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Molly Dwyer
Clerk of the Court
U.S. Court of Appeals for the
Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Courthouse News Service v. Planet*
U.S. Court of Appeals Docket No. 11-57187

Dear Ms. Dwyer:

We represent Appellant Courthouse News Service in the above-referenced case, and write in response to Appellee Michael Planet’s October 31 notice of additional authority pursuant to Federal Rule of Appellate Procedure 28(j).

As a preliminary matter, Appellee’s Rule 28(j) Notice, which contains more than 600 words, exceeds the word limitation in Rule 28(j) and thus should not be considered. *Hart v. Parks*, 450 F.3d 1059, 1071 n.11 (9th Cir. 2006).

In any event, Assembly Bill 2073, including the provisions Appellee highlights, was pending before the Legislature at the time Appellee filed his answering brief. Since any points Appellee wished to make regarding AB 2073 could have been raised in that brief, the Rule 28(j) Notice verges on being new argument as opposed to new authority.

It also is not pertinent. The amendments AB 2073 makes to subdivision (d) of Code of Civil Procedure § 1010.6 relate to e-filing, not access, and the language pertaining to access to electronically filed records in new subdivision (f) replaces nearly identical language in the current, pre-amendment version of subdivision (d). Thus, AB 2073 does *not* show California is grappling with access to court records.

Moreover, contrary to Appellee’s assertion in his Rule 28(j) Notice that e-filing “should improve overall accessibility to court records,” Courthouse News has found the opposite is often true, and access to e-filed complaints often takes longer than access to paper filings, a point it made in the declarations filed in support of its

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motion for preliminary injunction in the trial court. *See* FER 10-13. And, as Courthouse News explained in its appellate briefs, the extent to which e-filing or the lack thereof at the Ventura County Superior Court has a bearing on the question of whether the delays in access to new complaints at Ventura Superior are permissible under the First Amendment is properly a matter for the merits of this case, which the district court did not reach because it abstained from addressing the merits of the First Amendment issue. *See, e.g.*, AOB 10, 49; Appellant's Reply Brief, 3-5, 6-7.

Very truly yours,



Rachel Matteo-Boehm

cc: Robert Naeve, Esq.