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15 **UNITED STATES DISTRICT COURT FOR THE**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN FRANCISCO DIVISION**

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

21 Plaintiffs,

22 v.

23 THOMSON REUTERS CORPORATION,
 24

25 Defendant.

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

REDACTED - PUBLICLY FILED VERSION
PURSUANT TO COURT ORDER, DATED
DECEMBER 7, 2022, DOCKET 147

PLAINTIFFS' NOTICE OF MOTION,
MOTION FOR CLASS CERTIFICATION,
AND MEMORANDUM IN SUPPORT

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

1 **NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION**

2 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on April 20, 2023 at 1:30 p.m., or as soon thereafter as
4 the matter may be heard, via videoconference or in Courtroom 5 of the United States District
5 Court, Northern District of California, San Francisco Division, located at 450 Golden Gate
6 Avenue, San Francisco, California 94102, before the Honorable Edward M. Chen, Plaintiffs Cat
7 Brooks and Rasheed Shabazz will, and hereby do, move this Court under Federal Rule of Civil
8 Procedure 23 for an order certifying a proposed Rule 23(b)(2) and/or Rule 23(b)(3) class defined
9 as follows:

10 All persons who, during the limitations period, both resided in the
11 state of California and whose information Thomson Reuters made
 available for sale through CLEAR without their consent.

12 Excluded from the class are officers and directors of Thomson Reuters, class counsel, the
13 judicial officers presiding over this action, and the members of their immediate family and
14 judicial staff.

15 Plaintiffs also move the Court to appoint them as class representatives, and to appoint
16 the law firms of Gibbs Law Group LLP and Cohen Milstein Sellers & Toll PLLC as class counsel.

17 This motion is based on this Notice of Motion; the accompanying memorandum in
18 support, the Declaration of Andre M. Mura (“Mura Decl.”); the Declaration of Geoffrey Graber
19 (“Graber Decl.”); the evidence submitted in support of the motion; any additional evidence
20 submitted on reply; the complete files and records in this action; and any such other written
21 and oral argument as may be presented to the Court.

TABLE OF CONTENTS

1		Page
2		
3	I. INTRODUCTION	1
4	II. BACKGROUND	2
5	A. The CLEAR platform makes available a vast array of personal information	
6	about Californians without first obtaining their consent.....	3
7	B. Thomson Reuters generates substantial profits from selling access to the	
8	CLEAR database to a wide range of customers.	7
9	C. Thomson Reuters does not inform Californians that their personal	
10	information is available through CLEAR, nor does it make any meaningful	
11	effort to enable Californians to correct or remove their information.....	8
12	III. STATEMENT OF THE ISSUES TO BE DECIDED	9
13	IV. ARGUMENT.....	9
14	A. This action satisfies Rule 23(a)'s requirements.	11
15	1. The class is sufficiently numerous.....	11
16	2. Legal and factual issues are common to the class.	11
17	3. The named plaintiffs' claims are typical of the class.	13
18	4. The named plaintiffs and class counsel are adequate representatives.	14
19	B. The Court should certify a Rule 23(b)(2)/(b)(3) hybrid class, or, in the	
20	alternative, a single Rule 23(b)(3) class.	15
21	1. The UCL claim may be certified under Rule 23(b)(2).....	15
22	2. Common questions predominate over any individual questions.	16
23	3. A class action is superior to other ways of adjudicating this controversy.	21
24		
25		
26	V. CONCLUSION.....	22
27		
28		

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Cases</u>	Page(s)
<i>Alcantar v. Hobart Service</i> , 800 F.3d 1047 (9th Cir. 2015)	11
<i>Allegra v. Luxottica Retail N. Am.</i> , 341 F.R.D. 373 (E.D.N.Y. 2022)	19
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	9, 22
<i>Amgen Inc. v. Conn. Ret. Plans & Tr. Funds</i> , 568 U.S. 455 (2013).....	9, 10, 16, 21
<i>Backus v. General Mills, Inc.</i> , 122 F. Supp. 3d 909 (N.D. Cal. 2015)	12, 18
<i>Briseno v. ConAgra Foods, Inc.</i> , 844 F.3d 1121 (9th Cir. 2017)	21
<i>Castillo v. Bank of Am., NA</i> , 980 F.3d 723 (9th Cir. 2020)	11, 12, 13
<i>Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.</i> , 973 P.2d 527 (Cal. 1999)	17, 19
<i>Comcast Corp. v. Behrend</i> , 569 U.S. 27 (2013).....	20
<i>DZ Reserve v. Meta Platforms, Inc.</i> , 2022 WL 912890 (N.D. Cal. Mar. 29, 2022).....	15
<i>Ellis v. Costco Wholesale Corp.</i> , 285 F.R.D. 492 (N.D. Cal. 2012)	15
<i>Ellsworth v. U.S. Bank, N.A.</i> , 2014 WL 2734953 (N.D. Cal. June 13, 2014)	18
<i>ESG Capital Partners, LP v. Stratos</i> , 828 F.3d 1023 (9th Cir. 2016)	19
<i>Freeman v. Time, Inc.</i> , 68 F.3d 285 (9th Cir. 1995)	18

1 *Gaudin v. Saxon Mortg. Servs., Inc.*,
 297 F.R.D. 417 (N.D. Cal. 2013) 19

2 *Ghirardo v. Antonioli*,
 3 924 P.2d 996 (Cal. 1996) 12, 19

4 *GHK Assoc. v. Mayer Grp., Inc.*,
 5 224 Cal. App. 3d 856 (1990)..... 20, 21

6 *In re Anthem, Inc. Data Breach Litig.*,
 7 162 F. Supp. 3d 953 (N.D. Cal. 2016) 18

8 *In re Carrier IQ, Inc.*,
 9 78 F. Supp. 3d 1051 (N.D. Cal. 2015) 19

10 *In re Facebook, Inc. Internet Tracking Litig.*,
 956 F.3d 589 (9th Cir. 2020) 13

11 *In re Hyundai & Kia Fuel Econ. Litig.*,
 12 926 F.3d 539 (9th Cir. 2019) 14, 16

13 *In re Juul Labs, Inc., Mktg. Sales Pracs. and Prods. Liab. Litig.*,
 14 ---F. Supp. 3d---, 2022 WL 2343268 (N.D. Cal. June 28, 2022) 16

15 *In re Lendingclub Sec. Litig.*,
 16 282 F. Supp. 3d 1171 (N.D. Cal. 2017) 14

17 *In re Tobacco II Cases*,
 18 207 P.3d 20 (Cal. 2009) 17

19 *In re Visa Check/MasterMoney Antitrust Litig.*,
 20 280 F.3d 124 (2d Cir. 2001) 21

21 *James v. Uber Techs. Inc.*,
 338 F.R.D. 123 (N.D. Cal. 2021) 11, 13, 14, 21

22 *Longest v. Green Tree Servicing LLC*,
 23 308 F.R.D. 310 (C.D. Cal. 2015) 18, 19, 20

24 *Lozano v. AT&T Wireless Servs., Inc.*,
 25 504 F.3d 718 (9th Cir. 2007) 12, 17

26 *McKell v. Washington Mutual, Inc.*,
 27 142 Cal. App. 4th 1457 (2006) 18

28

1 *Newton v. Am. Debt Servs., Inc.*,
 2 2015 WL 3614197 (N.D. Cal. June 9, 2015) 17, 18

3 *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*,
 4 31 F.4th 651 (9th Cir. 2022) 17

