

U.S. Court of Appeals Docket No. 11-57187

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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COURTHOUSE NEWS SERVICE,

*Plaintiff/Appellant,*

vs.

MICHAEL PLANET, in his official capacity as Court Executive Officer/ Clerk of  
the Ventura County Superior Court,

*Defendant/Appellee.*

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On Appeal from a Decision of the United States District Court  
for the Central District of California  
Case No. CV11-08083 R  
The Honorable Manuel Real

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**APPELLANT COURTHOUSE NEWS SERVICE'S  
FURTHER EXCERPTS OF RECORD**

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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 Courthouse News Service,

18 Plaintiff,

19 v.

20 Michael Planet, in his official capacity as  
21 Court Executive Officer/Clerk of the  
22 Ventura County Superior Court.

23 Defendant.

CASE NO. CV11-08083 R (MANx)

**SUPPLEMENTAL DECLARATION  
OF JULIANNA KROLAK IN  
SUPPORT OF MOTION OF  
COURTHOUSE NEWS SERVICE  
FOR PRELIMINARY INJUNCTION**

Date: Nov. 21, 2011  
Time: 10:00 am  
Courtroom: G-8 (2<sup>nd</sup> Floor)  
Judge: The Hon. Manuel L. Real

24 I, Julianna Krolak, declare and state as follows:

25 1. I am a reporter for Courthouse News Service ("Courthouse News"), the  
26 plaintiff in the above-captioned action. I have personal knowledge of the following  
27 facts and could testify to them if called as a witness.  
28

1           2.     I have reviewed the October 31, 2011, Declaration of Julie Camacho In  
2 Support of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction.  
3 Based on that review, it is my understanding that Ms. Camacho has reached different  
4 conclusions regarding the delay between the date that a complaint is filed and the date  
5 that it is made available for review than were set forth in my September 28, 2011,  
6 Declaration In Support of Courthouse News Service's Motion for Preliminary  
7 Injunction.

8           3.     After reviewing Ms. Camacho's October 31 declaration, I stand by the  
9 delays in access I observed as part of my August 8 through September 2, 2011,  
10 tracking exercise and as set forth in my September 28 declaration. Based on my  
11 personal experience visiting the Ventura County Superior Court ("Ventura Superior")  
12 on a daily basis, and my practice of requesting complaints from media bin on a daily  
13 basis, I can say definitively that Ms. Camacho's assertion that the vast majority of  
14 civil unlimited jurisdiction complaints are available for review through the media bin  
15 either on the day of filing or the next day is not accurate.

16           4.     As a preliminary matter, for the purposes of the tracking exercise  
17 described in my September 28 declaration, I tracked the 152 complaints that I was  
18 able to access and review during the August 8-September 2 time period (the "Tracking  
19 Period"). In contrast, Ms. Camacho's assessment appears to be based on the 147  
20 complaints that were filed during that period.

21           5.     During the Tracking Period, as to each civil unlimited jurisdiction  
22 complaint that I reviewed, I took note of the first date that each complaint was  
23 available from the media bin, or, if the complaint was never given to me from the  
24 media bin, the first date that I could access a complaint that had apparently bypassed  
25 the media bin and had been placed the shelves of the clerk's office. I based my  
26 conclusions on what I actually experienced during my daily visits to Ventura Superior,  
27 including my personal observations as to which complaints were retrieved by the  
28 clerk's staff and then given to me from the media bin.



1           6.     In paragraphs 11-12 of Ms. Camacho's declaration, she indicates that the  
2 complaint in *City National Bank v. Star Marketing & Media Inc.*, Case No. 56-2011-  
3 00401805, was available for review from the media bin on the same day it was filed,  
4 and the complaint in *Power Gomez v. LaCouture*, Case No. 56-2011-00401826, was  
5 available for review from the media bin one calendar day after it was filed. Contrary  
6 to what Ms. Camacho's records purport to show, those two complaints were not made  
7 available for my review from the media bin or otherwise until two calendar days after  
8 they were filed.

9           7.     Likewise, paragraph 22 of Ms. Camacho's declaration states that the  
10 complaints in *Estrada v. Rubio's Restaurant, Inc.*, Case No. 56-2010-00387332, and  
11 *Harrison v. Rite Aid Corp.*, Case No. 56-2010-00387942, were sent to the media bin  
12 on the same day they were filed; and the complaint in *Berber v. Holiday Retirement*,  
13 56-2010-00387945, was available from the media bin seven calendar days after it was  
14 filed. Contrary to what Ms. Camacho's records purport to show, the complaint in the  
15 *Estrada* case was not made available for review from the media bin or otherwise until  
16 thirteen calendar days after it was filed; the complaint in the *Harrison* case was not  
17 made available for review from the media bin or otherwise until nine calendar days  
18 after it was filed; and the complaint in the *Berber* case was not made available for  
19 review from the media bin or otherwise until eight calendar days after it was filed.

20           8.     When a civil unlimited jurisdiction complaint is not available for review,  
21 but there is docket information available online regarding a particular complaint  
22 (usually available one calendar day after the complaint is filed), it is my practice to  
23 include the parties' names and the cause of action based on the online docket  
24 information in the new litigation report that is sent to Courthouse News' subscribers.  
25 Because new civil unlimited jurisdiction complaints typically are not available for  
26 review until several days after they are filed, new reports usually contain several  
27 entries that are reported "from the docket"; I will then provide a full description of the  
28 complaint at a later date when I am finally able to access the complaint itself.

1           9.     On numerous occasions, subscribers have asked for more information  
2 related to a particular complaint reported “from the docket.” When this happens, I  
3 will ask the clerk’s staff to track down those complaints, which they have informed  
4 me they do by looking up each complaint on the court’s online case management  
5 system, which I understand is part of the California Court Case Management System  
6 (“CCMS”). On several occasions, upon looking up the complaint on CCMS, the  
7 clerk’s staff has told me that the system indicates that the complaint is in the media  
8 bin. When I inform the clerk’s staff that the complaint was not provided to me from  
9 the media bin, they often will check the bin in an effort to locate the complaint. In all  
10 of these instances, the clerk’s staff has never been able to find the complaints in the  
11 media bin.

12           10.    Likewise, on several occasions, the clerk’s staff has told me that the  
13 computer system indicates that a particular complaint is located on the clerk’s shelves,  
14 but upon looking for the complaint on the shelves, the file is not there. For example,  
15 on November 2, 2011, I requested to see the complaint in *Simon v. Lopez*, Case No.  
16 56-2011-00406107, filed November 1, 2011. Upon looking up this complaint on  
17 CCMS, the processing clerk who was assisting me, an individual named Joseph, said  
18 that the system indicated that the complaint was on the clerk’s shelves. However,  
19 after looking for the complaint on the shelves, Joseph told me he could not find the  
20 complaint there. I also observed that Joseph and another processing clerk also  
21 checked the media bin for the complaint, but were not able to locate the complaint  
22 there. In the end, I was not able to review this particular complaint until November 3,  
23 2011.

24           11.    Since May of this year, I have observed that Ventura Superior has trained  
25 at least three new processing clerks. From what I have been told by clerk’s staff, the  
26 civil unlimited jurisdiction complaints that are processed by new clerks typically must  
27 be double-checked by a supervisor before they can be made available to members of  
28 the press and public. In these situations, it can be as long as one week before a civil

1 unlimited jurisdiction complaint is made available for review. In fact, on several  
2 occasions, I was told that the complaints that I sought to review were on the desk of a  
3 supervisor who was gone for several days, and therefore I could not review those  
4 particular complaints until after she returned.

5 12. Finally, based on personal observation and statements by court staff, I  
6 can say that all new complaints come into the court through a single room called the  
7 "filings room," which is room number 210. The clerks who take in new civil  
8 complaints filed across the counter, as well as the back counter and window 14 used  
9 by messenger services, are all located in that one room. The drop-off box for  
10 complaints is located immediately outside the door into the same filings room.

11 I declare under penalty of perjury under the laws of the United States that the  
12 foregoing is true and correct. Executed at Ventura, California on this 5<sup>th</sup> day of  
13 November 2011.

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15 \_\_\_\_\_  
16 Julianna Krolak

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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 Courthouse News Service,  
18 Plaintiff,  
19 v.

20 Michael Planet, in his official capacity as  
21 Court Executive Officer/Clerk of the  
22 Ventura County Superior Court.

23 Defendant.

CASE NO. CV11-08083 R (MANx)

**SUPPLEMENTAL DECLARATION  
OF WILLIAM GIRDNER IN  
SUPPORT OF MOTION OF  
COURTHOUSE NEWS SERVICE  
FOR PRELIMINARY INJUNCTION**

Date: Nov. 21, 2011

Time: 10:00 am

Courtroom: G-8 (2<sup>nd</sup> Floor)

Judge: The Hon. Manuel L. Real

24 I, William Girdner, declare and state as follows:

25 1. I am the founder and editor of Courthouse News Service ("Courthouse  
26 News"), a nationwide legal news service and the plaintiff in the above-captioned  
27 action. I have personal knowledge of the following facts and could testify to them if  
28 called as a witness.

1           2.     As a preliminary matter, I understand that Defendant has claimed that  
2 delays in access to newly filed civil unlimited jurisdiction complaints do not harm  
3 Courthouse News or its subscribers. To the contrary, Courthouse News' subscribers  
4 are quick to notice when newsworthy complaints are not reported in one of  
5 Courthouse News' litigation reports, and they do not hesitate to contact Courthouse  
6 News directly by phone regarding the lack of reporting on a particular complaint.  
7 When access to new civil complaints is delayed, information on an important case  
8 often comes to their attention through other channels – through the messengers that  
9 file civil complaints, through the plaintiff's lawyer who can manipulate press coverage  
10 by providing the complaint to a targeted audience, and through a court's online docket  
11 (*i.e.*, where the court posts online docket information before the corresponding case  
12 can be seen by journalists). Courthouse News loses the confidence and goodwill of its  
13 subscribers when they hear through these various channels about a civil unlimited  
14 jurisdiction complaint that Courthouse News cannot report because it does not have  
15 access to it. Subscribers, through telephone calls to me and others at Courthouse  
16 News, express anger with Courthouse News' reports, mock Courthouse News'  
17 newsgathering efforts, ask for explanations regarding the failure to report on new civil  
18 complaints in a timely manner, and blame Courthouse News for the losses of  
19 important clients they attribute to the delayed reports.

