

Declaration of Joshua Blandi in Support of Public.Resource.Org

I, Joshua Blandi, declare as follows:

1. I am the Chief Executive Officer and Co-Founder of UniCourt Inc. (“UniCourt”). I have personal knowledge of the facts stated in this declaration and know them to be true and correct. I could competently testify to them if called as a witness. Though I am not an attorney, I have consulted with several attorneys on my team at UniCourt. As part of these conversations, the attorneys on my team have advised me as to the meaning of the various legal cases contained in this declaration. These attorneys have also advised me as to how these legal cases and frameworks apply to the facts contained in this declaration. I have also discussed the conclusions made in this declaration with these attorneys, and I am comfortable including them in this declaration.
2. UniCourt was founded in 2014 and has become a leader in making court data more accessible and useful with our Legal Data as a Service. We provide real-time access to court data for legal research, legal analytics, litigation tracking, business development, business intelligence, investigations, due diligence, compliance, underwriting, machine learning models, and process automation. We provide one portal to access legal data from federal (PACER) and state courts across the United States to a diverse list of clients, including law firms, legal support firms, financial institutions, insurance firms, news agencies, government agencies, educational institutions, non-profits, investigators, and consumers.
3. UniCourt aggregates court data from approximately 15 different states. Several of these states have a single electronic access point in the form of an online public portal, while many others have online public portals for each individual county or jurisdiction within their state court system. There are over 1000 different courts from which we aggregate data. Once UniCourt has collected the court data from publicly available sources, we apply machine learning (ML) and artificial intelligence (AI) to then organize, standardize, and structure that data and make it readily available via our online application and APIs for real-time access and data feeds. In addition to cleaning and structuring the court data we collect, we also apply natural language processing (NLP) for entity normalization (entity linking/disambiguation) to identify real-world attorneys, law firms, parties, and judges involved in litigation. Further, we then enrich that court data with other public data sets such as Secretary of State records and attorney bar records to provide a fuller picture of who's who in court records. We also run image processing and optical character recognition (OCR) on court documents within our litigation database to structure, tag, and index information, so that our clients can search through the content of these documents.

Lack of Access to Court Data Causes Economic Harm

4. In order to provide accurate services to our clients, and to the public at large, UniCourt has a critical need to acquire and offer a complete set of data which is publicly provided by the courts. Not being able to access publicly available court data economically harms UniCourt and other similarly situated providers. For instance, potential clients of UniCourt have decided not to use our services when UniCourt was prevented from accessing court data for certain jurisdictions or was blocked from acquiring a complete data set. To illustrate how lack of access to court data impacts our services and causes economic harm to UniCourt, I have highlighted the below examples of how this affects our offerings for (1) legal research (2) legal analytics; (3) business intelligence; (4) business development; (5) investigations; and (6) news reporting.

Legal Research

Legal research is one of the most obvious use cases for UniCourt's services. To be an authoritative source that legal professionals, academics, consumers, and others will use to handle legal research, it is vital to have a complete set of court data to search from. For example, without a complete set of court data, legal professionals cannot conduct the exhaustive legal research needed to protect their clients' interest by accurately determining whether a court case represents good precedent that can be cited in their legal arguments, or includes similar fact patterns to bolster their arguments. Nor can it be used by academia to support their policy making efforts to address nuanced legal issues and persistent problems plaguing the courts.

Legal Analytics

UniCourt currently provides the following types of legal analytics that are dependent on access to a complete set of court data: (1) judge analytics; (2) attorney analytics; (3) law firm analytics; (4) party analytics (corporations and businesses); (5) case type analytics; and (6) jurisdiction analytics. The litigation analytics offered by UniCourt helps make informed decisions on litigation strategy, provides background on the experience and litigation history of an attorney, law firm, judge, party, or court, whether or not to settle or to take a case to trial, and how to respond to certain motions and filings based on prior litigation history and the likelihood of success. In addition to the legal analytics UniCourt develops, we also offer our clients the ability to access structured court data to develop their own custom analytics. Accuracy is at the heart of any legal analytics product, and without complete data sets backing analytics, their usefulness and accuracy will come into question.