5 *Parsons v. Ryan*,
 6 754 F.3d 657 (9th Cir. 2014) 15

7 *Senne v. Kan. City Royals Baseball Corp.*,
 8 934 F.3d 918 (9th Cir. 2019) 10

9 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*,
 10 559 U.S. 393 (2010) 9

11 *Smith v. Keurig Green Mountain, Inc.*,
 12 2020 WL 5630051 (N.D. Cal. Sept. 21, 2020) 19

13 *Tait v. BSH Home Appliances Corp.*,
 14 289 F.R.D. 466 (C.D. Cal. 2012) 17

15 *Teixeira v. Cnty. of Alameda*,
 16 873 F.3d 670 (9th Cir. 2017) 11

17 *Torres v. Mercer Canyons Inc.*,
 18 835 F.3d 1125 (9th Cir. 2016) 16, 17

19 *Tyson Foods, Inc. v. Bouaphakeo*,
 20 577 U.S. 442 (2016) 16

21 *Walker v. Life Ins. Co. of the Sw.*,
 22 953 F.3d 624 (9th Cir. 2020) 17

23 *Wal-Mart Stores, Inc. v. Dukes*,
 24 564 U.S. 338 (2011) 11, 15, 16, 20

25 *Wolin v. Jaguar Land Rover N. Am., LLC*,
 26 617 F.3d 1168 (9th Cir. 2010) 13

27 *Wortman v. Air New Zealand*,
 28 326 F.R.D. 549 (N.D. Cal. 2018) 14

Statutes

Cal. Bus. & Prof. Code § 22578 12

1	Cal. Civ. Code §§ 1798.....	12
2	Cal. Const. art. 1, § 1	12
3	<u>Other Authorities</u>	
4	1 McLaughlin on Class Actions § 5.60	19, 20
5	2 Newberg on Class Actions § 4:38 (5th ed. 2014).....	15
6	Restatement (Third) of Restitution and Unjust Enrichment § 51.....	20
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Through CLEAR, Thomson Reuters sells a vast array of personal information about
4 virtually everyone in California. With the click of a button, a paying customer can find
5 comprehensive cradle-to-grave dossiers on hundreds of millions of people, containing billions
6 of data points aggregated from public and non-public sources: social security numbers,
7 criminal and court records, real-time booking information, utility and DMV records, and even
8 personal information about an individual’s family and associates.

9 But that access does not come cheap. Thomson Reuters has collectively charged its
10 customers—including private corporations, law enforcement, debt collectors, towing services,
11 private investigators, even [REDACTED] millions of dollars each year to
12 subscribe to CLEAR.

13 And while Thomson Reuters takes great pains to make as much information on
14 Californians available to its customers as possible, it makes no effort to notify Californians that
15 their information is available for sale. In fact, the vast majority of people are entirely unaware
16 that CLEAR exists, let alone that Thomson Reuters is selling access to dossiers that include their
17 most personal data. Instead of compensating Californians for their personal information or
18 obtaining their consent to make it available through CLEAR, the company buys data from third
19 parties including private data aggregators. It then uses proprietary algorithms to associate this
20 data with comprehensive individual profiles made searchable on CLEAR. The result for paying
21 customers is access to what the *New York Times* described as an “ever-evolving 360-degree view
22 of U.S. residents’ lives.”¹ And the result for Thomson Reuters is millions of dollars in profits.

23 Plaintiffs Cat Brooks and Rasheed Shabazz filed this case to stop Thomson Reuters from
24 violating the rights of Californians to control the use of their own personal information.
25 Thomson Reuters’ decision to make available for sale Californians’ personal information
26 without their consent or compensation is an “unfair business practice” under the state’s Unfair

27 _____
28 ¹ McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, N.Y. Times (Oct. 3, 2019)
<https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>.

1 Competition Law – one that cannot be reconciled with California’s well-established public
2 policy protecting privacy and the harms of which far outweigh any benefit. In addition to
3 injunctive relief, Plaintiffs also seek disgorgement of all the profits that Thomson Reuters
4 unjustly retained at Californians’ expense.

5 This case is ideally suited for class treatment. Thomson Reuters’ business practices are
6 uniform across the class. Nothing about the company’s licensing, collection, aggregation,
7 analysis, or sale of data on CLEAR turns on anything about any particular class member. The
8 harms to the class are also uniform. Every class member has been deprived of the right to
9 exercise control over the use and sale of their personal information. And nothing about the
10 relief is individualized either. Enjoining Thomson Reuters from offering Californians’ personal
11 information for sale without their consent would benefit Californians; and the monetary relief
12 is merely the net profit that the company generated from making the class members’ personal
13 data available through CLEAR. For these reasons and more, this case easily satisfies Rule 23’s
14 requirements. The Court should therefore certify the class.

15 II. BACKGROUND

16 Thomson Reuters’ CLEAR is based on a simple premise: a “one-stop shop” for
17 information on nearly all Californians. *See* Ex. 1 (Fox Dep.) at 36:1-37:23, 38:15-24, 150:2-9;² Ex.
18 2 (CLEAR Overview Document I); Ex. 3 (CLEAR Working With Law Enforcement Document);
19 *see also* Ex. 4 (Report of Professor Joseph Turow) at 10-12, 17. Thomson Reuters collects vast
20 quantities of public and non-public personal information about individuals, aggregates that
21 information into comprehensive profiles, and sells access to those profiles to a wide range of
22 customers – all without obtaining consent. *See* Ex. 5 (Buckethal Dep.) at 23:5-25, 32:13-23; Ex. 1
23 (Fox Dep.) 36:1-37:23, 38:15-24, 98:19-99:20, 150:8-9, 189:16-23; Ex. 6 (Godlewski Dep.) at 17:9-
24 10, 164:10-12; Ex. 2; Ex. 3; Ex. 4 (Turow Report) at 10-12. While Thomson Reuters’ marketing
25 highlights the customers it would prefer to serve as the face of its product, the company allows
26 a wide range of customers to access Californians’ personal information for a variety of
27

28 ² All citations to exhibits refer to exhibits to the Mura Declaration unless otherwise noted.

1 purposes: Immigration & Customs Enforcement, casinos, debt collectors, towing services,
2 private investigators, and thousands of other corporations have all bought access to CLEAR.
3 Ex. 7 (Thomson Reuters Responses to Pls.’ First Set of Interrogatories at 15); Ex. 8 (CLEAR
4 Subscriber List 2014); Ex. 9 (CLEAR Subscriber List 2015-2022). Most Californians have no idea
5 their information is available for sale through CLEAR, and none have affirmatively
6 consented—Thomson Reuters does not even ask Californians for their consent. *See* Ex. 6
7 (Godlewski Dep.) at 151:22-152:4, 163:15-21, 164:10-12; Ex. 10 (Thomson Reuters’ Privacy
8 Statement); Ex. 11 (Thomson Reuters’ Public Records Privacy Statement); Ex. 4 (Turow Report)
9 at 15-16.