20           3.     Likewise, subscribers also complain about reports that, like the Ventura  
21 Superior portion of the Central Coast Report, rely on docket coverage because the  
22 complaints themselves are not made available until several days after the complaint is  
23 filed. Directing members of the news media to online docket reports for information  
24 regarding new civil complaints is becoming a worrisome trend in some  
25 courts. Because of the meager content of reports that rely on docket information, law  
26 firms then question the value of their subscriptions with Courthouse News. Recently,  
27 a partner at a large California law firm emailed me to complain about such  
28 reporting with respect to one problematic court that Courthouse News covers, and

1 stated that such limited information was not much better than no information at all. I  
2 was told by the partner that the law firm, which has been a subscriber to Courthouse  
3 News for ten years, spends a significant amount of time and effort tracking down civil  
4 complaints from this particular court that are of interest given the lack of information  
5 available in Courthouse News' report. Even then, the amount of time that has passed  
6 since the filing of the complaint usually means the newsworthiness of the complaint  
7 has passed.

8 4. I also understand that Defendant has pointed to Courthouse News' Report  
9 Card detailing access to newly filed civil complaints filed at superior courts around  
10 California, which was compiled at my direction, as an example of how there is no  
11 tradition of access in California superior courts. To the contrary, there is a strong  
12 tradition of access to newly filed civil unlimited jurisdiction complaints in California,  
13 as indicated in the Report Card's detail of access at the Alameda, Los Angeles, San  
14 Francisco, Riverside and Santa Clara superior courts. In addition to highlighting these  
15 courts where the tradition of access remains strong, the Report Card was intended to  
16 document the deterioration of access at other California superior courts that  
17 Courthouse News has recently witnessed for the purpose of demonstrating the merits  
18 of Senate Bill 326, for which Courthouse News was one of the co-sponsors.

19 5. While I understand and do not dispute the budgetary restraints that  
20 California's judicial system is facing overall, and that individual superior courts are  
21 facing in particular, my personal experience as editor of Courthouse News over the  
22 last twenty-one years has been that providing access to case-initiating documents does  
23 not require the expenditure of large sums of money or additional staffing. If anything,  
24 the cost of providing same-day access to newly filed civil complaints is nominal, as I  
25 have personally observed time and again. My personal observation is that where  
26 delays in access occur, it is not because of budgetary constraints, but most frequently  
27 because the clerk's staff does not allow the press or public access to newly filed civil  
28

1 unlimited jurisdiction complaints until after a range of tasks associated with  
2 processing those complaints has been completed.

3         6. By way of example as to how budget constraints are not a limiting factor  
4 in providing same-day access to newly filed complaints, in late 1999, I attempted to  
5 work with defendant Michael Planet, who was at that time the court administrator for  
6 the King County Superior Court in Seattle, on providing same-day access to newly  
7 filed complaints filed in that court. At the time, Washington courts were facing  
8 budget shortfalls, and I was informed by Mr. Planet that providing same-day access to  
9 the press was a low priority, particularly in light of these constraints. It was only after  
10 Courthouse News obtained counsel and wrote to the presiding judge and I met with  
11 the presiding judge that court officials agreed to allow reporters to see the new actions  
12 on the day they were filed.

13         7. When same-day access was granted in King County Superior Court, the  
14 procedure consisted of allowing the Courthouse News' reporter to walk behind the  
15 sixth-floor intake counter to a cleared counter space roughly two feet long. An intake  
16 clerk would then walk ten to fifteen feet to bring a basket with new civil complaints  
17 from the intake counter to that work space. No further effort was required by the staff.  
18 The expenditure of staff time and court money can be and often is as simple as  
19 opening a door, or allowing the press to open the door. As demonstrated at the King  
20 County Superior Court, at the most, providing press access might require a court  
21 employee to walk documents to a review area, a task that Courthouse News  
22 consistently volunteers to undertake itself and in fact performs in many courts across  
23 the country. As I have seen in courts around the country, providing the news media  
24 with prompt access to new civil complaints does not require a court to spend its  
25 limited funds or hire extra personnel. Indeed, it is my personal observation that citing  
26 budget shortfalls as a reason to deny same-day access to new civil complaints is a red  
27 herring.

28

1           8.     The claim that e-filing is a necessary component to providing prompt  
2 access to newly filed civil unlimited jurisdiction complaints fails to correspond to any  
3 reality that I have personally observed. No superior court in California mandates e-  
4 filing for all civil cases. Yet Courthouse News has excellent, same-day access in a  
5 host of California superior courts where paper filing is the norm. Access to e-filed  
6 civil complaints depends on the same factors as access to paper-filed complaints, that  
7 is the willingness of court officials to allow news reporters to see complaints before all  
8 official processing tasks are accomplished. For example, the one superior court in  
9 California that mandates e-filing for an important and news-generating class of  
10 unlimited civil cases is Orange County Superior Court ("Orange Superior"), where  
11 complex commercial cases must be e-filed. The delay in access to those e-filed  
12 complaints is actually longer on average than the access to paper filed complaints. We  
13 have been told by the court's staff that the delay is the result of "QC" or quality  
14 control, which means that a clerk checks over the e-filed complaint before allowing  
15 the press to see it. In my experience, e-filing is simply another means of delivering a  
16 document to a court and in itself has nothing to do with access.

17           9.     Orange Superior, which, like Ventura Superior, now uses the California  
18 Court Case Management System ("CCMS"), also provides a good example of how not  
19 only e-filing, but other electronic technologies, have led to recent delays in access in  
20 some courts where there has been a tradition of same-day access. Consistent same-  
21 day access to new civil complaints also used to be the rule at Orange Superior, which  
22 Courthouse News has been covering for most of its 21-year history. Under Orange  
23 Superior's past procedures, near the end of each court day, a box with new complaints  
24 was delivered from the intake area to the records area so that reporters could review  
25 the complaints and, once that review was completed, return the box to the records  
26 staff. The *Los Angeles Times*, the *Orange County Register*, and the *Daily Journal* all  
27 checked the new filings regularly, as did Courthouse News. Approximately ten years  
28 ago, however, the clerk's office informed the press that they would no longer be



1 provided with access to new civil complaints on a same day basis; instead, new filings  
2 would be made available the day after filing. Complaints continued to be provided in  
3 a box, but they were no longer provided on a same-day basis. At some point later, the  
4 court started scanning cases, and media access deteriorated even further, with the  
5 review of the new complaints falling even further behind. Finally, in July 2009, the  
6 clerk's office did away with the box altogether and the media's exclusive means of  
7 reviewing new complaints was through the court's computer terminals. In May 2010,  
8 the court began offering e-filing for all civil cases, with e-filing being mandatory for  
9 complex cases.

10 10. As it stands, newly-filed unlimited civil complaints at Orange Superior  
11 are rarely made available for review on the day they are filed. Most are not made  
12 available until one court day after filing, a problematic delay in and of itself that is  
13 exacerbated when the delays occur over a weekend or holiday (or both), resulting in  
14 actual delays that are even longer. In addition, a significant minority of new unlimited  
15 civil complaints are delayed by two or more court days, with e-filed complex  
16 complaints taking *longer* on average to be made available for review than paper-filed  
17 complaints. Overall, the efforts on Orange Superior's part to utilize electronic  
18 technologies have resulted in worse, and not improved, access to newly filed civil  
19 unlimited jurisdiction complaints. To my knowledge, Orange Superior is the only  
20 California superior court that has e-filing capabilities for all civil case types.

21 11. The switch to e-filing at Nevada's Eighth Judicial District Court in Las  
22 Vegas is another example of how e-filing is not a cure-all for delays. Prior to  
23 switching to e-filing in February 2010, Courthouse News' reporter had same-day  
24 access to paper-filed complaints, regardless of whether the complaints had been fully  
25 processed. Following the switch to mandatory e-filing, which included e-filing of  
26 civil complaints, the court initially did not provide same-day access to complaints  
27 because of a procedural step that required the clerk's staff to electronically "accept" a  
28 new complaint after it had been filed, which resulted in new complaints not appearing

1 on the court's public access terminals until the next day. After Courthouse News  
2 brought this issue to the attention of court officials, the court found a solution through  
3 an electronic "in-box" through which reporters can essentially see exactly what  
4 staffers in the clerk's office see as new complaints are electronically filed throughout  
5 the day.

6 12. In contrast, many of the California superior courts that do not have e-  
7 filing programs at all, or only have e-filing programs for limited case types, are still  
8 able to provide same-day access to all newly filed civil unlimited jurisdiction  
9 complaints. For example, at the San Francisco County Superior Court ("San  
10 Francisco Superior"), where I understand that all court filings, except for those that  
11 involve asbestos litigation, are hand-filed, complaints filed on a particular day,  
12 including those that are accompanied by fee-waiver applications, are placed in a  
13 media box between 3 and 4:30 p.m. and made available to news reporters for review  
14 that same day in the intake and records area.

15 13. The fee-waiver applications themselves are separated from the complaint  
16 and are not provided to the reporter. Courthouse News' reporters covering the  
17 superior courts in the counties of Los Angeles and Alameda also see civil complaints  
18 that are accompanied by fee waiver applications on the same day of filing (again, the  
19 applications themselves are not provided to Courthouse News' reporters). In the  
20 superior courts for the counties of Contra Costa, Santa Clara and Riverside,  
21 Courthouse News' reporters are able to see the large majority of civil unlimited  
22 jurisdiction complaints on the same day they are filed, without any distinction as to  
23 those civil complaints that may have been accompanied by fee waiver applications.  
24 Again, all of these courts are hand-filing courts.

25 14. Major courts around the country that are also primarily hand-filing courts  
26 also are able to provide same-day access to case-initiating documents, in particular the  
27 Fulton County Superior Court in Atlanta; the Jefferson County District Court in  
28 Beaumont, Texas; the Kings County Supreme Court in Brooklyn; the Cook County

1 Circuit Court in Chicago; the Hamilton County Court of Common Pleas in Cincinnati;  
2 the Cuyahoga County Court of Common Pleas in Cleveland; the Dallas County  
3 District Court; the Wayne County Circuit Court in Detroit; the Tarrant County District  
4 Court in Ft. Worth, Texas; the Harris County Civil District Court in Houston; the  
5 Marion County Circuit and Superior courts in Indianapolis; the Jefferson County  
6 Circuit Court in Louisville, Kentucky; the New York Supreme Court in Manhattan;  
7 the Milwaukee County Court the Hennepin County District Court in Minneapolis; the  
8 Davidson County Chancery Court in Nashville; the Davidson County Circuit Court in  
9 Nashville; the Oklahoma County Court in Oklahoma City; the Douglas County  
10 District Court in Omaha; the Ninth Judicial Circuit Court in Orlando; the Maricopa  
11 County Superior Court in Phoenix; the Allegheny County Court of Common Pleas in  
12 Pittsburgh; the Multnomah County Court in Portland, Oregon; the St. Louis City  
13 Circuit Court in Missouri; the Ramsey County District Court in St. Paul; the King  
14 County Superior Court in Seattle; and the Hillsborough County Circuit Court in  
15 Tampa.

16 15. Additionally, case-initiating documents are required to be hand-filed at  
17 the U.S. District Courts for both the Northern District and Central District of  
18 California. In both of these districts, reporters are provided with same-day access to  
19 paper copies of newly filed civil complaints.