Business Intelligence

There are many types of business intelligence which are currently being derived from court records through UniCourt's services. Such uses of court records include: (1) the competitive intelligence gained by attorneys and law firms who are representing clients and businesses; (2) the intelligence as to the types of litigation which are impacting certain clients and industries; (3) the intelligence of whether or not to settle against certain parties, attorneys, and/or law firms based on the parties' prior litigation history; and (4) the intelligence necessary for development of litigation strategies which can be procured by reviewing existing complaints and certain motions. In the context of business intelligence, completeness of data is a core component of assessing the value of the intelligence. Specifically, if a court data set is not complete, it would call into question the accuracy and veracity of the intelligence gathered from the underlying data.

Business Development

In addition to business intelligence, one of the main current and future use cases for court data is business development. Having a complete set of court records is crucial for business development when it comes to tracking new litigation involving clients and competitors for potential business opportunities. Without a complete data set, attorneys and law firms cannot be alerted to new case filings, accurately dig deeper into business opportunities in certain practice areas and/or jurisdictions, or take advantage of trends impacting their practice groups. Beyond the legal profession, there are also other industries using court records for business development such as

real estate and finance to find business opportunities, and those industries rely on having a complete set of records to make data driven decisions on which opportunities to pursue.

Investigations

A portion of UniCourt's clients use our services for conducting investigations, due diligence, compliance, and providing protective or preventative intelligence services. Court records are a critical data point for actively identifying, investigating, assessing, and managing security threats to protect employees, customers, networks, and assets. As with other use cases, without a complete court data set, investigative professionals may miss out on a key link to an investigation and the opportunity to prepare for and reduce avoidable risks.

News Reporting

UniCourt is a publisher of legal news and publishes case information for millions of court cases online for free in an easily digestible manner for the public. We also provide the public with free case summaries of newsworthy litigation. Beyond our role as a publisher of court case information and case summaries, UniCourt also provides access to this information in a streamlined fashion to major news outlets to enhance and drive their reporting on the cases in the public interest. Without access to a complete court data set, UniCourt would not be able to report on certain cases that may be deemed to be newsworthy or act as a trusted source for news organizations.

Fundamental Constitutional Right to Access Court Records

5. As part of our mission to improve access to court records for the public and our role as a publisher of legal news related to litigation, UniCourt has published millions of state and federal court cases online for free, and we also provide free case summaries of newsworthy litigation, written by legal professionals. In providing access to court records, UniCourt follows a long line of judicial precedents that underscore the importance of public access to court records.

6. Open access to public records is a fundamental constitutional right. Judicial rulings have emphasized that "access to public proceedings and records is an indispensable predicate to free expression about the workings of government." *Courthouse News Serv. v. Planet*, 750 F.3d 776, 785- 787 (9th Cir. 2014). The First Amendment provides a presumptive right of public access to civil records, and the proponent of withholding access bears the high burden of proof to show that denial of access is constitutionally permissible. *Bernstein v. Bernstein, Litowitz Berger & Grossman LLP*, 814 F.3d 132, 140-141 (2d Cir. 2016). Courts have recognized that public access to court records helps ensure the integrity of the judicial process. See, e.g., *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982); *NBC Subsidiary, Inc. v. Superior Court*, 20 Cal. 4th 1178, 1201-1202 (1999). The public right to know and to have access to court proceedings and records has been established as an indispensable element of the judicial process itself. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. at 597 (Brennan, J., concurring); *NBC Subsidiary, Inc.*, 20 Cal. 4th at 1202. The U.S. Supreme Court has repeatedly emphasized the high public interest to know whatever happens in a courtroom. "What transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374. In short, the vast body of federal case law, decided over the course of four decades, has recognized that there is a constitutional right of the public to access judicial proceedings and records in both civil and criminal judicial proceedings.

