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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

THOMSON REUTERS CORPORATION,

Defendant.

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

DEFENDANT THOMSON REUTERS' STATEMENT IN RESPONSE TO PLAINTIFFS' ADMINISTRATIVE MOTION TO CONSIDER WHETHER ANOTHER PARTY'S MATERIALS SHOULD BE SEALED

Thomson Reuters submits this Statement pursuant to Civil Local Rules 7-11 and 79-5 and in response to Plaintiffs' Administrative Motion to Consider Whether Another Party's Materials Should be Sealed ("Motion"). Dkt. 239. Through this Statement, Thomson Reuters seeks an order to file under seal the materials originally designated in Plaintiffs' Motion (the "Designated Materials"). This Statement and its exhibits are supported by the Declaration of Kevin Appold ("Appold Decl."), filed concurrently.

LEGAL STANDARD

There is a "strong presumption in favor of access" to court records, but "access to judicial records is not absolute." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation omitted). The legal standard applicable to whether a document should be sealed depends on whether the document is attached to a dispositive motion or a non-dispositive motion. *See id.* at 1179–80. Documents attached to dispositive motions may be sealed only when the proponent establishes "compelling reasons" for doing so. *Id.* at 1179. But documents attached to non-dispositive motions that relate to the merits only tangentially may be sealed upon a lesser showing of good cause. *Id.* at 1180; *see also In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509, 2013 WL 163779, at *2 n.1 (N.D. Cal. Jan. 15, 2013) (noting that the "vast majority" of the courts within this district generally treat class certification motions as non-dispositive). Since both standards are met here, this Statement addresses the more demanding "compelling reasons" standard.

What reasons are sufficiently compelling to justify sealing documents is generally "left to the sound discretion of the trial court." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). Commonly accepted examples of sealable materials, however, are "business information that might harm a litigant's competitive standing," *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978), and "confidential financial information," *Prescott v. Reckitt Benckiser LLC*, No. 20-CV-02101-BLF, 2022 WL 847309, at *2 (N.D. Cal. Mar. 22, 2022). The Designated Materials that Thomson Reuters seeks to seal fall into these categories.

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ARGUMENT

Thomson Reuters seeks to redact two brief discussions of confidential, non-public information that are similar to—and in one case, materially identical to—information the Court has already sealed: a detailed description of CLEAR's capabilities regarding particular content and Plaintiffs' expert's estimate regarding Thomson Reuters' profit attributable to CLEAR's availability in California. *See, e.g.*, Doc. 178 (sealing a detailed description of CLEAR's capabilities that is not otherwise available to the public or Thomson Reuters competitors); Doc. 179 (sealing Plaintiffs' expert's estimates derived from Thomson Reuters' confidential and non-public financial information).

There are compelling reasons to seal the detailed description of CLEAR's capabilities regarding particular content because this information (about what CLEAR is *not* intended or designed to do) is not available to the public, and public disclosure of this information would harm Thomson Reuters by allowing CLEAR competitors to leverage that detailed information for their own competitive purposes. *See* Appold Decl. ¶ 2; *Nixon*, 435 U.S. at 598 (holding that "business information that might harm a litigant's competitive standing" should be sealed). In addition, the information could be taken out of context to give a misleading or inaccurate picture of CLEAR and related business practices. *See Adtrader, Inc. v. Google*, No. 17-cv-07082-BLF, 2020 WL 6389186, at *2 (N.D. Cal. Feb. 24, 2020) (sealing portions of documents that present "information without context [because it could] harm Google by providing an incomplete and misleading picture of its crediting practices and capabilities"); *Aleksandr Urakhchin v. Allianz Asset Mgmt. of Am.*, No. 15-cv-1614, 2017 WL 11643350, at *4 (C.D. Cal. Apr. 21, 2017) (sealing portions of emails that competitors could present "to the marketplace out-of-context and place the investment option in a negative light").

For the same reasons, the Court should seal Plaintiffs' expert's estimate regarding Thomson Reuters' profit attributable to CLEAR's availability in California, as it did in the *Daubert* briefing regarding that opinion. *See* Appold Decl. ¶¶ 3–4; Doc. 179 (granting Thomson Reuters' motion to seal this information in its motion to exclude Finance Scholars Group's opinions); *Prescott v. Reckitt Benckiser LLC*, No. 20-CV-02101-BLF, 2022 WL 847309, at *2

(N.D. Cal. Mar. 22, 2022) (collecting cases and noting that when it comes to "confidential financial information . . . [c]ourts within the Ninth Circuit commonly grant sealing requests to protect exactly this type of information"); *Brown v. Brown*, No. CV 13-03318 SI, 2013 WL 12400041, at *1 (N.D. Cal. Dec. 30, 2013) (finding compelling reasons to seal "information about . . . profits, losses, income, investments, and expenses" where "the public disclosure of this information could harm these companies if the information was used by its competitors"); *Exeltis USA Inc.*, 2020 WL 2838812, at *2 (finding good cause to seal documents concerning "Defendant's financial performance and company strategy" because "public release of these documents could give non-party competitors an unfair advantage in the development or marketing of rival products"); *Linex Techs., Inc. v. Hewlett-Packard Co.*, No. C 13-159 CW, 2014 WL 6901744, at *1 (N.D. Cal. Dec. 8, 2014) (finding good cause to seal material with "sensitive financial information").

Rather than requesting that the Court seal entire documents, Thomson Reuters has narrowly tailored this request to redact only the specific information that is likely to harm Thomson Reuters if made readily available to the general public and CLEAR competitors.

CONCLUSION

For the reasons discussed above and in the declaration supporting this Statement, Thomson Reuters respectfully asks the Court to issue an order sealing the Designated Materials.

Dated: September 5, 2024

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