20 16. In my experience, and in all the courts where I have reviewed new  
21 complaints on a same-day basis, Courthouse News does not see checks on civil  
22 complaints, with one exception. That exception was the Orleans Parish Court, where  
23 Courthouse News' reporter reviews new filings at a desk next to the clerk who takes  
24 the checks from the complaints. Courthouse News does not see checks attached to  
25 new civil complaints in any of the other courts that it covers, either in California or  
26 elsewhere, and regardless of whether it is a state or federal court.

27 17. In requesting access for the press, it has been my experience that clerk's  
28 office officials who do not wish to grant such access will emphasize and sometimes

1   overstate the complexity of their operations, as though press access would disrupt a  
 2   finely tuned machine of constantly moving parts. In fact, most new complaints funnel  
 3   into a courthouse through a single room, which is the case in Ventura. When a  
 4   reporter is physically in that same room, it is my experience that it becomes a  
 5   relatively simple matter for the court to either gather the complaints together for press  
 6   review or allow the reporter to fetch the cases him or herself in order to accomplish  
 7   that review. In my direct observation, the new cases are not constantly in a state of  
 8   motion and processing but are in fact stationary for hours at a time, waiting for  
 9   another part of the official process to take place. Many courts have different windows  
 10   where cases can be filed, and a separate window or delivery method to favor  
 11   messenger services. But as long as the funnel into the court is through a single room,  
 12   or choke point, the new actions can be reviewed by the press in that same room on the  
 13   day they are filed. Indeed, the new complaints are best reviewed in that room on the  
 14   day of filing, before they have started on their various and sometimes separate paths to  
 15   other departments in the court.

16         I declare under penalty of perjury under the laws of the United States that the  
 17   foregoing is true and correct. Executed at Pasadena, California on this 6<sup>th</sup> day of  
 18   November 2011.

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21   William Girdner

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8 MICHAEL PLANET, IN HIS OFFICIAL  
9 CAPACITY AS COURT EXECUTIVE  
10 OFFICER/CLERK OF THE VENTURA  
11 COUNTY SUPERIOR COURT

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13  
14 COURTHOUSE NEWS SERVICE,  
15 Plaintiff,

16 v.

17 MICHAEL PLANET, IN HIS  
18 OFFICIAL CAPACITY AS COURT  
19 EXECUTIVE OFFICER/CLERK OF  
20 THE VENTURA COUNTY  
21 SUPERIOR COURT,  
22 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to  
Hon. Manuel L. Real

**DEFENDANT'S OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

Date: November 21, 2011  
Time: 10:00 a.m.  
Courtroom: 8

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1 INTRODUCTION

2 Plaintiff Courthouse News Service (“CNS”) seeks an immediate mandatory  
3 injunction against Michael D. Planet, in his official capacity as Executive Officer  
4 and Clerk of the Superior Court of California, County of Ventura (the “Ventura  
5 Superior Court”). CNS contends it has a constitutional or common law right to  
6 “same-day access” to all newly filed unlimited civil complaints, and that Ventura  
7 Superior Court must *change* its current procedures—which do everything possible to  
8 provide reasonable access, as the law requires, and actually provides same- or next-  
9 day access in the majority of instances—to guarantee “same-day access.” CNS’s  
10 requested injunction is fundamentally flawed in several respects, and must be denied.

11 First, as detailed in Ventura Superior Court’s Motion to Dismiss (filed  
12 October 20, 2011), CNS’s requested injunction would require this *federal* court to  
13 involve itself in the administration of the *state’s* judicial system, which runs afoul of  
14 settled principles of federalism, comity, and institutional competence, and which  
15 urges this Court to exercise its discretion to abstain from the case entirely.

16 Second, CNS requests a “disfavored” mandatory injunction insofar as it seeks  
17 to compel Ventura Superior Court to take an affirmative action—that is, to guarantee  
18 “same-day access” to all new unlimited civil complaints. This type of injunction is  
19 subject to heightened scrutiny that CNS cannot survive given that it cannot survive  
20 even ordinary scrutiny for issuance of a preliminary injunction.

21 Third, as just alluded to, CNS cannot make the requisite clear showing on *any*  
22 of the four factors it must establish. It cannot prevail on the merits because it cannot  
23 establish a constitutional or common law right to “same-day access;” it cannot  
24 establish irreparable harm because any alleged harm cannot be presumed as a matter  
25 of law and is not sufficiently “real and concrete;” it cannot show the equities tip in its  
26 favor because the harm to Ventura Superior Court is grave compared to CNS’s  
27 isolated and legally unsupportable complaints; and issuing the type of injunction  
28 CNS requests actually would harm the public interest. The Motion must be denied.

1 **STATEMENT OF FACTS**

2 **A. Ventura Superior Court Clerks Must Process By Hand More Than**  
3 **150,000 New Filings Per Year.**

4 As explained in the Declaration of Cheryl Kanatzar (filed concurrently  
5 herewith, (“Kanatzar Decl.”)), who is one of the Deputy Executive Officers of  
6 Ventura Superior Court, the court receives and processes more than 150,000 separate  
7 filings each year. (Kanatzar Decl. ¶ 5.) The Civil Department employs 14 Court  
8 Processing Assistants (“CPAs”) and one supervisor to process all these filings. (*Id.* ¶  
9 6.) Assuming there are 260 court days—which is far too forgiving, as that number  
10 only takes into account weekends, and not court holidays, mandatory closure days,  
11 staff vacation days, and the like—that equates to more than 575 filings *each day*.

12 *None* of these 150,000-plus documents can be filed electronically. Unlike  
13 federal courts, which have long since adopted PACER, or state courts that have  
14 electronic filing capabilities, *all* filings in Ventura must be processed *by hand*.

15 Ms. Kanatzar puts it this way in paragraph 4 of her Declaration:

16 Ventura Superior Court maintains only standard physical  
17 files for all actions pending in the County of Ventura.  
18 Litigants must physically file paper copies of their  
19 documents. They can do so either by depositing them with  
20 CPAs in our Civil Department as described elsewhere in  
21 this Declaration, or by faxing or emailing their documents  
22 to our fax-filing desk CPA, who must then generate paper  
23 documents for our files. Therefore, unlike the clerk’s  
24 office in federal and other electronic filing courts, the  
25 clerk’s office in the Ventura Superior Court *is* burdened by  
26 the substantial additional administrative task imposed by  
27 the need to process by hand every document filed with the  
28 court.

Hence, at least this much is certain of the court’s current operations:

26 First, each of the court’s CPAs carries a *very heavy* workload to begin with.  
27 Second, it is incredibly misleading to suggest that the court’s CPAs need “only”  
28 process “fewer than eight complaints per court day.” (Mot. at 6.) The truth is that

1 the court's CPAs handle *hundreds* of filings each day, many of which (including *ex*  
2 *parte* applications and motions of various types) demand more immediate attention  
3 than "new complaint files [which] remain essentially inactive for approximately 65  
4 days, until the summons and complaint are served, and the defendant(s) answer or  
5 take some other action." (Kanatzar Decl. ¶ 17.) And third, CNS compares apples  
6 with oranges by suggesting that Ventura Superior Court should be ordered to  
7 guarantee "same-day access" to new complaints because the federal courts and other  
8 courts identified in its survey that accept electronic filings have the ability to do so.  
9 (Compl. ¶¶ 11, 13; Marshall Decl. ¶¶ 4-6; Girdner Decl. ¶¶ 13-16 .)

10 **B. The State's Budget Crisis Affects Ventura Superior Court's Ability**  
11 **To Process Newly Filed Unlimited Civil Complaints.**

12 The responsibilities borne by each CPA have and will continue to become  
13 even heavier. Over the last three years, Ventura Superior Court's budget has been  
14 cut by more than \$13 million, which has resulted in a growing deficit between its  
15 revenue and expenses. (Declaration of Robert Sherman in Support of Defendant's  
16 Opposition to Plaintiff's Motion for Preliminary Injunction, filed concurrently  
17 herewith ("Sherman Decl.") ¶ 3.) This fiscal year, Ventura Superior Court's deficit  
18 has reached \$5.9 million; next fiscal year, the deficit is expected to exceed \$12  
19 million. (*Id.* ¶¶ 12-13.)

20 **1. A Four-Year Hiring Freeze Prevents Hiring Of New CPAs.**

21 These increasing budgetary shortfalls have required a four-year-running hiring  
22 freeze and increased mandatory furlough days; as a result, Ventura Superior Court's  
23 administrative vacancy rate has more than doubled—from 22 in 2008, to 48 in 2011.  
24 (Kanatzar Decl. ¶ 11; Sherman Decl. ¶ 5.) Moreover, at least eight of those  
25 vacancies are for positions within the civil processing unit and records departments,  
26 thereby directly implicating the resources available to process filings such as those  
27 that CNS seeks guaranteed "same-day access" to here. (Kanatzar Decl. ¶ 11.)  
28

1                   **2. The Superior Court Reduced Public Hours And Established**  
2                   **A “Drop Box” For Late-In-The Day Filings.**

3                   To further mitigate the impact of budgetary shortfalls, Ventura Superior Court  
4 reduced its public business hours from a closing time of 5:00 p.m. back to 4:00 p.m.  
5 (*Id.* ¶ 12.) And effective January 1, 2012, the clerk’s office will close another hour  
6 earlier, at 3:00 p.m. (Sherman Decl. ¶ 7.) To accommodate this change, Ventura  
7 Superior Court installed a secure drop box in which filings of all types could be  
8 received. (Kanatzar Decl. ¶ 13.) That drop box is checked twice per day—once at  
9 4:30 p.m. to check how many documents it contains, and once at 5:00 p.m. to  
10 retrieve all the documents and take them inside for processing. (*Id.*) All documents  
11 deposited in the drop box are stamped “received” on the back of the first page of the  
12 filing, and are deemed filed on that date. (*Id.*)

13                   **3. New Complaints Can Only Be “Received” For Later**  
14                   **Processing By New Filings Desk CPAs.**

15                   As an additional mitigating measure, Ventura Superior Court changed the  
16 procedure by which it accepts new complaints for filing. Prior to June 2010, most  
17 new complaints were received by the clerk’s office at the public filing windows, and  
18 CPAs were immediately responsible for fully processing and opening new files. (*Id.*  
19 ¶ 14.) This practice of creating new files upon receipt of complaints at the filing  
20 window became increasingly unworkable due to the small number of open clerk  
21 windows and the reduced number of CPAs available to staff them. (*Id.*)

22                   Ventura Superior Court therefore implemented a change requiring that most  
23 new complaints could only be “dropped off” at the filing windows to be processed  
24 by back-counter CPAs. (*Id.* ¶¶ 15-16.) This change allowed the Civil Department’s  
25 limited staff to deal with other customers waiting in line at the civil filing windows,  
26 and to handle *ex parte* applications and other time-sensitive matters. (*Id.* ¶ 17.)