7. Being a fundamental constitutional right, any state-imposed restriction that limits the right to access to the courts and its documents mandates a strict scrutiny analysis. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S.555, 597 (1980). Denying access to court records must be in the least restrictive means available to achieve a compelling government interest. The constitutional presumption of access to proceedings or records can only be rebutted “by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501, 510 (1984). Ignoring this mandate, some state courts have unconstitutionally restricted public access to court data.

Commercial Use of Public Court Records Is Not Grounds for Denial of Access

8. Some state courts have attempted to prohibit any commercial use of the court data they make publicly available through their terms of service or service agreements. The purpose of the use of the public records, however, cannot be used to deny access to First Amendment protected data. In *Sorrell v. IMS Health, Inc.*, the Supreme Court held that commercial data miners had a First Amendment right to analyze *confidential* prescription information, overruling a “medical privacy” objection because the information was in “extensive use” by others. 564 U.S. 552, 571 (2011). The Court in *Sorrell* reasoned that the First Amendment protected data mining for commercial uses, because “the creation and dissemination of information are speech within the meaning of the First Amendment.” *Id.* The Court went further to state that “[f]acts, after all, are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs.” *Id.*

9. The Supreme Court has definitively addressed this issue. “That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment.” *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 343 U.S. 501-502; *New York Times co. v. Sullivan*, 376 U.S. at 266; *Times, Inc. v. Hill*, 385 U.S. 374, 397 (1967). One cannot deny access and use of public court records and documents merely by labeling the anticipated use a “commercial enterprise”.

Regulations on the Method of Retrieval of the Data By the Public Must Be By the Least Restrictive Means Available

10. Some courts have also imposed restrictions on the use of automated data gathering methods to acquire court data and documents, and the redistribution of court data and documents. UniCourt uses automated programs to communicate with the courts. These programs, or BOTS (as they are commonly referred), have been “banned” by some state courts in their terms of service or service agreements. Such blanket prohibitions do not properly follow the constitutional requirements. That is, these blanket prohibitions cannot pass a strict scrutiny analysis by being the “least restrictive means available”. What is the compelling government interest for having such a restriction? If it is to guarantee that the court’s computer systems are free from lag, then only BOTS that slow court systems down should be prohibited.

State Courts Cannot Claim Copyright Protection Over Court Data

11. Several state courts claim copyright protection over the court data and documents made publicly available through their electronic case management (“ECM”) systems. Such claims are in direct contravention to the United States Supreme Court’s ruling in *Georgia v. Public.Resource.Org*, which held that no state can claim copyright over government edicts, such as court data and documents produced by judicial employees in their official capacity.

Restrictions On Access to Court Records by the State of Indiana and Tyler Technologies

12. A severe example of restricting access to court records, can be found by looking at the user agreement and Terms of Service put forward by the State of Indiana, which has contracted with a company called Tyler Technologies (“Tyler”) to establish and operate their ECM system, Odyssey Public Access, also known as “MyCase” (<https://public.courts.in.gov/mycase#/vw/Search>). The contract between the State of Indiana and Tyler dates back to 2007. It covers the entire state, and there are no ECM alternatives available. In the Odyssey Public Access Terms of Use (<https://www.in.gov/courts/policies/tou-mycase/>), Indiana and Tyler claim intellectual property rights in the court data they publish freely to the public, and threaten civil and criminal penalties for any user who exercise their constitutionally protected rights to access and publish court records online. Here below are the specific provisions currently posted in the the Odyssey Public Access Terms of Use:

“When retrieving information from MyCase, you are prohibited from (1) using or attempting to use spiders, robots, avatars, intelligent agents, or any other extraction or navigation search except for a normal browser; (2) aggregating, copying or duplicating any of the materials or information available from the site except for the small amount of materials and information temporarily required for an ordinary single use of the site; or (3) accessing data not intended for such user.

You are authorized to access, use and copy information and materials available through MyCase only as necessary for the proper use of the site's online services. The information and materials, including pages and content, may not be copied, distributed, modified, published, or transmitted in any other manner, including for use for creative work or to sell or promote other products. Violation of this policy may result in infringement of intellectual property and contractual rights of the Indiana Supreme Court, the Office of Judicial Administration, Tyler Technologies, Inc., or other parties, which is prohibited by law and could result in substantial civil and criminal penalties.”