10 **A. The CLEAR platform makes available a vast array of personal information about**
11 **Californians without first obtaining their consent.**

12 “CLEAR contains information on pretty much all consumers[.]” Ex. 1 (Fox Dep.) at 150:8-
13 9. Through these consumer profiles, CLEAR offers its customers access to a vast array of
14 personal information: Even before it is populated with data, a representative sample CLEAR
15 report is twenty-six pages long with forty categories of records that may be available. Ex. 12
16 (Sample CLEAR Report); Ex. 13 (Def.’s Answer to Pls.’ Request for Admission No. 1). Reports
17 on Californians can include names, photographs, contact information, relatives, associates,
18 social security numbers, live cell phone records, location data from billions of license plate
19 detections, real-time booking information from thousands of facilities, gender, race, current and
20 historical driver’s licenses, marriage and divorce records, professional and recreational licenses
21 or permits, work history, education, aliases, current and historical addresses, utility services,
22 military records, political donations, voter registrations, criminal records, community service
23 information, arrest records, liens and judgments, bankruptcy records, civil lawsuits, real
24 property and deed transfers, property tax records, motor vehicle information, unclaimed assets,
25 and more. *See* Ex. 12; Ex. 14 (CLEAR for Federal Government Investigations). They can include
26 anything from an individual’s physical characteristics, *see* Ex. 12 at 12, to whether an individual
27 had an abortion. Ex. 15 (Email 8/23/21). Thomson Reuters seeks to ensure that as much
28 information as possible—from arrests to expunged records—is available to its customers. *See*

1 Ex. 16 (CLEAR Training Quiz); Ex. 1 (Fox Dep.) at 32:20-33:3, 156:11-157:4; Ex. 6 (Godlewski
2 Dep.) at 220:1-20.

3 Thomson Reuters benefits from CLEAR's uniform and comprehensive data coverage—
4 the more information available, the more customers it can attract, and the more those customers
5 may search, the more valuable CLEAR becomes. *See* Ex. 6 (Godlewski Dep.) at 220:1-20.
6 Naturally, the company markets CLEAR's ability to give its customers access to billions of
7 records, *see, e.g.*, Ex. 17 (CLEAR Child Support Document), spanning thousands of data sets, so
8 that its customers can "easily connect information about people" that might otherwise exist
9 only in disaggregated form—or not publicly at all. *See* Ex. 18 (CLEAR Webpage); Ex. 4 (Turow
10 Report) at 17. Through CLEAR, Thomson Reuters has offered customers access to hundreds of
11 millions of phone records, criminal and court records, driver's license records, motor vehicle
12 records, consumer records, and motor vehicle service records, along with tens of millions of
13 arrest records and work affiliations, and hundreds of thousands of utility listings, sex offender
14 registry records, and conceal and carry weapons permits. *See* Ex. 16; Ex. 19 (Email 1/22-1/25);
15 Ex. 20 (Email 3/18-3/23); Ex. 1 (Fox Dep.) at 104:1-110:17. If the data exists, it is likely within
16 CLEAR's reach. And CLEAR routinely updates its available data sets to bring in new records
17 once created. *See, e.g.*, Ex. 21 (CLEAR RTIA Spreadsheet) (showing coverage and update
18 frequency for arrest records). If someone was just arrested in [REDACTED], for example,
19 CLEAR may reflect that arrest within a week—and that record may remain available through
20 CLEAR even if the arrest was later sealed or expunged. *See, e.g., id.* at "Arrest Record Coverage"
21 tab, row 16; Ex. 1 (Fox Dep.) at 156:11-157:4.

22 Thomson Reuters collects the vast majority of the data available through CLEAR in the
23 same way: It licenses it through [REDACTED] third parties (everyone from third party data
24 aggregators to credit bureaus to law enforcement). *See* Ex. 22 (Def.'s Second Supplemental Resp.
25 to Pls.' Interrog. No. 1); Ex. 23 (August 2017 Public Records Powerpoint); Ex. 24 (February 2021
26 Licensor Table). All records, once licensed, are processed and standardized for storage and
27 searchability. *See* Ex. 7 (Def.'s Resp. to Pls.' First Set of Interrog. at 20-21); Ex. 1 (Fox Dep.) at
28 60:21-61:14. They are then made available for customers to search. *See* Ex. 7 at 21; Ex. 25 (CLEAR

1 Plans Table); Ex. 26 (Search Spreadsheet). Customers may search for single individuals, or run
 2 “batch” searches for many individuals at once—up to 1 million people at a time. *See* Ex. 27
 3 (CLEAR Brochure); Ex. 28 (CLEAR Batch Brochure); Ex. 29 (CLEAR Batch December 2021
 4 Notes); Ex. 18. Even CLEAR’s individual search function sees substantial search volume—with
 5 tens of millions of searches in 2020 alone. *See* Ex. 30 (Email 11/6); Ex. 26.

6 Each step of Thomson Reuters’ data-aggregation and compilation process is uniform.
 7 The basic building blocks of CLEAR are consumer records, which Thomson Reuters gathers for
 8 virtually all individuals from the third parties that sell it data.³ After processing and
 9 normalizing the data, Thomson Reuters uses its in-house technology to connect those data
 10 whenever possible to the profile of a single individual or entity already included in CLEAR. *See*
 11 Ex. 35 (CLEAR Overview Document II); Ex. 36 (CLEAR White Paper); Ex. 6 (Godlewski Dep.)
 12 at 172:22-173:5; *see also* Ex. 1 (Fox Dep.) at 35:16-37:23 (observing that it is “rare that a brand
 13 new consumer will show up in the CLEAR database”). In order to organize these expansive
 14 data so that its customers can quickly navigate through them, Thomson Reuters applies its
 15 “proprietary pinning process” and patented “entity resolution database” to all data, which
 16 associates particular records with particular individuals. *See* Ex. 1 (Fox Dep.) at 95:3-6, 102:16-
 17 103:5, 169:21-170:4; Ex. 37 (CLEAR Marketing Points); Ex. 38 (Email 5/20-6/25); Ex. 39 (CLEAR
 18 Overview Document III); Ex. 40 (ERD Patent); Ex. 35.

19 Thomson Reuters does all this without ever seeking consent from Californians. The
 20 company does not seek consent before acquiring their personal information. *See* Ex. 10; Ex. 6
 21 (Godlewski Dep.) at 151:22-152:4, 163:15-21, 164:10-12; Ex. 4 (Turow Report) at 15. It does not
 22 seek consent before it melds their personal information into comprehensive profiles. *See* Ex. 10;

23
 24 ³ *See, e.g.*, Ex. 31 (“Jane” Powerpoint) [REDACTED]
 25 [REDACTED] Ex. 32 (August 2015 Legal Powerpoint)
 26 [REDACTED]; Ex. 33 (Email 6/15-7/5) ([REDACTED])
 27 [REDACTED]
 28 [REDACTED]; Ex. 6 (Godlewski Dep.) at 191:10-13; Ex. 34 (July 2020 Public Records Powerpoint).

1 [REDACTED]
2 [REDACTED]; Ex. 55 (Email
3 2/2-2/11) [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]; *see also* Ex. 56 (Email 11/19-11/22) (discussing how
7 Thomson Reuters found [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]; Ex. 57 (Email 11/15); Ex. 1 (Fox Dep.) at 121:15-123:12, 178:2-24.

11 **B. Thomson Reuters generates substantial profits from selling access to the CLEAR**
12 **database to a wide range of customers.**

13 Since 2017, Thomson Reuters has made over [REDACTED] million selling access to its “vast
14 collection of public and proprietary records.” *See* Ex. 58 (2017 Investigations Document); Ex. 9;
15 Ex. 59 (Report of Finance Scholars Group or “FSG Report”) at 7, 10, 12-13; Ex. 60 (Def.’s First
16 Supp. Answer to Pls.’ Interrog. 16). As it has developed the scale and scope of its data coverage,
17 CLEAR has only become more profitable, seeing revenues grow from [REDACTED]
18 [REDACTED]. *See* Ex. 60.