1           **C. Despite These Constraints, Newly Filed Unlimited Civil Complaints**  
2           **Typically Are Available The Day After Receipt.**

3           CNS complains that during the period from August 8, 2011, through  
4           September 2, 2011, it was permitted same-day or next-day access in only a very  
5           small percentage of the 152 new unlimited civil complaints Ms. Krolak reviewed.  
6           (Compl. ¶ 29.) These figures conflict in every way with what the actual data shows.

7           There were 147 total new unlimited civil complaints filed during the time  
8           period at issue. (Declaration of Julie Camacho in Support of Defendant’s Opposition  
9           to Plaintiff’s Motion for Preliminary Injunction, filed concurrently herewith  
10          [“Camacho Decl.”] ¶ 15.) Forty-seven (47) of those new complaints were received,  
11          processed and placed in the media bin all on the same day—i.e., “same-day access.”  
12          (*Id.* ¶ 16.) Fifty-four (54) of those new complaints were received on one day and  
13          processed and placed in the media bin the next day—i.e., next-day access. (*Id.* ¶ 17.)  
14          And 18 of those new complaints were processed and placed in the media bin within  
15          two days of receipt. (*Id.* ¶ 18.) Thus, a full 77% of new complaints were accessible  
16          within two days after receipt, with the bulk of them available the same- or next-day.

17          Of the remainder, at least 17 new complaints (or another 11%) needed to be  
18          assigned to a judicial officer immediately. (*Id.* ¶ 19.) Another seven did not get  
19          placed in the media bin due to an inadvertent clerical error. (*Id.* ¶ 20.) The balance  
20          of new complaints that had delayed access—only a handful—all had unusual delays  
21          that can be explained. (*Id.* ¶ 21.)<sup>1</sup>

22           **D. CNS Cannot Honestly Claim There Is A “Longstanding Tradition”**  
23           **Of “Same-Day Access” To Newly Filed Complaints.**

24          CNS claims the First Amendment guarantees a right of “same-day access” to  
25          newly filed civil complaints because of an allegedly “longstanding tradition for both  
26

27           <sup>1</sup> Similarly, in a February 7, 2011 letter to Ventura Superior Court, CNS points  
28          to four cases demonstrating access “nowhere near same-day.” (Marshall Decl., Ex.  
        4.) CNS’s claims again conflict with the actual data. (Camacho Decl. ¶¶ 22-23.)



1 state and federal courts to provide reporters who visit the court every day with access  
 2 to new complaints at the end of the day on which they are filed.” (Compl. ¶ 4.)

3 Whatever else may be said of that alleged “tradition,” CNS *contradicts* its own  
 4 argument in two of its most recent public pronouncements. First, in February 2011,  
 5 CNS published its “Report Card Summary—Superior Court of the State of California  
 6 Access To Newly Filed Civil Complaints:”

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Report Card 2011	
Subject	Evaluated by
Access to Newly-Filed Civil Complaints	Courthouse News Service
County	Grade
Alameda County Superior Court	A
Los Angeles County Superior Court (Downsized)	A
San Francisco County Superior Court	A
Riverside County Superior Court	A-
Santa Clara County Superior Court	A-
Solano County Superior Court	B+
Sydney County Superior Court	B+
Colusa County Superior Court	C
Fresno County Superior Court	C
Orange County Superior Court	C
San Diego County Superior Court	C
Sacramento County Superior Court	D
San Bernardino County Superior Court	F
San Joaquin County Superior Court	D
Ventura County Superior Court	D
Yuba County Superior Court	F
San Joaquin County Superior Court	F

PREPARED BY COURTHOUSE NEWS SERVICE

(Declaration of Karen Dalton-Koch Submitted in Opposition to Plaintiff’s Motion  
 for Preliminary Injunction, filed concurrently herewith (“Dalton-Koch Decl.”)  
 Ex. A.) CNS gave “As” to 5 courts that maintain electronic files (Alameda, Los  
 Angeles, Riverside, Santa Clara) or that are considerably larger and have greater  
 staff (San Francisco, Los Angeles). However, CNS reported that the remaining 12  
 courts *failed* to provide “same-day access.” (*Ibid.*)

Second, in sponsoring SB 326—*see* Defendant’s Motion to Dismiss at 8-9—  
 CNS claimed to have “directly experienced the deterioration of timely access to the  
 civil court record.” (Def’t’s Req. for Judicial Notice In Support of Mot. to Dismiss,  
 Ex. B at B9.) Indeed, it appears that CNS supported SB 326 *precisely because* there  
 is *no* historical right to “same-day access” to newly filed complaints in California.

1           **E. Starting In About November 2010, CNS Demanded “Same-Day**  
2           **Access” To Newly Filed Unlimited Civil Complaints.**

3           Shortly after Ventura Superior Court implemented its change for processing  
4           only “dropped off” complaints, CNS changed its business model by deciding to visit  
5           Ventura Superior Court on a daily, rather than the once- or twice-weekly basis.  
6           (Compl., ¶¶ 22, 25.) In November 2010, CNS’s reporter, Juliana Krolak, started  
7           demanding “same-day access” to newly filed unlimited civil complaints. (*Id.* ¶ 25.)  
8           From about February 2011 through March 2011, Ventura Superior Court staff  
9           communicated with CNS on several occasions to try and reach a compromise on  
10          CNS’s demands. (Kanatzar Decl. ¶¶ 19-20, 22-27.)

11          As a result of those exchanges, Ventura Superior Court reprioritized the  
12          procedures by which newly filed complaints are processed and made available to the  
13          public. (*Id.* ¶¶ 22-27.) Specifically, the procedure was changed to give “the highest  
14          priority” to processing new civil unlimited complaints, so that they could be filed  
15          and placed in the media bin with a general two-day turnaround. (*Id.* ¶¶ 27-28.) To  
16          further facilitate this change, Ventura Superior Court even obtained this past August  
17          an exception from the court-wide hiring freeze to create a second new filings desk  
18          and to staff it with a CPA whose first priority is to identify and process newly filed  
19          unlimited civil complaints. (*Id.* ¶ 29.)

20          But CNS still remains unsatisfied. There are, however, a number of reasons  
21          why “same-day access”—certainly a laudable goal—cannot be guaranteed in every  
22          instance:

23                 •       Unpredictable “drop off.” New complaints can be “dropped off” in a  
24                 number of different ways, and may not get picked up for processing until the end of  
25                 the day; Ventura Superior Court has no control over the timing by which these new  
26                 complaints are dropped and therefore cannot guarantee “same-day access” to them  
27                 under even the best of circumstances. (*Id.* ¶ 31.)

1           •     Immediate judicial action. Certain new complaints must be assigned to  
2 judicial officers immediately upon receipt, and may remain in chambers for one or  
3 more days (or even weeks) as the judicial officer evaluates whether any additional  
4 action needs to be taken. (*Id.* ¶ 33.) These new complaints are placed in the media  
5 bin upon release from chambers, but Ventura Superior Court cannot guarantee  
6 “same-day access” prior to that point. (*Id.*)

7           •     Quality control. When new CPAs begins working in the clerk’s office,  
8 it is not uncommon for them to process incomplete complaints that should be  
9 rejected; to enter crucial case data improperly that would impair CCMS from  
10 properly tracking and assigning the case; and to enter contact information for  
11 attorneys improperly. (*Id.* ¶ 34.) To maintain the public’s trust in its system and  
12 filings, Ventura Superior Court subjects to a quality control review any new files  
13 processed by new CPAs. (*Id.*) This review must occur before the file is sent to  
14 media bin so that errors may be corrected and resubmitted. (*Id.*) This process can  
15 take several days and is another reason why Ventura Superior Court cannot  
16 guarantee “same-day access” to those complaints.

17           CNS claims that guaranteeing “same-day access” is as “simple as opening a  
18 door” or permitting CNS to “go behind the counter” to review “dropped-off”  
19 complaints that have not yet been processed. (Girdner Decl. ¶ 22.) As Ventura  
20 Superior Court has tried to explain to CNS, this is not a workable solution. First,  
21 Ventura Superior Court’s security procedures were tightened considerably after a  
22 shooting incident several years ago at the Employment Development Department in  
23 Oxnard. (Kanatzar Decl. ¶ 36.) Ventura Superior Court’s current policies prohibit  
24 members of the general public from accessing processing desks where new civil  
25 unlimited complaints are maintained prior to processing. (*Id.*) Second, Ventura  
26 Superior Court cannot allow CNS or other members of the public to review new  
27 unlimited civil complaints until they are filed to ensure proper respect for the privacy  
28 of its litigants. (*Id.* ¶ 37.) It would be entirely inappropriate to permit CNS access to

1 fee waiver requests or other documents—which typically accompany new filings—  
2 containing such confidential information. (*Id.*) Third, permitting CNS access behind  
3 the counter would violate Ventura Superior Court’s accounting protocols, which  
4 impose strict cash handling and audit procedures. (*Id.* ¶ 38.)

5 Beyond all this, though, Ventura Superior Court fully complies with its legal  
6 obligation to provide “reasonable access” to “court records,” and overwhelmingly  
7 that access is in fact provided on a same-day or next-day basis.

8 **ARGUMENT**

9 **I. CNS FAILS TO SATISFY ANY OF THE FOUR FACTORS THAT**  
10 **MIGHT OTHERWISE JUSTIFY THE “DISFAVORED”**  
11 **PRELIMINARY INJUNCTIVE RELIEF IT SEEKS.**

12 “[A] preliminary injunction is an extraordinary and drastic remedy, one that  
13 should not be granted unless the movant, *by a clear showing*, carries the burden of  
14 persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original;  
15 citation omitted). In *Winter v. Nat’l Res. Def. Council*, 555 U.S. 7, 20 (2008), the  
16 United States Supreme Court affirmed that a plaintiff seeking a preliminary  
17 injunction must make a clear showing of *all four* following factors: (1) that it is  
18 likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the  
19 absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4)  
20 that an injunction is in the public interest.

21 For the reasons discussed below, CNS cannot satisfy a single factor, much less  
22 all four. And this outcome only is bolstered by the stricter scrutiny that must guide  
23 this Court’s consideration of CNS’s requested mandatory injunction.