13. On September 13, 2011, the Indiana Supreme Court issued Order No. 94S00-1109-MS-552, which set forth procedures to be used to obtain bulk distribution of and remote access to court records using Odyssey. The order indicated that information on individual cases was available at no cost to the public over the internet.

14. Pursuant to Order No. 94S00-1109-MS-552 and Administrative Rule 9 at the time of the Order’s issuance, requests for bulk distribution of Odyssey Public Access information were to be made in writing to the Executive Director of the Indiana Office of Court Services. For bulk distribution, Admin. Rule 9 also authorized courts to charge an amount not exceeding the “fair market value of the information.” However, I do not believe fair market value was properly set.

15. In 2019, UniCourt initiated conversations with the Indiana Office of Court Services, and was quoted a price of over \$10,000 per month to obtain bulk monthly data feeds to all new cases filed with Indiana courts, totalling over \$120,000 per year for basic access to court data for Indiana court cases. However, this exorbitant cost, well above “fair market value,” specifically did not provide access to court documents connected to the court cases available through bulk access options made available by Indiana, meaning the only option available to obtain bulk access to court documents is to aggregate them from the Odyssey Public Access, which in turn is prohibited by Indiana and Tyler’s Terms of Use.

16. To further compound the exorbitant monthly costs quoted by the Indiana Office of Court Services, if UniCourt wanted to use Indiana’s option for bulk messaging option for more real-time data feeds, as opposed to

the monthly bulk data feeds, we were informed that we would be required to purchase Indiana's full historical database of court records, estimated by an Indiana Office of Court Services representative to be over 25 million records. At the quoted price of \$.01 per court case, this would total more than \$250,000.

17. These exorbitant fees do not reasonably relate to the cost of the services provided. It is a long-standing principle that, when charging a user fee, "the government should seek, not to earn a profit, but only to charge fees commensurate with the cost of providing a particular service." *Electronic Case Files in the Federal Courts: A Preliminary Examination of Goals, Issues and the Road Ahead*, at 34 (Mar. 1997). Whenever it is determined that the purpose of the fees is to raise revenue, the fees are deemed to be unconstitutionally enacted taxes. *Hoefling v. City of San Antonio*, 20 S.W. 85 (Tex. 1892); *City of Fort Worth v. Gulf Refining Co.*, 83 S.W.2d 610 (Tex. 1935); *Royall v. State of Virginia*, 116 U.S. 572 (1886); *Dayton-Goose Creek Ry. Co. v. United States*, 287 F. 728 (D.C. Tex. 1923); *Texas Co. v. Brown*, 266 F. 577 (D.C. Ga. 1920). Further, when making that determination, the courts have resolved any ambiguity in the favor of the taxpayers in most states, including the State of Indiana and the State of Texas. *City of Gary v. Indiana Bell Telephone Co., Inc.*, 732 N.E.2d 149, 156 (Ind. 2000); *Bullock v. Statistical Tabulating Corp.*, 549 S.W.2d 166, 169 (Tex. 1977). If individual users can get open access to the court data provided by Indiana Office of Court Services at no cost, how can the amounts being charged by Indiana for bulk distribution be considered fair market value?

18. As our conversations continued with the Indiana Office of Court Services, UniCourt was provided a copy of Indiana's "User Agreement for Bulk Distribution of Data and Compiled Information," which was signed by the Executive Director of Indiana Office of Court Services and executable by UniCourt. This agreement contained further provisions that required UniCourt to waive fundamental constitutional rights and certain provisions that would completely call into question the "fair market value" being ascribed to the data provided via bulk distribution. For example, the following passage asserts that after paying significant sums of money to acquire the data via bulk distribution, if the Indiana Office of Court Services decided to terminate the agreement, or if UniCourt wished to terminate the agreement, that we would not only have to return all publicly available court data that was purchased, but that we would have to claw back any and all data in the possession of our clients:

"Upon expiration of this User Agreement, including upon non-renewal or termination of this User Agreement for any reason, the Requesting Party shall return all Court Records subject to this User Agreement and may not retain any copies of the Court Records or any compilation of Court Records created by or in the possession of the Requesting Party. Further, upon expiration of this User Agreement, including by non-renewal or upon termination of this User Agreement for any reason, the Requesting Party shall retrieve and destroy any copies of the Court Records or any compilation of Court Records then in the possession of third-parties who received such Court Records or compilations from or through the Requesting Party, or shall confirm that such Court Records or compilations of Court Records are destroyed by such third-parties."