19 CLEAR generates these revenues from a laundry list of clients that are [REDACTED]
20 [REDACTED] corporate and government customers. *See, e.g.,* Ex. 9; Ex. 59 (FSG Report) at 7, 10,
21 12-13; Ex. 1 (Fox Dep.) at 50:10-15. CLEAR’s customers include technology companies,
22 insurance agencies, casinos, financial institutions, management consultants, property
23 appraisers, private investigators, towing and asset recovery companies, debt collectors, capital
24 corporations, fast food companies, megachurches, manufacturers, and more. *See* Ex. 9. And
25 Thomson Reuters offers CLEAR to these varied customers for a central purpose: “[REDACTED]
26 [REDACTED]” *See* Ex. 61 (September 2020 Powerpoint). Thomson Reuters markets CLEAR
27 as a tool to save its customers money. *See* Ex. 6 (Godlewski Dep.) at 33:4-7; Ex. 62 (Risk Inform
28 Document). Many, if not most, of the purposes Thomson Reuters’ customers self-report for

1 using CLEAR center around money – debt collection, for example. *See, e.g.*, Ex. 61; Ex. 59 (FSG
2 Report) at 12 n. 42, 13 n. 47.

3 **C. Thomson Reuters does not inform Californians that their personal information is**
4 **available through CLEAR, nor does it make any meaningful effort to enable**
5 **Californians to correct or remove their information.**

6 While Thomson Reuters works hard to make available all the information it can on
7 Californians, there is no evidence that it takes similar steps to make Californians aware of
8 CLEAR. *See, e.g.*, Ex. 6 (Godlewski Dep.) at 151:22-152:4, 163:15-21, 164:10-12; Ex. 4 (Turow
9 Report) at 15. Thomson Reuters’ Senior Director of Marketing, for example, knew of no efforts
10 to affirmatively inform people that their information is available through CLEAR, or whether
11 their information has been searched. *See* Ex. 6 (Godlewski Dep.) at 151:22-152:4, 163:15-21,
12 164:10-12; Ex. 4 (Turow Report) at 15. In fact, for the most part, the general public does not
13 know about CLEAR at all. *See, e.g.*, Ex. 6 (Godlewski Dep.) at 164:10-12.

14 But if Californians did learn that their information is available through CLEAR,
15 Thomson Reuters makes it difficult for them to remove or correct their information. *See* Ex. 4
16 (Turow Report) at 15-16; Ex. 10; Ex. 11. To even request that Thomson Reuters refrain from
17 making a person’s information available, a person would have to (1) know that the company
18 does so in the first place, (2) find links buried in small print in the footer of TR’s webpages, (3)
19 find a “supplemental” California statement buried in a general statement behind those links,
20 and (4) navigate through multiple “portals” to submit their request. *See, e.g.*, Ex. 63 (CLEAR
21 Customer Support Webpage); Ex. 64 (CLEAR Plans and Pricing Webpage); Ex. 10; Ex. 11; Ex.
22 65 (Thomson Reuters’ Personal Information Request Portal); Ex. 66 (Thomson Reuters’
23 Suppression, Statement, Correction Webpage). If a Californian somehow manages to do all that,
24 they may still only be able to review or delete their data by providing yet more personal
25 information, such as recent bills or a copy of a driver’s license, through a prolonged and difficult
26 process. *See* Ex. 10; Ex 67 (Email 2/14-8/3); Ex. 68 (Brooks Decl.) at ¶7; Ex. 69 (Shabazz Decl.)
27 at ¶7; Ex. 11; Ex. 66; Ex. 4 (Turow Report) at 16-17.

28 Then, assuming someone manages to successfully navigate this labyrinthine process,
Thomson Reuters still may not fully remove or correct their information. *See* Ex. 10; Ex. 11; Ex.

1 1 (Fox. Dep.) at 95:4-96:19; Ex. 70 (Personal Information Requests Spreadsheet) TR-
 2 BROOKS017559 For example, some data available through CLEAR is stored on Thomson
 3 Reuters' third-party licensee's servers, and is provided to CLEAR customers through "one of
 4 [CLEAR's] live gateways." See Ex. 11; Ex. 7 at 20; Ex. 1 (Fox Dep.) at 69:8-16, 96:5-16. Thomson
 5 Reuters will not remove or correct this information, nor will it remove information from
 6 "databases comprising information made available by government agency." See Ex. 11; Ex. 7 at
 7 20; Ex. 1 (Fox Dep.) at 69:8-16, 96:5-16. Instead, Thomson Reuters uniformly disavows
 8 responsibility for the accuracy of the data within its records, stating that it cannot
 9 "independently verify or validate the accuracy and completeness of the data" and "expressly
 10 does not warrant the comprehensiveness, completeness, accuracy, or adequacy of the
 11 information for any purpose." See Ex. 7 at 20; Ex. 4 (Turow Report) at 21.

12 III. STATEMENT OF THE ISSUES TO BE DECIDED

13 Whether Plaintiffs have satisfied the requirements of Rule 23(a) and Rule 23(b) such
 14 that a class may be certified as either a hybrid Rule 23(b)(2)/(b)(3) class or, in the alternative,
 15 as a single Rule 23(b)(3) class, while appointing named plaintiffs Cat Brooks and Rasheed
 16 Shabazz as class representatives, and Gibbs Law Group LLP and Cohen Milstein Sellers &
 17 Toll PLLC as class counsel.

18 IV. ARGUMENT⁵

19 Rule 23 "creates a categorical rule entitling a plaintiff whose suit meets the specified
 20 criteria to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*
 21 *Co.*, 559 U.S. 393, 398 (2010). The purpose of the Rule 23 requirements is to determine whether
 22 a class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc.*
 23 *v. Windsor*, 521 U.S. 591, 623 (1997). Although the Court's analysis for class-certification is
 24 "rigorous" and can "overlap with the merits of the plaintiff's underlying claim," the Court may
 25 consider merits questions "only to the extent[] that they are relevant to determining whether

26 ⁵ Plaintiffs filed a motion for leave to file an amended complaint. ECF No. 123. The Proposed
 27 First Amended Complaint is attached as Exhibit 1 to that motion. ECF No. 123-1. References to
 28 Plaintiffs' amended complaint herein refer to that document; however, all substantive
 allegations can also be found in Plaintiffs' original complaint. See ECF No. 1-1.

1 the Rule 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans &*
 2 *Tr. Funds*, 568 U.S. 455, 465–66 (2013) (citation omitted).

3 Where, as here, the plaintiffs can satisfy the requirements of both Rule 23(a) and Rule
 4 23(b), courts are required to certify the class. Rule 23(a) requires that Plaintiffs show that: (1)
 5 the class is so numerous that joinder of all class members impracticable, (2) there are common
 6 factual or legal issues, (3) the named plaintiffs’ claims are typical of the class, and (4) the named
 7 plaintiffs and their counsel will fairly and adequately protect the class’s interests. Rule 23(b)
 8 identifies “three different types of classes” and provides the requirements for each. *Senne v.*
 9 *Kan. City Royals Baseball Corp.*, 934 F.3d 918, 927 (9th Cir. 2019) (citation omitted). A class action
 10 may be certified under Rule 23(b)(2) if “the party opposing the class has acted or refused to act
 11 on grounds that apply generally to the class, so that final injunctive relief or corresponding
 12 declaratory relief is appropriate respecting the class as a whole.” And a class may be certified
 13 under Rule 23(b)(3) if “the questions of law or fact common to class members predominate over
 14 any questions affecting only individual members, and that a class action is superior to other
 15 available methods for fairly and efficiently adjudicating the controversy.”