24 **A. CNS’s Requested Mandatory Injunction Is “Disfavored” And**  
25 **Subject To Even Stricter Scrutiny.**

26 To avoid the more stringent scrutiny applied to disfavored mandatory  
27 injunctions, CNS constructs an argument that, because the alleged “policy” sought to  
28 be enjoined restricts First Amendment rights, CNS’s requested injunction is

1 presumed to preserve the status quo, and therefore is prohibitory in nature, rather  
2 than mandatory. (Mot. at 7 & n.4.) *Cf. Stanley v. Univ. of Southern California*, 13  
3 F.3d 1313, 1320 (9th Cir. 1994) (a “mandatory” injunction “goes well beyond simply  
4 maintaining the status quo pendente lite [and] is particularly disfavored”) (internal  
5 quotations and citations omitted); *Dahl v. HEM Pharms. Corp.*, 7 F.3d 1399, 1403  
6 (9th Cir. 1993) (stating that mandatory preliminary injunctions are “subject to a  
7 heightened scrutiny and should not be issued unless the facts and law clearly favor  
8 the moving party”). CNS’s construction must fail.

9 First, CNS’s position assumes too much. There is no First Amendment right  
10 to “same-day access.” (*See infra* Section I.B.1.) Thus, even if there was a  
11 “presumption” in First Amendment cases that the status quo is the condition in which  
12 a person is free to exercise their rights (there is not<sup>2</sup>), CNS cannot invoke it here.

13 Second, CNS mischaracterizes the nature of its requested relief. Whereas a  
14 prohibitory injunction *prohibits a party from taking action*, “[a] mandatory  
15 injunction orders a responsible party to ‘take action.’” *Marlyn Nutraceuticals, Inc. v.*  
16 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879-80 (9th Cir. 2009) (vacating  
17 mandatory injunction requiring defendant to take affirmative steps to recall  
18 infringing drug where record failed to establish harm) (internal quotation omitted).  
19 Here, CNS tries to cleverly articulate its injunction as one “*prohibiting* him [Mr.  
20 Planet] . . . from continuing his policies resulting in delayed access to new unlimited  
21 jurisdiction civil complaints.” (Compl. Prayer ¶ 1 (emphasis added).) But Ventura  
22 Superior Court is providing access to newly filed unlimited civil complaints as  
23 quickly as possible given the resources available and the competing concerns over  
24 accurate processing of litigants’ documents. What CNS really wants is an injunction

25 <sup>2</sup> And CNS’s cited cases do not establish otherwise. *See Southeastern*  
26 *Promotions, Ltd. v. Conrad*, 420 U.S. 546, 562 (1975) (denying plaintiff’s  
27 application to use municipal venue based on content of “speech” actually changed  
28 status quo of venue generally being publicly available); *Mastrovincenzo v. City of*  
*New York*, 435 F.3d 78, 90 (2d Cir. 2006) (recognizing that proper label can be  
somewhat ambiguous because injunction commands usually can be phrased in either  
prohibitory or mandatory terms).

1 that makes Ventura Superior Court provide that access *faster*. Doing something  
2 faster requires an affirmative act. To be sure, if Ventura Superior Court simply  
3 “stopped” what it was doing now, nothing would get processed and access would be  
4 indefinitely delayed. CNS’s requested injunction would require Ventura Superior  
5 Court to “take action”—it is a mandatory injunction subject to heightened scrutiny.

6 Third, the mandatory nature of CNS’s requested injunction only is  
7 underscored by the fact that it does not seek to *preserve* the status quo, but instead  
8 meaningfully alters it. “Status quo” is defined as the last uncontested status that  
9 preceded the pending controversy. *See Dep’t of Parks & Rec. v. Bazaar Del Mundo,*  
10 *Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006) (citing *GoTo.Com, Inc. v. Walt Disney Co.*,  
11 202 F.3d 1199, 1210 (9th Cir. 2000)). Thus, if CNS sought to preserve the status  
12 quo, it would seek an injunction that would order Ventura Superior Court to *not*  
13 *change* its current processes in a way that might negatively impact CNS’s access to  
14 newly filed unlimited civil complaints. That is not what CNS seeks. It wants a  
15 preliminary injunction guaranteeing “same-day access”—now.

16 Fourth, CNS’s requested injunction also would award it with all the relief to  
17 which it claims it is entitled after a full trial on the merits, which is itself disfavored:  
18 “[I]t is not usually proper to grant the moving party the full relief to which he might  
19 be entitled if successful at the conclusion of a trial. This is particularly true where  
20 the relief afforded, rather than preserving the status quo, completely changes it.”  
21 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808-09 (9th Cir. 1963).  
22 CNS’s requested injunction would require all the same changes to Ventura Superior  
23 Court’s internal operations and processing procedures—and all the same strains on  
24 its budget and already-stretched resources—as would be required from an (unlikely)  
25 judgment on the merits. And Ventura Superior Court’s ability to resume its prior  
26 operations following CNS’s defeat on the merits only would cost the court more.

27 CNS’s requested injunction is disfavored and subject to heightened scrutiny.  
28

1           **B.    CNS Cannot Succeed On The Merits.**

2                   **1.    CNS Does Not Have a Right to “Same-Day Access.”**

3           For all the same reasons that CNS fails to even *state* a claim as a matter of law  
4 (see Deft’s Mot. to Dismiss at 18-23)—that is, because there is no constitutional or  
5 federal common law right to “same-day access” to court records—CNS is unlikely to  
6 *succeed* on such claim as well.

7           CNS does not cite a single, published decision establishing a right of “same-  
8 day access” to court records. Indeed, in *Richmond Newspapers, Inc. v. Virginia*, 448  
9 U.S. 555, 579-81, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980), the Supreme Court first  
10 held that the First Amendment afforded the press and public an affirmative, *qualified*  
11 right of access to criminal court proceedings. That qualified right has since been  
12 extended to civil filings. See, e.g., *New York Civil Liberties Union v. New York City*  
13 *Transit Auth.*, 652 F.3d 247, 250-51 (2d Cir. 2011); *In re Marriage of Burkle*, 135  
14 Cal. App. 4th 1045, 1052-53, 1060-62, 37 Cal. Rptr. 3d 805 (2006).

15           In determining whether such a right exists, the Court identified two related  
16 criteria, which it later termed “considerations of experience and logic:” (1) whether  
17 the place and process have historically been open to the press and general public  
18 (*i.e.*, “experience”); and (2) whether public access plays a significant positive role in  
19 the functioning of the particular process in question (*i.e.*, “logic”). *Press-Enterprise*  
20 *Co. v. Superior Court*, 478 US 1, 8, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (*Press-*  
21 *Enterprise II*). CNS cannot satisfy either criteria.

22                   **a.    “Experience” fails to demonstrate a right to “same-day**  
23                   **access.”**

24           For the “experience” inquiry, CNS’s purports to establish “a longstanding  
25 tradition” of “same-day access” to new complaints, by citing a handful of decisions  
26 concerning the public’s access rights in the context of motions to seal or unseal  
27 records. See *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-80 (9th  
28 Cir. 2006); *In re NVIDIA Corp.*, Case No. C 06–06110 SBA, 2008 WL 1859067 \*1,

1 \*\*2-4 (N.D. Cal. 2008); *Vassiliades v. Israely*, 714 F. Supp. 604, 606 (D. Conn.  
2 1989). Although those courts acknowledged a general right of access to those  
3 records (a point Ventura Superior Court does not dispute), those courts in *no way*  
4 addressed whether such access *must* occur the same day the documents are filed.

5 CNS next resorts to an unpublished Texas decision where CNS successfully  
6 obtained the kind of preliminary injunctive relief it seeks here. *Courthouse News*  
7 *Service v. Jackson*, No. H-09-1844, 2009 WL 2163609 1, \*\*2-5, 38 Media L. Rep.  
8 1890 (S.D. Tex. July 20, 2009). Yet, for the same reasons discussed here, the  
9 reasoning of that decision lacks rational support: *None* of the authority on which that  
10 district court relied actually held—or even considered whether—a First Amendment  
11 right to “same-day access” of newly filed civil complaints exists. At most, the  
12 court’s discussion of a First Amendment right of access confirms general principles  
13 of *reasonable* access in criminal and civil cases. *See id.* at \*\*3-4.

14 CNS lastly attempts to construct a “tradition” of “same-day access” to court  
15 records from a sampling of courts that extend to it the *courtesy* of providing “same-  
16 day access” to new complaints. (Mot. at 2-4; Girdner Decl. Ex. 3.) CNS identifies  
17 courts in only 23 of the 50 states where it is allegedly provided “same-day access” to  
18 new civil complaints. (Girdner Decl. Ex. 3.) And within California, CNS alleges the  
19 courtesy of “same-day access” at only *seven* of approximately 532 court locations  
20 within California’s 58 counties. (*Id.* at 23, 25, 27, 29-31.) Indeed, CNS’s “Report  
21 Card Summary” only underscores the lack of any such “tradition.” (Dalton-Koch  
22 Decl., Ex. A.) There simply is no “tradition” of “same-day access” in California.

23 **b. “Logic” fails to demonstrate a right to “same-day**  
24 **access.”**

25 Nor does the “logic” component of the First Amendment analysis recognize a  
26 right of “same-day access” to court records. CNS suggests that local court  
27 considerations—including budget constraints, court caseloads, personnel capacities,  
28 and priorities of other court business—must bow to the “newsworthiness” of newly



1 filed unlimited civil complaints in the short window between when they are received  
2 by the court for processing and then filed. (Mot. at 15-16.) But the lack of  
3 contemporaneous news reporting does not *itself* diminish the significance of the  
4 news reports, even in the criminal context. *United States v. Edwards*, 823 F.2d 111,  
5 119 (5th Cir. 1987) (“The value served by the first amendment right of access is in  
6 its guarantee of a public watch to guard against arbitrary, overreaching, or even  
7 corrupt action by participants in judicial proceedings. Any serious indication of such  
8 an impropriety, would, we believe, receive significant exposure in the media, even  
9 when such news is not reported contemporaneously with the suspect event.”). Thus,  
10 even where the Supreme Court historically has been the most protective, there has  
11 been no recognized right of “same-day access” to such records.

12 CNS attempts derive “logic” supporting a “same-day access” right from its  
13 claim that any delay in access to public records is the functional equivalent of an  
14 outright denial of access to those records. (Mot. at 14-16.) But CNS’s authority is  
15 all inapposite—it involves either *blanket* restrictions on access to records<sup>3</sup> or  
16 proceedings,<sup>4</sup> not at issue here, or has nothing to do with the public right of access  
17 whatsoever.<sup>5</sup> Indeed, in *United States v. Simone*, 14 F.3d 833, 842 (3d Cir. 1994),  
18 where the Third Circuit rejected the later release of a transcript as a permissible

19 <sup>3</sup> See *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 895, 897  
20 (7th Cir. 1994) (considering journalists’ motion to intervene to vacate seal of entire  
21 court file and to modify protective order); *Globe v. Newspaper Co. v. Pokaski*, 868  
22 F.2d 497, 502-07 (1st Cir. 1989) (challenging state sealing statute automatically  
sealing records of cases ending in acquittal or a finding of no probable cause); *Estate*  
*of Hearst*, 67 Cal. App. 3d 777, 784-86 (1977) (considering propriety of probate  
court order vacating prior sealing order).