19. Additionally, the Indiana Office of Court Services also claimed all intellectual property rights in the court records produced by the Indiana Judiciary, which again is in direct contravention to the United States Supreme Court's ruling in *Georgia v. Public.Resource.Org* that no state can claim copyright or intellectual property rights in government edicts produced in their official capacity. The restriction of rights contained in the following passage from the "User Agreement for Bulk Distribution of Data and Compiled Information," would further reduce the "fair market value" of the data being provided via bulk distribution as it purports to restrict the ability of UniCourt to disseminate publicly available court records or license them to clients:

“All right, title, and interest, including all intellectual property rights, in and to the Court Records, Data, Compiled Information, code, application or any other information provided to the Requesting Party shall remain with the respective Courts and the Indiana Supreme Court, pursuant to Administrative Rule 10. The Requesting Party shall not acquire any proprietary right to or interest in any Court Records, Data, Compiled Information, code, application or any other information provided to the Requesting Party under this User Agreement, whether or not the Court Records, Data, Compiled Information, code, application or other information is incorporated in or integrated with in any way whatsoever with the Requesting Party's property, data, code, reports, application, program, system or any other sort of product. Such rights may not be transferred, assigned, or sold for any purpose to any person, corporation, partnership, association, or organization of any kind.”

Restrictions on Access to Court Records by the State of Texas and Tyler Technologies

20. However, this is not the only relationship established by Tyler with a statewide court system designed to restrict access to publicly available court records and threaten data aggregators with penalties for publishing and disseminating the court records it makes available as an agent of a state. Tyler has established a similar system in the State of Texas, yet this relationship more directly asserts Tyler's purported control over public records it is merely meant to provide the public access to as an agent of the State of Texas.

21. Initially, Tyler built ECM systems for several counties in Texas, while some of the larger counties hosted their own online portals. More recently, Tyler created a statewide portal to access court records across Texas (<https://research.txcourts.gov/CourtRecordsSearch/Home#!/home>), and like in Indiana, Tyler seeks to have all counties across Texas fully included in this statewide portal. However, before being added into the statewide portal, most of the individual counties across Texas did not include the overbroad and overreaching Terms of Use Tyler has applied to all court records included in the statewide portal. By continuing to expand the statewide portal's reach, Tyler is in effect closing off access to these court records county by county through the use of restrictive Terms of Use claiming ownership over the public court data it is merely meant to provide to the public as an agent of the State of Texas.

24. To provide references regarding the restrictive elements of Tyler's Terms of Use (https://research.txcourts.gov/CourtRecordsSearch/Assets/site/termsAndConditions/TX_TermsAndConditions.html), I have here below included relevant sections for your review:

"Tyler Technology" means any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, computer programs, user manuals, on-line documentation, products or other technology and materials of any kind, or any Enhancement thereto, used by Tyler in connection with the performance of eFileTexas.gov and re:SearchTX, or made available by Tyler to You, any User or any third party through the eFileTexas.gov Internet Site.

"Unauthorized Use" means any use, reproduction, distribution, disposition, possession, disclosure or other activity, including, without limitation, any bulk reselling involving any aspect of eFileTexas.gov or re:SearchTX, the eFileTexas.gov Internet Site or Information that is not expressly authorized under this Agreement or otherwise in writing by Tyler.

