net profit, I interpret or understand to be gross margin or gross profit . . . ."); *see also* Lloyd Rep. at 7-8 ("[T]he measure of profitability called 'net profit' by the Restatement and other authorities is what an accountant or financial analyst would more likely call 'gross margin,' 'gross profit,' or 'incremental profit.'"). He reached this conclusion based on the Restatement itself, and two opinions from the California Court of Appeal. *See* Lloyd Dep. at 58:1-10, 59:19-61:11; Lloyd Rep. at 3 n.4. But Dr. Lloyd is not qualified to offer legal conclusions, and none of those referenced authorities holds that gross profit is the proper measure of disgorgement, or that when calculating net profit one may deduct only some of the costs of goods sold while ignoring all of the other costs necessary to operate the business. The Restatement provides that the proper measure of disgorgement is "net profit" and that a defendant "may be allowed a credit for money expended . . . in carrying on the business that is the source of the profit that is subject to disgorgement." Restatement § 51(5)(c). The two California Court of Appeal opinions Lloyd cites hold the same: that "net profit" is the appropriate measure of disgorgement. *See Am. Master Lease*, 225 Cal. App. 4th at 1487-88, 1491; *Uzyel v. Kadisha*, 188 Cal. App. 4th 866, 894 (2010). Indeed, *American Master Lease* goes further and reaffirms the bedrock rule that "in calculating the net profit of a business *all* of the costs of producing the gross income should be deducted." 225 Cal. App. 4th at 1492 (emphasis added) (quoting *Carrey*, 245 Cal. App. 2d at 622).

In sum, net profit is the proper measure of disgorgement in California, and Dr. Lloyd's failure to estimate it means that his opinion does not bear "a valid scientific connection to the pertinent inquiry" and is thus inadmissible. *Daubert*, 509 U.S. at 592.

B. Dr. Lloyd's opinion is inadmissible because he did not exclude the profit TR earned from unchallenged aspects of CLEAR.

Since the proper measure of disgorgement is the "net profit *attributable to the underlying wrong*," *Am. Master Lease*, 225 Cal. App. 4th at 1491 (emphasis added), "[t]he party seeking disgorgement 'has the burden of producing evidence permitting at least a reasonable approximation of the amount of the wrongful gain,'" *Uzyel*, 188 Cal. App. 4th at 894 (quoting Restatement § 51(5)(d)). *See also* Restatement § 51, cmt. *f* (explaining that one must determine what portion of the defendant's net profit "is properly attributable to the underlying wrong" and what portion is "the product of legitimate contributions by the defendant that should not, in justice, be awarded to the claimant").

In this case, Plaintiffs challenge only the collection and availability for sale of information about putative class members. They do not challenge other features of CLEAR, like the design of the search function, the user interface, the organization of the data, or TR's proprietary Risk Inform scores. Therefore, the appropriate measure of disgorgement is only the portion of TR's profit that is attributable to the presence of information about putative class members in CLEAR.

Dr. Lloyd acknowledges that some of TR's profits from CLEAR were derived from *other* components of the product not the subject of this litigation. *See* Lloyd Dep. at 168:8-173:12. Yet he admits that he made no effort to identify and exclude that profit from his disgorgement estimate: "I was not asked nor did I independently undertake to disaggregate the components or the attributes or drivers of revenue." *Id.* at 171:8-10; *see also id.* at 180:5-7 ("I did not attempt to break out revenue or revenue drivers by those components. I was not asked to do that, and it's not relevant to my calculation."). Dr. Lloyd's failure to isolate the profit attributable to the alleged wrong is another independent reason to exclude his opinion.

VI. Dr. Lloyd used unreliable methods to form his opinion.

In addition to being unconnected to the pertinent inquiry, Dr. Lloyd used unreliable methods to generate his opinion. To demonstrate that his methods are reliable, Dr. Lloyd was required to "point to some objective source . . . to show that [he has] followed [a valid] method, as it is practiced by (at least) a recognized minority of [experts] in [his] field." *Daubert II*, 43 F.3d at 1319. Dr. Lloyd has not satisfied that requirement for two reasons. First, he did not use a reliable method of calculating gross profit and instead used an *ad hoc* method he invented for purposes of this case only. Second, Dr. Lloyd has not demonstrated that the figure he used to apportion TR's revenue to California–a simple mean of two arbitrary national statistics (California's share of national arrests in 2018 and its share of national GDP in 2021)–has anything to do with TR's revenue from CLEAR.

A. Dr. Lloyd's *ad hoc* method of calculating gross profit is not valid.

Even if calculating gross (rather than net) profit were appropriate here, Dr. Lloyd did not even do that correctly. Instead, he devised a nonsensical and *ad hoc* method of calculating gross profit that dramatically overstates the gross profit attributable to CLEAR. No legal authority Dr. Lloyd cites approves of his new method, and none of the secondary sources he cites endorse it. Therefore, Dr. Lloyd did not meet his burden to identify objective and independent evidence demonstrating that his method of calculating gross profit is reliable. *Daubert II*, 43 F.3d at 1319.