23 <sup>4</sup> See *United States v. Simone*, 14 F.3d 833, 842 (3d Cir. 1994) (holding release  
24 of transcript following exclusion of news media from criminal proceedings  
inadequate substitute given right of access to attend judicial proceedings); *In re*  
*Charlotte Observer*, 882 F.2d 850, 852-56 (4th Cir. 1989) (holding unconstitutional  
25 trial court’s hearing closure for change of venue determination).

26 <sup>5</sup> See *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 556-61, 96 S. Ct. 2791, 49  
27 L. Ed. 2d 683 (1976) (considering whether order restraining media from publishing  
or broadcasting accounts of confessions or admission made by the accused  
28 constituted impermissible prior restraint on speech); *Chicago Council of Lawyers v.*  
*Bauer*, 522 F.2d 242, 247-50 (7th Cir. 1975) (analyzing whether restrictions on  
speech amounted to a prior restraint).

1 substitute for the media's right to be present at a judicial hearing, the court  
2 nevertheless stated, "[w]e do not doubt that the *ten day* interval between the hearing  
3 and the release of the transcript *had very little effect on the value of the information*  
4 *as news.*" (Emphasis added.) Thus, neither *Simone* nor any other of CNS's cases  
5 establish a constitutional or common law right to "same-day access."<sup>6</sup>

6 **2. CNS Has Only A Right To Reasonable Access, Which CNS**  
7 **Already Receives.**

8 Starting from the flawed premise that it has a right to "same-day access" to  
9 begin with, CNS seeks to impose a "stringent three-part test" that Ventura Superior  
10 Court must satisfy to "overcome" that "right." (Mot. at 16-17 (relying on *United*  
11 *States v. Brooklier*, 685 F.2d 1162, 1168-69 (9th Cir. 1982) and its progeny).)  
12 CNS's entire analysis is inapposite.

13 As discussed, there is no right to "same-day access," and none of the  
14 additional cases cited by CNS that invoke this three-part test suggest otherwise.  
15 They all concern instances where courts have made specific orders directed at a  
16 particular hearing, transcript or filing for the purpose of sealing the record or closing  
17 off access to the public—entirely or indefinitely. *See Phoenix Newspapers, Inc. v.*  
18 *U.S. Dist. Ct.*, 156 F.3d 940 (9th Cir. 1998) (order sealing transcripts of hearings  
19 conducted during jury deliberations in a criminal trial); *Associated Press v. U.S. Dist.*  
20 *Ct.*, 705 F.2d 1143 (9th Cir. 1983) (order requiring filings in a particular criminal  
21 case to be filed in camera with 48-hour window for objections prior to sealing  
22 determination); *United States v. Brooklier*, 685 F.2d 1162 (9th Cir. 1982) (orders  
23 closing various hearings and refusing release of *in camera* proceedings prior to close  
24 of criminal trial).

25  
26  
27 <sup>6</sup> CNS's alternative reliance on the "serious questions" standard for injunctive  
28 relief fares no better than its claim of likely success. There are no serious questions  
on this issue, and CNS still cannot satisfy the other three factors. *See Alliance for*  
*the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

1 Neither situation is implicated here. Ventura Superior Court's "policy" of  
2 processing new complaints prior to making them available to the public does not  
3 target any particular case or subject matter, or withhold documents from any  
4 particular group; it does not delay access for a set period of time, if at all. In fact, its  
5 "policy" is to process *all* new complaints as promptly as its resources will allow, and  
6 to give the public access immediately thereafter. And overwhelmingly that "policy"  
7 provides *reasonable* access, or next-day access, if not "same-day access." (See  
8 Camacho Decl. ¶¶ 4-22.)

9 This is all the law requires. Cal. Gov't Code § 68150(l); *see also* Cal. Rs. Ct.  
10 2.500(a), 2.503(a); *Richmond Newspapers, Inc.*, 448 U.S. at 581 n.18  
11 (acknowledging "reasonable limitations" may be placed on public's access to  
12 criminal trial); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607 n.17 (1982).

13 **C. CNS Cannot Demonstrate A "Real And Concrete" Harm, Much**  
14 **Less Irreparable Harm.**

15 To obtain the mandatory injunctive relief it seeks, CNS must demonstrate  
16 irreparable harm that is not just hypothesized, but is "real and concrete." *Los*  
17 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d  
18 1197, 1201-1202 (9th Cir. 1980). CNS cannot meet that burden.

19 **1. CNS Cannot Avail Itself Of Any Presumed Harm Derived**  
20 **Under Inapposite Freedom Of Expression Cases.**

21 CNS relies on a host of inapposite authorities for the unsupportable  
22 proposition that *any* delay in access to newly filed unlimited civil complaints  
23 constitutes irreparable harm. All the cases cited by CNS, however, involve harm  
24 caused by restraint on the freedom of *expression or speech*, not restraint on access to  
25 court records. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 357 (1976) (freedom of belief  
26 and association); *New York Times Co. v. U.S.*, 403 U.S. 713, 717 (1971) (freedom of  
27 press); *Carroll v. President & Com'rs of Princess Anne*, 393 U.S. 175 (1968) ("The  
28 elimination of prior restraint was a 'leading purpose' in the adoption of the First

1 Amendment.”); *Wood v. Georgia*, 370 U.S. 375, 376 (1962) (freedom to publish  
2 “thoughts and opinions”); *Jacobsen v. U.S. Postal Service*, 812 F.2d 1151, 1154 (9th  
3 Cir. 1987) (involving vendor’s freedom to sell newspapers in public forum).

4 There is an important distinction between freedom of expression cases and  
5 those involving access to information; both of them are *rooted* in First Amendment  
6 principles, but they have developed along distinctly different lines. *See Houchins v.*  
7 *KQED, Inc.*, 438 U.S. 1, 9-10 (1978) (distinguishing right to access information  
8 cases from First Amendment cases where courts are “concerned with the freedom of  
9 the media to communicate information once it is obtained”). Thus, although CNS  
10 attempts to conflate the two, the United States Supreme Court has made clear that  
11 they are *not* intrinsically linked:

12 There are few restrictions on action which could not be  
13 clothed by ingenious argument in the garb of decreased  
14 data flow. For example, the prohibition of unauthorized  
15 entry into the White House diminishes the citizen’s  
16 opportunities to gather information he might find relevant  
17 to his opinion of the way the country is being run, but that  
18 does not make entry into the White House a First  
19 Amendment right. *The right to speak and publish does not*  
20 *carry with it the unrestrained right to gather information.*

21 *Id.* at 12 (internal quotations omitted and emphasis added); *see also S.H.A.R.K. v.*  
22 *Metro Parks Serving Summit County*, 499 F.3d 553, 559-560 (6th Cir. 2007).

23 For this reason, CNS’s reliance on the “precious First Amendment right of  
24 freedom of press” in *Jacobsen* (Mot. at 22) to demonstrate irreparable harm here—  
25 which concerns, at most, the right to “gather information”—is misplaced. *Whiteland*  
26 *Woods, L.P. v. Township of West Whiteland*, 193 F.3d 177, 183 (3rd Cir. 1999)  
27 (stating forum analysis inapplicable to resolve restrictions on right of access);  
28 *Westmoreland v. Columbia Broadcasting Sys., Inc.*, 752 F.2d 16, 21-22 (2d Cir.  
1984) (calling forum analysis “inapposite” to access to courtroom cases); *see also*  
*Houchins*, 438 U.S. at 10 (holding news organizations hold no greater “access to

1 government information beyond that open to the public generally”). The cases do  
2 not support recognition of a right to “same-day access” to court records, much less a  
3 presumption of irreparable harm resulting from a purportedly violation of that non-  
4 existent right.

5 **2. CNS’s Alleged Loss Of Goodwill Is Hypothetical, At Best.**

6 CNS’s effort to demonstrate irreparable harm “as a matter of law because the  
7 Eleventh Amendment bars [CNS] from seeking monetary damages” for its alleged  
8 loss of goodwill (Mot. at 22) fares no better. The inability to recover money  
9 damages does not alone establish irreparable harm. *See Los Angeles Memorial*  
10 *Coliseum Comm’n*, 634 F.2d at 1202 (reversing injunction where proponent failed to  
11 establish both irreparable harm *and* inadequacy of legal remedies). CNS still must  
12 demonstrate that its alleged injury to goodwill is concrete and real. It has not done  
13 so; in fact, its own pleadings demonstrate that such harm is hypothetical, at best.  
14 (See Mot. at 22 (“Prolonged delays in access *will* diminish the value of its reports to  
15 its subscribers, *leading to* a loss of goodwill.”) (emphasis added); *see also* Compl. ¶  
16 39; Girdner Decl. ¶ 28.)

17 CNS does not allege or attest that any subscriber *actually* has questioned the  
18 value of its reports; it does not allege or attest that it has *actually* lost any  
19 subscribers; it also does not allege or attest that it has lost out on an opportunity to  
20 timely report an event. CNS’s theoretical and conclusory claims of loss to goodwill  
21 fail to demonstrate a real and concrete harm, much less an irreparable one. *See*  
22 *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1264 (10th  
23 Cir. 2004) (reversing issuance of preliminary injunction where requesting party  
24 failed to establish irreparable harm solely by alleging breach of contract).

25 **D. No Clear Showing That The Balance Of Equities Tips In Favor Of**  
26 **CNS.**

27 CNS purports to show that the balance of equities tips in its favor by making  
28 the incredible claim that Ventura Superior Court “will suffer no injury.” (Mot. at

1 23.) Nothing could be farther from the truth. As a matter of finance, Ventura  
2 Superior Court cannot gather additional resources to address CNS's concerns—there  
3 simply is no money available. (Sherman Decl. ¶¶ 12-15.) In fact, the budgetary  
4 shortfall anticipated for the next fiscal year is so great that even depletion of every  
5 last penny of Ventura Superior Court's reserve fund (\$4.3 million), combined with  
6 use of every last penny of the only other local funding source (\$2.7 million), will still  
7 leave a shortfall of \$5.2 million. (*Id.* ¶ 14.) As a result, Ventura Superior Court will  
8 have no choice but to cut additional staff resources or further reduce court hours (*id.*  
9 ¶ 15)—either of which only will be exacerbated by an order requiring it to provide  
10 “same-day access” to every unlimited civil complaint.

11 As practical matter, Ventura Superior Court *cannot*, even with unlimited  
12 resources, guarantee “same-day access.” As described above, the timing of  
13 “dropped” filings, the need for immediate assignment to judicial officers, and the  
14 need to ensure quality control over the processing of new complaints all make it  
15 impossible to guarantee “same-day access.” (Kanatzar Decl. ¶¶ 31-34.) CNS's  
16 suggestion that its reporters simply could be let “behind the counter” likewise is  
17 unworkable. It puts court staff in an increased security risk, it violates the  
18 confidentiality of litigants' privacy interests, and it violates the strict accounting  
19 protocols to which Ventura Superior Court must adhere. (*Id.* ¶¶ 35-39.)