16 Plaintiffs here seek certification of the following proposed class:

17 All persons who, during the limitations period, both resided in the
 18 state of California and whose information Thomson Reuters made
 19 available for sale through CLEAR without their consent.

20 Am. Compl. at 15 (ECF No. 123-1).⁶ This class comfortably meets Rule 23’s criteria. Thomson
 21 Reuters’ business practices are uniform: It collects, analyzes, and aggregates Californians’
 22 personal information and offers it for sale on CLEAR without consent or compensation. The

23 ⁶ Plaintiffs’ proposed class definition excludes officers and directors of Thomson Reuters, class
 24 counsel, the judicial officers presiding over this action, and the members of their immediate
 25 family and judicial staff. *See* Am. Compl. at 15 (ECF No. 123-1). Plaintiffs’ proposed class
 26 definition is co-extensive with, if not narrower than the previous definition, reflecting a more
 27 precise understanding of how CLEAR operates and moving “during the limitations period” so
 28 that it inarguably applies to both residency and whether information was made available for
 sale through CLEAR. *See id.*

1 injuries to the class are also uniform: Every class member has been deprived of the right to
 2 exercise meaningful control over the use and sale of their personal information. Determining
 3 liability will also be a classwide inquiry: The Court will weigh the utility of Thomson Reuters'
 4 business practices against the harms those practices cause to Californian consumers, and assess
 5 whether Thomson Reuters unjustly retained the profits derived from its nonconsensual sale of
 6 the class members' information. As explained below, *every* key question of law and fact in this
 7 case is common. Plaintiffs respectfully ask the Court to certify their claims for class treatment.

8 **A. This action satisfies Rule 23(a)'s requirements.**

9 **1. The class is sufficiently numerous.**

10 To begin, Rule 23(a)(1) is satisfied because the class is "so numerous that joinder of all
 11 members is impracticable." CLEAR includes information on "pretty much all" Americans,
 12 including virtually all Californians. *See* Ex. 1 (Fox Dep.) at 36:1-37:23, 150:2-9; Ex. 71 (Coverage
 13 Table by State); Ex. 72 (Coverage Table by County). The class therefore contains tens of millions
 14 of class members.⁷ By any measure, the proposed class is sufficiently numerous for Rule
 15 23(a)(1). *See, e.g., James v. Uber Techs. Inc.*, 338 F.R.D. 123, 130 (N.D. Cal. 2021) (Chen, J.)
 16 (acknowledging courts' "general recognition" that numerosity "is satisfied when the proposed
 17 class contains one hundred or more members").

18 **2. Legal and factual issues are common to the class.**

19 This case likewise easily satisfies Rule 23(a)(2)'s requirement that there be "questions of
 20 law or fact common to the class." Commonality is met if "even a single common question"
 21 exists, *Alcantar v. Hobart Service*, 800 F.3d 1047, 1052 (9th Cir. 2015), so long as "determination
 22 of its truth or falsity will resolve an issue that is central to the validity of each one of the claims
 23 in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see also Castillo v. Bank of*

24 _____
 25 ⁷ The U.S. Census Bureau estimates that, as of July 2021, California's population was nearly 40
 26 million people. *See Annual Estimates of the Resident Population for the United States, Regions,*
 27 *States, District of Columbia and Puerto Rico: April 1, 2020 to July 1, 2021*, available at
 28 <https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html>.
 Courts may take judicial notice of census data to establish population estimates. *See Teixeira v.*
Cnty. of Alameda, 873 F.3d 670, 676 n.6 (9th Cir. 2017).

1 *Am., NA*, 980 F.3d 723, 728 (9th Cir. 2020) (“Even a single common question of law or fact that
2 resolves a central issue will be sufficient to satisfy this mandatory requirement for all class
3 actions.”).

4 As discussed in more detail in the section addressing Rule 23(b)(3)’s predominance
5 requirement, the most important questions in this case are all common. *See infra* Section IV.B.2
6 at 16-21. For example, central to both the UCL and unjust-enrichment claims are several
7 common questions of law and fact, including: (1) did Thomson Reuters seek the class members’
8 consent or compensate them before making their personal information available for sale
9 through CLEAR, and (2) did Thomson Reuters give class members any meaningful ability to
10 control the use of their personal information once it was offered through CLEAR?

11 Common questions will also drive the resolution of both claims. As to the UCL claim,
12 for example, both unfairness tests turn on common questions, including: (1) is “the harm to the
13 public” from making Californians’ personal information available for sale through CLEAR
14 without their consent “greater than the utility” of allowing Thomson Reuters to not seek class
15 members’ consent before selling access to their information in CLEAR, *see Backus v. General*
16 *Mills, Inc.*, 122 F. Supp. 3d 909, 929 (N.D. Cal. 2015); and (2) does Thomson Reuters’ failure to
17 seek Californians’ consent before selling access to their information through CLEAR offend
18 public policy as expressed in California’s constitution, statutes, or regulations? *See Lozano v.*
19 *AT&T Wireless Servs., Inc.*, 504 F.3d 718, 735 (9th Cir. 2007); *see, e.g.*, ECF No. 54 at 17-18 (citing
20 provisions of California law relevant to the tethering test in this case, including Cal. Const. art.
21 1, § 1; Cal. Civ. Code §§ 1798.1, 1798.81.5(a); Cal. Bus. & Prof. Code § 22578). And as to unjust
22 enrichment, the core elements are common to the class, namely: (1) did Thomson Reuters retain
23 a “benefit” from its unfair practices, such as profits from its customers who paid to have access
24 to the universe of information in CLEAR, including Californians’ personal information; and (2)
25 is it “unjust” for Thomson Reuters to retain the profits attributable to Californians’ data being
26 available for sale through CLEAR, when Californians never consented to Thomson Reuters
27 using or selling their information? *See Ghirardo v. Antonioli*, 924 P.2d 996, 1003 (Cal. 1996). Each
28 of these questions has a single, common answer that will be established using common proof.

1 And they are central to the validity of Plaintiffs' claims. No more is needed for Rule 23(a)(2).

2 **3. The named plaintiffs' claims are typical of the class.**

3 This case also meets Rule 23(a)(3)'s requirement that the named plaintiffs' claims be
 4 typical of the class's claims. Typicality tests "whether other members have the same or similar
 5 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
 6 whether other class members have been injured by the same course of conduct." *Wolin v. Jaguar*
 7 *Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). "Under the rule's
 8 permissive standards, representative claims are 'typical' if they are reasonably co-extensive
 9 with those of absent class members; they need not be substantially identical." *Castillo*, 980 F.3d
 10 at 729 (citation omitted). Plaintiffs meet this burden by showing (1) "other members have the
 11 same or similar injury," (2) "the action is based on conduct which is not unique to the named
 12 plaintiffs," and (3) "other class members have been injured by the same course of conduct."
 13 *James*, 338 F.R.D. at 132 (citation omitted).