Section 2. License; Restrictions on Use

2.1 License. Subject to the restrictions and limitations set forth in this Section 2 and elsewhere in this Agreement, Tyler hereby grants to You and Your Users a nonexclusive, nontransferable, limited license to do the following during the term of this License: (a) enable You and Your Users to access and use eFileTexas.gov and re:SearchTX subject and according to the terms of this Agreement solely for Your and Your Users' internal use in the regular course of Your and Your Users' business; (b) subject to any applicable third party rights or restrictions of law, reproduce the Information for use in connection with the rights granted under (a) above and provide the Information to Your and Your Users' customers and clients and third parties in the regular course of Your and Your Users' business, provided that such Information is provided as an incidental part of, and ancillary to, the other services You and Your Users provide Your and Your Users' clients or customers, or the regular course of Your and Your Users' business.

2.2 General Restrictions and Limitations.

Paragraph 2.1 sets forth the entirety of Your and Your Users' right to access and use eFileTexas.gov and re:SearchTX. The License does not include the right to, and You and Your Users will not directly or indirectly (a) enable any person or entity other than Users to access and use eFileTexas.gov or re:SearchTX; (b) modify or create any derivative work based upon any Tyler Technology product; without prior permission, Information in which anyone else may have an ownership or protected interest; or Third Party Content; (c) except as necessary to conduct Your and Your Users' regular course of business, engage in, permit or suffer to continue any bulk copying or bulk distribution of the Information or store the Information in a searchable database accessible to third parties, excluding You and Your and Your Users' clients and agents; (d) grant any sublicense or other rights under the License; (e) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software that is part of the Tyler Technology; (f) remove, obscure or alter any Proprietary Rights notice related to the eFileTexas.gov Internet Site, eFileTexas.gov, re:SearchTX, the Tyler Technology or any Third Party Content; or (g) engage in, permit or suffer to continue any Unauthorized Use by any person or entity within Your control. You will ensure, through proper instructions and enforcement actions, that all access to and use of eFileTexas.gov and the Information obtained by You and Your Users, or otherwise through Your facilities, equipment, identifiers or passwords, will conform to this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law or regulation, the rights of any third party, court orders or Tyler's policies.

Section 7. Proprietary Rights

7.1 Ownership. The eFileTexas.gov Internet Site and the Tyler Technology that constitutes eFileTexas.gov and re:SearchTX involve valuable Proprietary Rights of Tyler. You acknowledge that You obtain only license rights under this Agreement. No title to or ownership of eFileTexas.gov, re:SearchTX, the eFileTexas.gov Internet Site and the Tyler Technology, or any Proprietary Rights associated therewith is transferred to You, any User or any third party under this Agreement.

7.2 Protection of Proprietary Rights. You will not infringe or violate, and will take appropriate steps and precautions for the protection of Tyler's Proprietary Rights. Without limiting the

generality of the foregoing, You will (a) maintain access and use restrictions sufficient to prevent any Unauthorized Use; (b) except as provided by this Agreement, not make eFileTexas.gov, re:SearchTX, the eFileTexas.gov Internet Site, the Tyler Technology or Third Party Content available to any third party without the prior written consent of Tyler; and (c) otherwise use Your best efforts to prevent any Unauthorized Use. You will immediately notify Tyler of any Unauthorized Use that comes to Your attention and cooperate with Tyler to investigate and prevent the same. In the event of any Unauthorized Use relating to Your activities, any User or any of Your representatives, You will take all steps reasonably necessary to terminate such Unauthorized Use.

25. By erecting these barriers to access through the use of restrictive Terms of Use and user agreements claiming copyright and other proprietary interests in public court records, and by further threatening civil and even criminal penalties for violations of those Terms of Use and user agreements, the actions of Tyler and the states they have contracted with, such as Indiana and Texas, have had a chilling effect on the fundamental First Amendment rights of the press and the public through deceptively claiming copyright ownership and control over the documents and data that are public edicts of the judiciary. Ultimately, these barriers prohibit equal access to justice and should be removed.

I declare that the foregoing is true and correct.

Executed on 8/19/2021, 2021 in Tustin, CA.

DocuSigned by:
Joshua Blandi
/s/ 152EAB673E9B4F7...
JOSH BLANDI