20 By contrast, CNS is the *only* news outlet that seeks regular access—much less  
21 “same-day access”—to Ventura Superior Court's new complaints. (*Id.* ¶ 18.)  
22 Requests are only infrequently received from other reporters, and reasonable access  
23 is provided without any objection from the reporters. (*Id.*) Merely asking whether  
24 the equities of a demanding news outlet seeking an unsupported right to “same-day  
25 access” to court records should trump the equities of a cash- and resource-strapped  
26 court doing its best under the circumstances to provide reasonable access—and often  
27 *achieving* same- or next-day access—seems to answer the question. The balance of  
28

1 equities here tips sharply in Ventura Superior Court's favor and compels denial of  
2 CNS's requested mandatory injunction.

3 **E. CNS's Requested Injunction Will Not Serve The Public Interest;**  
4 **If Anything, It Will Harm It.**

5 The Supreme Court has properly cautioned that "courts of equity should pay  
6 particular regard for the public consequences in employing the extraordinary remedy  
7 of injunctions." *Winter*, 555 U.S. at 377 (quotations and citation omitted). And  
8 although various courts have recognized a strong public interest in upholding First  
9 Amendment principles, that interest is recognized only in *freedom of expression*  
10 cases, as CNS's own authority demonstrates. *Klein v. City of San Clemente*, 584  
11 F.3d 1196, 1208 (9th Cir. 2009) ("The ordinance [which restricts leafleting] thus  
12 infringes on the free speech rights not only of Klein, but also of anyone seeking to  
13 express their views in this manner in the City of San Clemente."); *see also*  
14 *Sammartano v. First Judicial Dist. Ct., In and For Cnty. of Carson City*, 303 F.3d  
15 959, 974 (9th Cir. 2002) (summarizing other circuit cases recognizing right in  
16 freedom of expression cases). This is not a freedom of expression case; the public  
17 interest on which CNS relies simply is not implicated here.<sup>7</sup>

18 Even if it were, that public interest is not absolute and can be overcome  
19 "where the First Amendment activities of the public are only limited, rather than  
20 entirely eliminated." *Sammartano*, 303 F.3d at 974. That is precisely the  
21 circumstance here: CNS faces a very limited delay (if any) in access to newly filed  
22 unlimited civil complaints that must bow to the severe harm to various other public  
23 interests that would be incurred by granting the mandatory injunction CNS seeks.

24 To start, CNS's requested mandatory injunction would harm the overall  
25 administration of justice in Ventura Superior Court insofar as vital personnel

26 <sup>7</sup> CNS attempts to create an "even more pronounced" public interest in access  
27 cases by noting "the press serves as the surrogate of the public." (Mot. at 23.) This  
28 is a non-starter. The press has no greater right to access than any other member of  
the public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S. Ct. 1306 55  
L. Ed. 2d 570 (1978)

1 resources would need to be diverted from other areas of the court's judicial  
2 administration system. There is absolutely no funding available to hire additional  
3 staff to accommodate CNS's request. (Sherman Decl. ¶ 15.) Indeed, each and every  
4 department of Ventura Superior Court has been forced through budget cuts to  
5 operate on less than full staffing capacity. (*See id.* ¶ 5.) That means that each and  
6 every department already needs *more* resources that it presently has. To require  
7 Ventura Superior Court to pull resources from those other departments to  
8 accommodate CNS's request not only will put CNS's interests improperly above the  
9 interests of every other member of the public, but it also will necessarily and  
10 negatively impact the administration of justice in those departments.

11 Moreover, CNS's requested mandatory injunction would harm the public's  
12 confidence in the court system. Requiring Ventura Superior Court to provide "same-  
13 day access"—either through rushed processing of newly filed complaints, or through  
14 partial processing of those complaints<sup>8</sup>—would dramatically increase the likelihood  
15 of processing errors and with no possibility of quality control. (Kanatzar Decl. ¶ 34.)  
16 Documents might be misplaced; file numbers might be mistakenly switched; funds  
17 might be lost, stolen, or misfiled. (*Id.*) If nothing else, the public expects its courts  
18 to handle responsibly the materials it is given.

19 Likewise, CNS's requested mandatory injunction would harm individual  
20 litigants' interests in having their documents properly managed by Ventura Superior  
21 Court. CNS suggests it could have "behind the counter" access to received but not  
22 yet filed complaints to avoid any burden on court staffing resources. (*See* Compl.  
23 ¶ 1; Mot. at 3; Gardner Decl. ¶ 22.) But Ventura Superior Court has an obligation to  
24 its litigants to ensure that confidential information—including name change petitions  
25 and fee waiver requests—remain confidential. (Kanatzar Decl. ¶ 37.) Similarly,

26 <sup>8</sup> CNS alleges that in June 2009, Ventura Superior Court agreed to make newly  
27 filed complaints available "after some processing but before the complaint had been  
28 fully processed . . ." (Compl. ¶ 24.) That is untrue. For the very same reasons  
articulated here, Ventura Superior Court *never* agreed to provide CNS with partially  
processed complaints. (Kanatzar Decl. ¶ 21.)



1 new filings often are accompanied by filings fees, which usually come by cash or  
2 check. (*Id.* ¶ 38.) Those funds are subject to strict cash handling and audit  
3 procedures designed to ensure that litigants' monies remain secure. (*Id.*) Allowing  
4 access behind the clerk's counter would compromise these established security  
5 procedures.

6 Finally, CNS's requested mandatory injunction would create a slippery slope  
7 that puts Ventura Superior Court—and potentially every other court in the state and  
8 the nation—at the mercy of CNS's ever-changing business plan. CNS admits that its  
9 determination of what is “newsworthy” is governed entirely by CNS's own  
10 preferences. (*See* Compl. ¶ 15; Krolak Decl. ¶ 3.) Right now CNS seeks access to  
11 only new civil unlimited complaints now; it may later determine (in its sole  
12 discretion) that other types of filings are “newsworthy” (*id.*), and may seek “same-  
13 day access” to those. Indeed, at some point, CNS may contend that “same-day  
14 access” is no longer sufficient; it must be “within the hour” access. All these harms  
15 to the public interest will only be magnified and compounded.

16 **II. UNDER ANY CIRCUMSTANCE, A BOND IS REQUIRED.**

17 There are important reasons why Rule 65(c) of the Federal Rules of Civil  
18 Procedure provides that a “court may issue a preliminary injunction or a temporary  
19 restraining order *only if* the movant gives security in an amount that the court  
20 considers proper” (emphasis added), and that it may be reversible error to issue an  
21 injunction without such security. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174  
22 F.3d 411, 421 (4th Cir. 1999).

23 *None* of CNS's cases support a nominal bond—much less a waived bond—  
24 here. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005)  
25 (affirming injunction with \$50,000 bond); *Jorgensen v. Cassidy*, 320 F.3d 906, 919  
26 (9th Cir. 2003) (affirming injunction without additional bond where the funds at  
27 issue in the injunction were held in sequestration by the court); *Tradition Club*  
28

1 *Assocs., LLC v. Tradition Golf Club*, No. EDCV 08-1581, 2008 WL 5352927 at \*6  
2 (C.D. Cal. Dec. 18, 2008) (ordering \$2500 bond even where enjoined party “state[d]  
3 it will suffer little injury, if any at all, from the entry of an injunction,” and the court  
4 still ordered a \$2500 bond); *Doctor John’s, Inc. v. City of Sioux City*, 305 F. Supp.  
5 2d 1022, 1043-44 (N.D. Iowa 2004) (waiving bond in case of quintessential censure  
6 of free speech where “City has not pointed to any evidence supporting a contention  
7 that the City will suffer compensable economic ‘secondary effects’ if its amended  
8 ordinances are improvidently enjoined”).<sup>9</sup>

9 Moreover, as detailed above, the mandatory injunctive relief CNS seeks will  
10 result in substantial financial and practical harm to Ventura Superior Court. To  
11 comply, and not otherwise harmfully affect the administration of justice to its  
12 litigants, Ventura Superior Court would be compelled to increase its staff resources  
13 at a time when budget constraints have forced it to cut them. Thus, if the Court were  
14 to issue such an injunction, a sizeable bond should be required.

15 **CONCLUSION**

16 CNS’s Motion for Preliminary Injunction should be denied.

17 Dated: October 31, 2011

Respectfully submitted,

18 JONES DAY

19  
20 By: /s/ Robert A. Naeve  
Robert A. Naeve

21  
22 Attorneys for Defendant  
MICHAEL PLANET, IN HIS OFFICIAL  
23 CAPACITY AS COURT EXECUTIVE  
OFFICER/CLERK OF THE VENTURA  
24 COUNTY SUPERIOR COURT

25 LAI-3152540

26 <sup>9</sup> CNS citation to the unpublished Texas decision it procured a couple years  
27 ago does not justify a nominal or waived bond here, either. *Jackson*, 2009 WL  
28 2163609 at \*\*2-5. There, the court ordered a \$1000 bond without *any* discussion of  
the relevant authorities or facts. *Id.* Much like the rest of that opinion, the court’s  
order on this point is not persuasive authority.

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11 COUNTY SUPERIOR COURT

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

14 COURTHOUSE NEWS SERVICE,  
15 Plaintiff,  
16 v.

17 MICHAEL PLANET, IN HIS  
18 OFFICIAL CAPACITY AS COURT  
19 EXECUTIVE OFFICER/CLERK OF  
20 THE VENTURA COUNTY  
21 SUPERIOR COURT,  
22 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to  
Hon. Manuel L. Real

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS AND  
ABSTAIN**

Date: November 21, 2011  
Time: 10:00 a.m.  
Courtroom: 8

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**INTRODUCTION**

Plaintiff Courthouse News Service (“CNS”), a purportedly widely read legal news wire service, seeks broad declaratory and injunctive relief against Michael D. Planet, in his official capacity as Executive Officer and Clerk of the Superior Court of California, County of Ventura (“Mr. Planet” or the “Ventura Superior Court”). The gravamen of CNS’s lawsuit rests on the misplaced notion that it has a *constitutional* or common law right to “same-day access” to all newly filed unlimited civil complaints. Specifically, CNS complains that “any delay in the reporter’s ability to review a newly filed complaint necessarily creates delay in [CNS’s] ability to inform interested persons of the factual and legal allegations in those complaints . . . .” (Compl., ¶ 18 (emphasis added).) CNS further complains that purportedly increasing access delays at Ventura Superior Court, and an alleged “policy” that CNS (and every other member of the public) cannot have access to new filings at that court until the requisite document processing is completed has resulted in new filings being “as good as sealed,” in violation of the First and Fourteenth Amendments to the U.S. Constitution, federal common law, and the California Rules of Court. (*Id.*, ¶ 6.) Thus, CNS wants nearly instantaneous access to all newly filed unlimited civil complaints.