14 Both named plaintiffs' claims are typical of the class. The named plaintiffs were injured
 15 in exactly the same way that all class members have been—Thomson Reuters made their
 16 personal information available for sale through CLEAR without their consent, depriving them
 17 of the right to exercise control over the use of their personas, which are their intellectual
 18 property. *See* Am. Compl. at 9-12 (ECF No. 123-1); ECF No. 1-1 at 9-12; Ex. 68 (Brooks Decl.) at
 19 ¶¶3, 7; Ex. 69 (Shabazz Decl.) at ¶¶3, 7; Ex. 73 (CLEAR Report – Cat Brooks); Ex. 74 (CLEAR
 20 Report – Rasheed Shabazz); Ex. 4 (Turow Report) at 18-19; *cf. In re Facebook, Inc. Internet Tracking*
 21 *Litig.*, 956 F.3d 589, 599–600 (9th Cir. 2020) (finding "collect[ing]" and "tracking" personal data
 22 "without users' consent" to create a "cradle-to-grave profile" causes "harm" to individuals'
 23 "interest in controlling their personal information"). Because Thomson Reuters' business model
 24 is collecting and selling access to personal information without the data subjects' consent,
 25 named plaintiffs' injuries were caused by the same uniform conduct that injured all class
 26 members, and thus the named plaintiffs are not subject to any unique defenses. *See supra* Section
 27 II.A at 3-7; Section II.C at 8-9. Accordingly, the named plaintiffs' claims are identical to those of
 28 the class.

1 **4. The named plaintiffs and class counsel are adequate representatives.**

2 The final prerequisite, set forth in Rule 23(a)(4) confirms that the named plaintiffs “will
3 fairly and adequately protect the interests of the class.” Adequacy has two parts: (1) that the
4 proposed representative plaintiff and his counsel do not have any conflicts of interest with the
5 proposed class; and (2) that they will prosecute this action vigorously on behalf of the class. *In*
6 *re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 566 (9th Cir. 2019) (en banc). Both are met here.

7 First, the named plaintiffs have “no conflicts of interest with other class members and
8 . . . will prosecute the action vigorously on behalf of the class.” *See James*, 338 F.R.D. at 132.
9 Adequacy “imposes only a modest burden” on the named plaintiffs, and they have carried it
10 here. *In re Lendingclub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182 (N.D. Cal. 2017). Ms. Brooks’ and
11 Mr. Shabazz’s interests are entirely aligned with those of the class: they “seek the same relief
12 and share an identical interest in proving Defendant’s liability.” *See Wortman v. Air New Zealand*,
13 326 F.R.D. 549, 557 (N.D. Cal. 2018); Ex. 68 (Brooks Decl.) at ¶¶8, 10; Ex. 69 (Shabazz Decl.) at
14 ¶¶8, 10. In addition, both named plaintiffs have diligently litigated this case and will continue
15 to vigorously pursue relief on behalf of the class. *See, e.g.*, Ex. 68 (Brooks Decl.) at ¶¶9-11; Ex.
16 69 (Shabazz Decl.) at ¶¶9-11.

17 Second, proposed class counsel is also adequate. They have no conflicts of interest with
18 the class and bring decades of experience in complex, plaintiffs-side litigation to this case. For
19 the past two years, Gibbs Law Group has secured tens of thousands of corporate documents,
20 deposed Thomson Reuters’ employees and experts, retained experts to support the class’s
21 certification efforts, and briefed and argued dispositive and discovery motions. *See Mura Decl.*
22 at ¶5. Because other counsel who have to date assisted in these efforts are not applying to be
23 appointed to represent the class, Gibbs Law Group will team up with Cohen Milstein Sellers &
24 Toll to lead this class action to its conclusion. Both are respected firms well-versed in class
25 litigation that have been appointed counsel in significant class and mass action cases, including
26 data privacy cases. *See Mura Decl.* at ¶¶4-5; *Graber Decl.* at ¶¶2-6.

27 Together, the named plaintiffs and proposed class counsel will continue to devote their
28 time and expertise to ensure the best outcome for the class as the case advances toward trial.

1 **B. The Court should certify a Rule 23(b)(2)/(b)(3) hybrid class, or, in the alternative, a**
 2 **single Rule 23(b)(3) class.**

3 After satisfying Rule 23(a)'s requirements, a "proposed class . . . must also satisfy the
 4 requirements of one of the sub-sections of Rule 23(b), 'which defines three different types of
 5 classes.'" *Parsons v. Ryan*, 754 F.3d 657, 674 (9th Cir. 2014) (citation omitted). Here, Plaintiffs
 6 seek "a hybrid class certification approach": a Rule 23(b)(2) class for the UCL claim, which seeks
 7 only injunctive relief, and a Rule 23(b)(3) class for the unjust-enrichment claim. *Ellis v. Costco*
 8 *Wholesale Corp.*, 285 F.R.D. 492, 503 (N.D. Cal. 2012) (Chen, J.) (granting hybrid certification); *see*
 9 *also, e.g., DZ Reserve v. Meta Platforms, Inc.*, 2022 WL 912890, at *9-10 (N.D. Cal. Mar. 29, 2022)
 10 (certifying a (b)(2) class for the plaintiffs' UCL injunction claim and a (b)(3) class for the
 11 plaintiffs' monetary common law fraud claims); 2 Newberg on Class Actions § 4:38 (5th ed.
 12 2014) (recognizing hybrid classes as "the best of both worlds, achieving judicial economies
 13 associated with group litigation while also respecting the due process rights of individuals with
 14 monetary claims"). Alternatively, because both claims meet Rule 23(b)(3)'s predominance and
 15 superiority requirements, the Court can certify a single (b)(3) class.

16 **1. The UCL claim may be certified under Rule 23(b)(2).**

17 Rule 23(b)(2) certification is warranted where "the party opposing the class has acted or
 18 refused to act on grounds that apply generally to the class, so that final injunctive relief or
 19 corresponding declaratory relief is appropriate respecting the class as a whole." These
 20 "requirements are unquestionably satisfied when members of a putative class seek uniform
 21 injunctive or declaratory relief from policies or practices that are generally applicable to the
 22 class as a whole." *Parsons*, 754 F.3d at 688; *see also Ellis*, 285 F.R.D. at 536 ("Rule 23(b)(2) suits
 23 remain appropriate mechanisms for obtaining injunctive relief in cases where a centralized
 24 policy is alleged to impact a large class of plaintiffs, even when the magnitude (and existence)
 25 of the impact may vary by class member.") (citation omitted).

26 Plaintiffs' UCL claim for injunctive relief is perfectly suited for Rule 23(b)(2) certification.
 27 Enjoining Thomson Reuters from making Californians' personal information available for sale
 28 on the CLEAR platform without their consent is an indivisible remedy that would "provide

1 relief to each member of the class.” *See Dukes*, 564 U.S. at 360; ECF No. 1-1 at 20; Am. Compl. at
2 21-23 (ECF No. 123-1). Thomson Reuters’ unlawful conduct can thus be “remedied by a single
3 classwide order.” *Id.* That is all Plaintiffs need to show for Rule 23(b)(2) certification of their
4 UCL claim. *See id.* at 362–63 (holding that, for (b)(2) classes, “there is no reason to undertake a
5 case-specific inquiry into” predominance and superiority because they are “self-evident”).
6 Nevertheless, if the Court declines to exercise its discretion to certify a hybrid class, it should
7 certify a single 23(b)(3) class. As explained below, Plaintiffs also satisfy Rule 23(b)(3)’s
8 requirements for both the UCL and unjust-enrichment claims.

