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**UNITED STATES DISTRICT COURT FOR THE
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-KAW

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Judge: Hon. Edward M. Chen

1 Plaintiffs move pursuant to Civil Local Rules 7-11 and 79-5(c) to seal a narrow portion
 2 of the parties' master settlement agreement (Exhibit 1 to the Declaration of Andre Mura and
 3 Geoffrey Graber) in the above-captioned litigation in connection with Plaintiffs' Motion for
 4 Preliminary Approval of a Class Action Settlement. Specifically, Plaintiffs move to seal only
 5 the specific opt-out threshold that would trigger settlement failure under the Parties'
 6 agreement. Courts in this District, including this Court, find such information appropriate
 7 for sealing.

8 As required by Civil Local Rules 79-5(c)¹ and 7-11(a), Plaintiffs simultaneously submit
 9 (1) the declaration of Andre M. Mura in support of Plaintiffs' Administrative Motion to File
 10 Under Seal; (2) an unredacted version of the parties' Master Settlement Agreement,
 11 highlighted to indicate the proposed redaction (attached as Exhibit 1 to the Declaration of
 12 Andre Mura and Geoffrey Graber in Support of Plaintiffs' Motion for Preliminary Approval);
 13 and (3) a proposed order that lists each portion of the Settlement Agreement sought to be
 14 sealed.

15 I. ARGUMENT

16 Plaintiffs have narrowly tailored their sealing request. All they seek to file under seal
 17 here is "the exact [opt-out] threshold" for their settlement—information that is highly
 18 appropriate to "ke[ep] confidential." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
 19 948 (9th Cir. 2015). Because public disclosure of this information would be highly prejudicial,
 20 there are compelling reasons to keep that information under seal. *See id.*

21 "Historically, courts have recognized a 'general right to inspect and copy public
 22 records and documents, including judicial records and documents.'" *Kamakana v. City &*
 23 *Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*,
 24 435 U.S. 589, 597 & n.7 (1978)). Parties seeking to seal judicial records relating to motions that
 25

26 ¹ While Plaintiffs are filing a contemporaneous Administrative Motion to Consider
 27 Whether Another Party's Materials Should be Sealed with respect to other information in
 28 the same declaration that Thomson Reuters designated under the parties' stipulated
 protective order, Local Rule 79-5(f)(5) requires Plaintiffs file a separate motion under 79-
 5(c) because this document contains independently sealable material, as argued herein.

1 are “more than tangentially related to the underlying cause of action,” *Ctr. for Auto Safety v.*
2 *Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016), bear the burden of overcoming the
3 presumption with “compelling reasons supported by specific factual findings that outweigh
4 the general history of access and the public policies favoring disclosure.” *Kamakana*, 447 F.3d
5 at 1178–79 (internal quotation marks and citation omitted). Compelling reasons justifying
6 the sealing of court records generally exist “when such ‘court files might have become a
7 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote
8 public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting
9 *Nixon*, 435 U.S. at 598).

10 Records attached to motions that are “not related, or only tangentially related, to the
11 merits of a case” are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809
12 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to
13 court records attached only to non-dispositive motions because those documents are often
14 unrelated, or only tangentially related, to the underlying cause of action.” (internal quotation
15 marks and citation omitted)). Parties moving to seal records attached to motions unrelated
16 or only tangentially related to the merits of a case must meet the lower “good cause”
17 standard of Rule 26(c) of the Federal Rules of Civil Procedure. *Ctr. for Auto Safety*, 809 F.3d
18 at 1098–99; *Kamakana*, 447 F.3d at 1179–80. The “good cause” standard requires a
19 “particularized showing” that “specific prejudice or harm will result” if the information is
20 disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir.
21 2002) (citation omitted); *see* Fed. R. Civ. P. 26(c).

22 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court
23 documents for, inter alia, the protection of “a trade secret or other confidential research,
24 development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has
25 adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that
26 “[a] trade secret may consist of any formula, pattern, device or compilation of information
27 which is used in one’s business, and which gives him an opportunity to obtain an advantage
28 over competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir.

1972) (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the production of goods. . . . It may, however, relate to the sale of goods or to other operations in the business. . . .” *Id.* (alterations in original). Furthermore, the U.S. Supreme Court has recognized that sealing may be justified to prevent judicial documents from being used “as sources of business information that might harm a litigant's competitive standing.” *Nixon*, 435 U.S. at 598.

A. There are Compelling Reasons to Seal the Opt-Out Threshold

Courts reviewing motions to file under seal connected to motions for preliminary approval of class action settlements apply the “compelling reasons” standard. *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2017 WL 4750628, at *4 (N.D. Cal. Oct. 20, 2017); *In re Yahoo! Inc. Sec. Litig.*, No. 17-CV-00373-LHK, 2018 WL 11349976, at *2 (N.D. Cal. May 9, 2018).

There are compelling reasons to seal the opt-out threshold that triggers settlement failure here. Courts in this District, including this Court, have agreed that a settlement’s opt-out threshold is appropriate to file under seal. *In re Yahoo!*, 2018 WL 11349976, at *2 (sealing opt-out threshold in settlement agreement); *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 9115980, at *2 (N.D. Cal. May 6, 2016) (Chen, J.) (same); *Thomas*, 2017 WL 4750628, at *4 (same); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 4207245, at *7 (N.D. Cal. Sept. 4, 2018) (same). As each of these courts concluded, the opt-out threshold was properly sealed to prevent potential obstructors from taking advantage of that threshold to seek higher payments for themselves. *Hefler*, 2018 WL 4207245, at *7 (N.D. Cal. Sept. 4, 2018) (collecting cases). That threat created a compelling reason to file the threshold under seal. *Id.* The same is true here. If the opt-out threshold is filed in the public record, third parties may utilize it to frustrate the settlement to their own gain. That compelling reason suffices to support Plaintiffs’ narrow sealing request. *See id.*

B. The Parties Will be Prejudiced if the Court Denies the Sealing Request

For the same reason, the parties will be prejudiced if the Court denies this narrow sealing request and requires the opt-out threshold to be publicly filed. *See O'Connor*, 2016

WL 9115980, at *2 (this court agreeing that a narrow request to seal the opt-out threshold is appropriate); *In re Yahoo!*, 2018 WL 11349976, at *2 (describing the prejudice that may result absent sealing this limited information). This factor, too, weighs in favor of granting Plaintiffs' narrow sealing request here.

C. There is no Less Restrictive Alternative

Plaintiffs here do not seek to seal the entirety of the settlement agreement, but only the narrow information that this Court, and others, have found appropriately targeted for a sealing request. *O'Connor*, 2016 WL 9115980, at *2 (sealing only the opt-out threshold); *In re Yahoo!*, 2018 WL 11349976, at *2 (same). There is no more targeted sealing request or alternative means of protecting this competitively sensitive information that would avoid prejudice to Plaintiffs here.

* * *

As this Court and others have recognized, there are compelling reasons to seal an opt-out threshold from a publicly filed settlement agreement that is filed in connection with a motion for preliminary approval. Plaintiffs here would suffer prejudice absent this Court reaching the same conclusion. And Plaintiffs offer a narrowly tailored sealing request that seals only that competitively sensitive information, and preserves the broad right of public access to the settlement itself. For these reasons, the Court should grant Plaintiffs' request to seal the opt-out threshold from the parties' master settlement agreement.

DATED: August 29, 2024

Respectfully submitted,

/s/ Andre M. Mura
Andre M. Mura

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