To estimate gross profit attributable to CLEAR, Dr. Lloyd began by calculating an *allocated* CLEAR revenue figure (i.e., identified *total* CLEAR revenues he believed relevant to this case). And then he subtracted from that figure *incremental* cost, which he defined as "costs that . . . vary for each additional data point included within CLEAR." Lloyd Rep. at 16; *see also* Lloyd Dep. at 226:14-17 ("I didn't calculate marginal revenues. I calculated total revenues derived by CLEAR using data on California persons, and then calculated the marginal or incremental cost related to producing that revenue."). That "hybrid" of taking *allocated* revenue figures and subtracting *incremental* cost is not a valid or reliable measure of gross (or net) profit. *See* Kidder Rep. at 26-28. In the simplest terms, if Dr. Lloyd "believes that it is appropriate to allocate all of CLEAR's revenue on the basis of the relative size of California," (here, 14%), "he should also allocate all of CLEAR's expenses on the basis of the relative size of California" (again, 14%). *Id.* ¶ 78. Alternatively, he could identify an appropriate increment (i.e., one additional search of the information at issue in this case) and then calculate the revenues derived from that increment,[4] and subtract the costs associated with generating that increment. Instead, his newly-invented hybrid approach "significantly overstates Thomson Reuters' gross profits." *Id.* ¶ 81. That hybrid approach is the only way that Dr. Lloyd could come to the absurd conclusion that TR realizes a [redacted] profit margin from operating CLEAR. *See id.*, at Part 6.3.1 (describing these flaws in greater detail).

B. Dr. Lloyd's method of apportioning TR's total revenue from CLEAR to California is not reliable.

In addition to his other methodological errors, Dr. Lloyd's method for apportioning TR's revenue from CLEAR to California was not reliable. The approach he took is poorly explained. At times, he suggests that he attempted to determine the share of the information in CLEAR that is about California residents, and at other times he suggests that he attempted to determine the proportion of searches that turned up information about California residents. *Compare* Lloyd

[4] One reason Dr. Lloyd may have deviated from known or accepted accounting methods here is because "the incremental revenue associated with one more search is zero for most customers because they are on subscription plans." Kidder Rep. at 27.

Dep. at 124:18-21 ("We're attempting to estimate the . . . share of California data that goes into the total U.S. dataset aggregated by Thomson Reuters in the CLEAR product.") *with* Lloyd Rep. at 12 (noting that TR does not "maintain historical data identifying which CLEAR queries have obtained information about Californians as compared to non-Californians"). As proxies for those loose parameters, Dr. Lloyd chose to average California's share of U.S. GDP from 2021 (14.6%) and California's share of U.S. arrests from 2018 (13.4%). Lloyd Rep. at 12-13. But Dr. Lloyd has not demonstrated that a simple, non-weighted average of California's share of GDP in one year and its arrest rate in another is a reliable proxy for limiting CLEAR's revenues to Plaintiffs' theory of unjust enrichment here. *See* Kidder Rep. at 31-34.

Dr. Lloyd did not analyze whether California's share of national arrests or share of GDP are correlated with the share of information about Californians in CLEAR or searches of Californians in CLEAR. *See* Lloyd Rep. at 12-13; Lloyd Dep. at 124:5-125:22. Nor does he explain why one would even expect them to be related. And he does not cite any evidence suggesting that either the share of Californians' information in CLEAR or the share of searches targeting Californians over the past several years is any larger than California's share of the population. Making matters worse, even if the proxies Dr. Lloyd chose were relevant to this case, the data he used to calculate his arrest proxy is wholly unreliable for this application. Dr. Lloyd's sole source for the arrest rate did not account for arrests by the New York City Police Department or the District of Columbia's Metropolitan Police Department, or from the State of Iowa, and it appears to be missing data from large swaths of Illinois. *See* Schottlaender Decl., Exs. 2-3 (Lloyd Dep. Ex. F5-F6). California's share of national arrests is therefore unreliably inflated in Dr. Lloyd's only source data.

Further, even *if* that underlying data were reliable, Dr. Lloyd committed an arithmetic error in calculating that California's share of national arrests was 13.4%. That data shows that California's share of nationwide arrests was actually 12.8%. *See* Schottlaender Decl., Ex. 3 (Lloyd Dep. Ex. F5); Kidder Rep. at 33.

VII. Conclusion

For the foregoing reasons, the Court should exclude the testimony of Dr. Lloyd.

Dated: February 6, 2023

PERKINS COIE LLP

By: */s/ Hayden M. Schottlaender*
Hayden M. Schottlaender
HSchottlaender@perkinscoie.com

Attorneys for Defendant Thomson Reuters Corporation