9 **2. Common questions predominate over any individual questions.**

10 Rule 23(b)(3)’s predominance requirement concerns “the relation between common and
11 individual questions in a case.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).
12 Common questions are those where “the same evidence will suffice for each member to make
13 a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.” *Id.* (citation
14 omitted). Individual questions, by contrast, are those requiring “evidence that varies from
15 member to member.” *Id.* (citation omitted). Predominance is satisfied if “the common,
16 aggregation-enabling, issues in the case are more prevalent or important than the non-common,
17 aggregation-defeating, individual issues.” *Id.* (citation omitted).

18 Thus, Rule 23(b)(3) “does *not* require a plaintiff seeking class certification to prove that
19 each ‘element of her claim is susceptible to classwide proof.’” *Amgen*, 568 U.S. at 469 (emphasis
20 in original, cleaned up). The Court may certify a class “even if just one common question
21 predominates.” *Hyundai*, 926 F.3d at 557. “When ‘one or more of the central issues in the action
22 are common to the class and can be said to predominate, the action may be considered proper
23 under Rule 23(b)(3) even though other important matters will have to be tried separately, such
24 as damages or some affirmative defenses peculiar to some individual class members.’” *Tyson*,
25 577 U.S. at 453 (citation omitted). Predominance, in other words, “is not a counting game.” *In*
26 *re Juul Labs, Inc., Mktg. Sales Pracs. and Prods. Liab. Litig.*, ---F. Supp. 3d---, 2022 WL 2343268, at
27 *9 (N.D. Cal. June 28, 2022). “‘Rather, more important questions apt to drive the resolution of
28 the litigation’ carry greater weight than less significant individualized questions.” *Id.* (quoting

1 *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016)). In short, a plaintiff can satisfy
 2 predominance by “show[ing] that the common question relates to a central issue in the
 3 plaintiffs’ claim.” *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651,
 4 665 (9th Cir. 2022). Plaintiffs can do so here for both claims.

5 **a. UCL.** Any “assessment of predominance ‘begins, of course, with the elements of the
 6 underlying cause of action.’” *Walker v. Life Ins. Co. of the Sw.*, 953 F.3d 624, 630 (9th Cir. 2020)
 7 (citation omitted). To succeed on their UCL “unfairness” claim, Plaintiffs will need to establish
 8 that Thomson Reuters’ conduct “offends an established public policy” or “is immoral,
 9 unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Cel-Tech*
 10 *Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 543 (Cal. 1999). The UCL’s “focus [is] on the
 11 defendant’s conduct, rather than the plaintiff’s damages,” which reflects the UCL’s “larger
 12 purpose of protecting the general public against unscrupulous business practices.” *In re Tobacco*
 13 *II Cases*, 207 P.3d 20, 30 (Cal. 2009). For this reason, “district courts in California routinely certify
 14 consumer class actions arising from alleged violations of the . . . UCL.” *Tait v. BSH Home*
 15 *Appliances Corp.*, 289 F.R.D. 466, 480 (C.D. Cal. 2012); *see also Tobacco II Cases*, 207 P.3d at 30
 16 (recognizing that “[c]lass actions have often been the vehicle” for UCL actions).

17 Rule 23(b)(3) certification is especially “warranted” when “a plaintiff’s claim under the
 18 ‘unfair’ prong ‘hinges on the existence of a uniform business practice or series of practices
 19 amenable to some degree of precise definition.’” *Newton v. Am. Debt Servs., Inc.*, 2015 WL
 20 3614197, at *10 (N.D. Cal. June 9, 2015) (Chen, J.) (citation omitted). That is the case here:
 21 Thomson Reuters’ conduct is uniform and does not change from class member to class member.
 22 *See supra* Section II.B at 7-8. The company uses uniform data-collection, aggregation, and
 23 analysis practices to offer Californians’ personal data for sale in a uniform way through CLEAR.
 24 *See supra* Section II.B at 7-8. And it uniformly does not seek any Californian’s consent to do so.
 25 *See supra* Section II.C at 8-9.

26 California courts apply two tests to UCL unfairness claims: the balancing test and the
 27 tethering test. *See* ECF No. 54 at 13 (citing *Lozano*, 504 F.3d at 735). Proving that Thomson
 28 Reuters’ nonconsensual collection and sale of the class members’ personal information is unfair

1 under either test will be an entirely classwide exercise, and the common questions will
2 predominate over any potential individualized issues.

3 Under the balancing test, Plaintiffs must show that “the harm to the public from the
4 business practice is greater than the utility of the practice.” *Backus*, 122 F. Supp. 3d at 929; *see*
5 ECF No. 54 at 13–16. The balancing test, in other words, weighs whether the defendant’s
6 “public policy violation” is greater than “the utility” of the offending conduct. *In re Anthem, Inc.*
7 *Data Breach Litig.*, 162 F. Supp. 3d 953, 990 (N.D. Cal. 2016); *see, e.g., Freeman v. Time, Inc.*, 68 F.3d
8 285, 289 (9th Cir. 1995) (noting that an “unfair business practices claim must be evaluated from
9 the vantage of a reasonable consumer”). The Court’s consideration of whether Thomson
10 Reuters’ business practices are “unfair” requires probing “the reasons, justifications and
11 motives of the alleged wrongdoer” – all factors that do not change from class member to class
12 member. *See McKell v. Washington Mutual, Inc.*, 142 Cal. App. 4th 1457, 1473 (2006) (citation
13 omitted). The “harm to the public” resulting from Thomson Reuters’ nonconsensual sale of
14 Californians’ personal information is definitionally a question that does not turn on any
15 individualized inquiries—it asks whether Californians generally have been harmed by
16 Thomson Reuters’ offending conduct.⁸ *See Backus*, 122 F. Supp. 3d at 929. Neither element of
17 the balancing test is impacted by an individual outcome – in other words, the Court here “may
18 make one uniform determination of whether the utility of the conduct outweighed the harm.”
19 *See Newton*, 2015 WL 3614197, at *10; *see also, e.g., Ellsworth v. U.S. Bank, N.A.*, 2014 WL 2734953,
20 at *28 (N.D. Cal. June 13, 2014) (noting that “whether harms outweigh utilities” under the UCL
21 is a “question[] capable of classwide resolution”); *Longest v. Green Tree Servicing LLC*, 308 F.R.D.
22 310, 331 (C.D. Cal. 2015) (same). Common questions therefore predominate under the balancing
23 test.

24 The same is true with the tethering test, which asks whether the defendant’s unfairness

25 _____
26 ⁸ Even if the harm to individual class members were relevant, the harms still would be uniform
27 across the class: Each individual has been deprived of their right to exercise control over the
28 use of their personal information. *See* Ex. 4 (Turow Report) at 13, 16; Ex. 68 (Brooks Decl.) at ¶3;
Ex. 69 (Shabazz Decl.) at ¶3; *see also* Ex. 6 (Godlewski Dep.) at 17:9-10, 164:10-12 (noting that
most of Californians do not even know that their data is offered for sale on CLEAR).

1 is “tethered to some legislatively declared policy” espoused in California’s constitution,
2 statutes, or regulations. *Cel-Tech*, 973 P.2d at 544. As this Court has already recognized,
3 determining whether Thomson Reuters’ nonconsensual collection and sale of Californians’
4 personal data through CLEAR violates California’s public policy requires an analysis of (1)
5 California’s statutes and regulations governing privacy and personally identifiable
6 information, and (2) Thomson Reuters’ conduct. ECF No. 54 at 17–18; *see also In re Carrier IQ*,
7 *Inc.*, 78 F. Supp. 3d 1051, 1116–17 (N.D. Cal. 2015). Because neither California law nor Thomson
8 Reuters’ business model changes by class member, “proving the claim will primarily require
9 an investigation into [California law] and Defendant’s uniform practice.” *See Gaudin v. Saxon*
10 *Mortg. Servs., Inc.*, 297 F.R.D. 417, 430 (N.D. Cal. 2013).

11 **b. Unjust enrichment.** Common questions also predominate on the unjust-enrichment
12 claim. To prevail on that claim, the class will need to show Thomson Reuters “received and
13 unjustly retained a benefit at [their] expense.” *See ESG Capital Partners, LP v. Stratos*, 828 F.3d
14 1023, 1038 (9th Cir. 2016). A “benefit” is “any form of advantage,” including when “one saves
15 the other from expense or loss.” *Ghirardo*, 924 P.2d at 1003. Such benefits must be disgorged
16 when “the circumstances of its receipt or retention are such that, as between the two [parties],
17 it is unjust for [the beneficiary] to retain it.” *Id.*

18 Class treatment of unjust enrichment claims is appropriate when the claim “raises the
19 same legal issues as to all class members.” *Smith v. Keurig Green Mountain, Inc.*, 2020 WL
20 5630051, at *5 (N.D. Cal. Sept. 21, 2020) (certifying unjust enrichment class); *see, e.g., Allegra v.*
21 *Luxottica Retail N. Am.*, 341 F.R.D. 373, 460 (E.D.N.Y. 2022) (certifying California unjust-
22 enrichment class and collecting cases). When evaluating whether an unjust enrichment claim
23 can be certified, courts focus on the “plaintiffs’ theory of the case” to establish the relevant
24 framework. *See Longest*, 308 F.R.D. at 330. In so doing, courts certify unjust enrichment claims
25 for class treatment when the plaintiffs allege that the class members were all harmed in the
26 same manner, even despite potential factual differences. *See id.* Put differently, “[c]ertification
27 of an unjust enrichment class may be proper if it is clear that the defendant had uniform
28 interactions or transactions with all members of the putative class so that it is reasonable to

1 conclude that no significant equitable differences exist in the status of class members.” 1
2 McLaughlin on Class Actions § 5.60.

3 That precisely describes this case. Plaintiffs’ “theory” of unjust enrichment here is that
4 Thomson Reuters’ conduct (obtaining the class members’ personal information and making it
5 available for sale on CLEAR without consent) unjustly resulted in the company retaining a
6 benefit (the revenues and profits derived from doing so). *See Longest*, 308 F.R.D. at 330.
7 Determining whether it is unjust for Thomson Reuters to retain its profits without first
8 obtaining Californians’ consent to sell access to their personal information depends solely on
9 common questions of law and fact because Thomson Reuters acts uniformly with respect to the
10 class. *See supra* Section II.A at 3-7; Section II.C at 8-9. Whether Thomson Reuters “unjustly”
11 profited from these practices is therefore a question that can be answered in “one stroke” for
12 the entire class – nothing turns on any individual class member. *See Dukes*, 564 U.S. at 350.

13 Plaintiffs can also show that their requested monetary relief is “capable of measurement
14 on a classwide basis” and “consistent” with Plaintiffs’ theory of liability. *See Comcast Corp. v.*
15 *Behrend*, 569 U.S. 27, 34-35 (2013). Plaintiffs’ theory of unjust enrichment is straightforward:
16 Thomson Reuters unjustly retained profits generated from making the class members’ personal
17 information available for sale on CLEAR without their consent. Disgorging Thomson Reuters’
18 unjustly retained profits is a remedy consistent with Plaintiffs’ theory of unjust enrichment
19 liability – both focus on Thomson Reuter’s conduct and profits, rather than the particular injury
20 or amount of damages sustained by individual class members. The measure of the
21 disgorgement here, therefore, is the company’s net profits from CLEAR that are attributable to
22 the use of the class members’ personal data. *See* Restatement (Third) of Restitution and Unjust
23 Enrichment § 51. This measure can be derived from Thomson Reuters’ own financial statements
24 and requires only basic accounting and arithmetic. It can easily, therefore, be performed on a
25 classwide basis. Indeed, Plaintiffs’ expert, Terry Lloyd of Finance Scholars Group, Inc., has set
26 out a reasonable methodology for calculating the total amount of unjustly retained profits – all
27 that is required at this stage. Ex. 59 (FSG Report) at 7-16; *see also GHK Assoc. v. Mayer Grp., Inc.*,
28 224 Cal. App. 3d 856, 873 (1990) (noting California law requires “only that some reasonable

1 basis of computation of damages be used . . . even if the result reached is an approximation”).

2 In sum, whether and to what extent Thomson Reuters’ profits from Californians’
3 personal information being included in CLEAR without consent are “unjustly retained” is a
4 natural fit for classwide determination.

5 **3. A class action is superior to other ways of adjudicating this controversy.**

6 Finally, Plaintiffs meet Rule 23(b)(3)’s requirement that a class action be “superior to
7 other available methods for fairly and efficiently adjudicating the controversy.” When
8 evaluating superiority, the Court considers a variety of factors including class members’
9 interest in individually controlling separate actions, litigation that class members have already
10 commenced, the desirability of concentrating litigation in one forum, and expected difficulties
11 in managing a class action. *See James*, 338 F.R.D. at 143. Refusing to certify a class “on the sole
12 ground that it would be unmanageable is disfavored and should be the exception rather than
13 the rule,” *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 140 (2d Cir. 2001)
14 (Sotomayor, J.), particularly “given the variety of procedural tools courts can use to manage the
15 administrative burdens of class litigation.” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128
16 (9th Cir. 2017).

17 Here, individual litigation is neither a fair nor efficient solution for either party. Most
18 class members are not even aware of CLEAR’s existence and would therefore not know to bring
19 individual claims *see* Ex. 6 (Godlewski Dep.) at 17:9-10, 164:10-12, which, in any event, would
20 likely not be worth the cost of individual litigation. *See* Ex. 59 (FSG Report) at 18; *Amgen*, 568
21 U.S at 478 (“The policy at the very core of the class action mechanism is to overcome the
22 problem that small recoveries do not provide the incentive for any individual to bring a solo
23 action prosecuting his or her rights.”). Moreover, attempting to disgorge Thomson Reuters’
24 profits for each individual plaintiff who brings an unjust enrichment claim would risk
25 inconsistent verdicts, increase costs among class members and for Thomson Reuters, and
26 generate largely duplicative litigation that could unnecessarily flood the Court’s docket.
27 Certifying this case as a class action, by contrast, allows the Court to “achieve economies of
28 time, effort, and expense, and promote . . . uniformity of decision as to persons similarly

1 situated, without sacrificing procedural fairness or bringing about other undesirable results.”
2 *Amchem*, 521 U.S. at 615.

3 Because Californians are unlikely to pursue these claims individually, and Plaintiffs’
4 claims are particularly well-suited to class adjudication, the Court should certify the class.

5 **V. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court certify a hybrid
7 (b)(2) and (b)(3) class or, in the alternative, certify both claims for class treatment pursuant to
8 Rule 23(b)(3), appoint Plaintiffs Cat Brooks and Rasheed Shabazz as class representatives, and
9 appoint Gibbs Law Group and Cohen Milstein Sellers & Toll as class counsel.

10
11 DATED: December 1, 2022

Respectfully submitted,

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