CNS can cite to *no case* holding that the First Amendment protects a news agency’s right to “same-day access” to newly filed complaints. Instead, it claims that because certain other courts are able to extend the *courtesy* of “same-day access”, this Court should make such access a constitutional mandate. But the law does not countenance such a decree, and for good reason. *First*, CNS’s request that this *federal* district court involve itself in the administration of the *state’s* judicial system runs afoul of settled principles of federalism, comity, and institutional competence—all of which urge this Court to exercise its discretion to abstain from hearing the matter at all. *Second*, CNS’s first and second claims for relief for

1 violation of the First Amendment to the United States Constitution and federal  
2 common law fail to state a claim upon which relief may be granted, as there simply  
3 is no constitutional or common-law right to “same-day access” to newly filed  
4 unlimited civil complaints. *Third*, CNS’s third claim for relief, which alleges that  
5 the Ventura Superior Court violates California Rule of Court 2.550, runs afoul of  
6 the Eleventh Amendment, and is barred. Ventura Superior Court’s motion should  
7 be granted, and the entire action should be dismissed accordingly.

8  
9 **FACTUAL BACKGROUND**

10 **A. California Law Grants To All Members Of The Public, Including**  
11 **The Press, The Right Of “Reasonable Access” To Documents Filed**  
12 **In California’s Courts.**

13 It has long been settled in California that members of the public have a right  
14 of access to “adjudicative proceedings and filed documents of trial and appellate  
15 courts.” *NBC Subsidiary (KNBC-TV) v. Superior Court*, 20 Cal. 4th 1178, 1212, 86  
16 Cal. Rptr. 2d 778 (1999). This is because “the public has an interest, in all civil  
17 cases, in observing and assessing the performance of its public judicial system . . .  
18 .” *Id.* at 1210; *see also Hibernia Savings and Loan Soc. v. Boyd*, 155 Cal. 193, 200,  
19 100 P. 239 (1909) (“A judicial record is a public writing . . .”); *In re Marriage of*  
20 *Nicholas*, 186 Cal. App. 4th 1566, 1575, 113 Cal. Rptr. 3d 629 (2010) (“A strong  
21 presumption exists in favor of public access to court records in ordinary civil  
22 trials”); *Estate of Hearst*, 67 Cal.App.3d 777, 784, 136 Cal. Rptr. 821 (1977)  
23 (“[T]he public has a legitimate interest in access to public records, such as court  
24 documents.”).

25 The California Legislature codified this right of access in Government Code  
26 section 68150. In particular, the Legislature mandated in section 68150(l) that,  
27 “[u]nless access is otherwise restricted by law,” court records of all types, including  
28 paper and electronic, “shall be made *reasonably accessible* to all members of the  
public for viewing and duplication as the paper records would have been

1 accessible.” Cal. Gov’t Code § 68150(l) (emphasis added). Significantly, this right  
2 of “reasonable access” extends to documents only after they have been “filed . . . in  
3 the case folder, but if no case folder is created by the court, all filed papers and  
4 documents that would have been in the case folder if one had been created.” Cal.  
5 Gov’t Code § 68151(a)(1); see also Cal. Civ. Proc. Code § 1904 (defining “judicial  
6 record”).

7 The Legislature directed the Judicial Council of California to “adopt rules to  
8 establish the standards or guidelines for the creation, maintenance, reproduction, or  
9 preservation of court records . . . .” Cal. Gov’t Code § 68150(c). The Judicial  
10 Council complied with the Legislature’s directive by adopting Title 2, Division 4 of  
11 the Rules of Court relating to maintenance of and access to trial court records. As  
12 is relevant to these proceedings, Rule of Court 2.400(a) provides that, “Only the  
13 clerk may remove and replace records in the court’s files,” and that, “[u]nless  
14 otherwise provided by these rules or ordered by the court, court records may only  
15 be inspected by the public in the office of the clerk.” Cal. R. Ct. 2.400(a). The  
16 Rules of Court further acknowledge that “[u]nless confidentiality is required by  
17 law, court records are presumed to be open,” Cal. R. Ct. 2.550(c), and that the  
18 public has a right of “reasonable access” to them. *E.g.*, Cal. Rs. Ct. 2.500(a),  
19 2.503(a). *See generally In re Marriage of Mosley*, 190 Cal. App. 4th 1096, 1102-  
20 03, 82 Cal. Rptr. 3d 497 (2010).

21 **B. CNS Insisted That The Ventura Superior Court’s Clerk’s Office**  
22 **Provide “Same-Day Access” To Newly Filed Civil Unlimited**  
23 **Complaints.**

24 CNS claims to be “a widely-read legal news wire service with thousands of  
25 subscribers across the nation . . . .” (Compl., ¶ 4.) Its “core news publications are  
26 its new litigation reports, which are e-mailed to its subscribers and contain staff-  
27 written summaries of all significant new civil complaints filed in a particular court.”  
28 (¶15.) To obtain these summaries, CNS assigns “reporters” to various courthouses

1 with the instruction to review newly-filed “unlimited jurisdiction” civil complaints  
2 in which the matter in controversy exceeds \$25,000. (Compl., ¶ 18.)

3       Significantly, CNS does not seek the same “reasonable access” to new case  
4 filings afforded to members of the general public. *Cf. Nixon v. Warner*  
5 *Communications, Inc.*, 435 U.S. 589, 98 S. Ct. 1306 55 L. Ed. 2d 570 (1978)  
6 (holding that members of the media generally have no greater rights or privileges  
7 than do members of the general public). Instead, CNS explicitly alleges that it is  
8 constitutionally entitled to what amounts to immediate or “same-day access” to  
9 newly filed unlimited civil complaints, ostensibly because this “ensures that  
10 interested members of the public learn about new civil litigation while the initiation  
11 of that litigation is still newsworthy . . . .” (Compl., ¶¶ 4, 18.)

12       For most of the time periods alleged in its complaint, CNS did not seek to  
13 obtain “same-day access” to filings in Ventura Superior Court. Instead, CNS  
14 alleges that from 2000 to 2010, CNS’s reporter only visited the Ventura Superior  
15 Court’s clerk’s office “once or twice a week” to review new complaints maintained  
16 in a “media bin.” (*Id.*, ¶¶ 22-25.) Hence, whatever delays CNS may have  
17 experienced during this period of time has little bearing on the substance of its  
18 current claim to “same-day access” to civil filings.

19       CNS changed its business model in November 2010 by asking one of its  
20 reporters to visit the Ventura Superior Court’s clerk’s office every day. (*Id.*, ¶ 25.)  
21 However, rather than seek the same access as the clerk’s office grants to other  
22 members of the general public, CNS asked for more. In particular, CNS alleges at  
23 paragraph 25 of its complaint that it asked Ventura Superior Court should “adjust”  
24 its procedures to grant “same-day access” to unlimited civil complaints not because  
25 other members of the public obtained “same-day access” to complaints in Ventura,  
26 but because courts in other jurisdictions allegedly have the ability to do so:  
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25. In an effort to improve the quality of the Central Coast Report through more timely reporting on new civil unlimited jurisdiction complaints, in November 2010, Courthouse News began covering Ventura Superior a daily basis. Prompted by its change to daily coverage and the access problems it continued to experience, Courthouse News once again initiated discussions with the clerk's office about the possibility of adjusting its procedures so that Ms. Krolak could have same-day access to newly filed unlimited jurisdiction civil complaints, as news reporters do in other courts they visit on a daily basis.

CNS alleges that it sent a June 20, 2011 demand letter to Mr. Planet, attached as Exhibit 2 to its Complaint. (*Id.*, ¶ 26.) The demand letter explains that courts in other jurisdictions, including federal courts that have adopted electronic filing through the PACER system, have the ability to grant "same-day access" to CNS reporters. (*Id.*, ¶ 26 & Ex. 2.) Mr. Planet responded to CNS's June 20, 2011 demand letter on July 11, 2011. (*Id.*, ¶ 27 & Ex. 3.) He explained that, while it was not possible for the court to provide "same-day access" to all civil complaints, the court would continue make files available "as early as practicable:"

As you have noted, the Court has met and spoken with you and representatives of Courthouse News Service several times over the past couple of years to both explain the Court's serious resource shortages as a result of budget reductions, and steps that could reasonably be taken to make new complaints available to the media. The budget recently signed by the Governor imposes even more drastic reductions to the Courts, which makes it even more difficult to provide same-day access to new filings.

While I appreciate the Courthouse News Services' interest in same-day access, the Court cannot prioritize that access above other priorities and mandates. Further, the Court must ensure the integrity of all filings, including new filings, and cannot make any filings available until the requisite processing is completed. We will continue to make every effort to make new filings available as early as is practicable given the demands on limited court resources.

(*Id.*, ¶ 27 & Ex. 3.)

1 CNS alleges that, since receipt of the July 11, 2011 response from Mr.  
2 Planet, its reporters have not obtained ““same-day access”” to all newly filed civil  
3 unlimited complaints filed in the Ventura Superior Court. (¶¶ 29-30).

4 **C. CNS’s Complaint Asks This Court To Create Constitutional And**  
5 **Common-Law Rights To “Same-Day Access” To Unlimited Civil**  
6 **Complaints, Except As Deemed Permissible Following A “Case-**  
7 **By-Case” Adjudication Of Individual Claims.**

8 CNS’s complaint contains three claims for relief, the first two of which are  
9 asserted pursuant to 42 U.S.C. § 1983:

10 1. First Claim for Relief. CNS alleges that Ventura Superior Court  
11 violates the First Amendment to the United States Constitution by delaying access  
12 to new civil unlimited complaints and by failing to provide “timely, same-day  
13 access to new civil unlimited complaints.” (*Id.*, ¶¶ 32-35.)

14 2. Second Claim for Relief. CNS alleges that Ventura Superior Court  
15 violates federal common law by delaying access to new civil unlimited complaints  
16 and by failing to provide “timely, same-day access to new civil unlimited  
17 complaints.” (*Id.*, ¶¶ 37-39.)

18 3. Third Claim for Relief. Finally, CNS claims that, by failing to provide  
19 “timely, same-day access” to newly filed unlimited civil complaints, Ventura  
20 Superior Court has “effectively seal[ed]” these complaints, in violation of  
21 California Rule of Court 2.550. (*Id.*, ¶¶ 41-43.)

22 This is *not* a case in which the plaintiff seeks the standard prohibitory  
23 injunction designed to maintain the status quo pending trial. Instead, as can be seen  
24 from paragraph 1 of CNS’s prayer for relief, CNS effectively seeks a stringent  
25 mandatory injunction that is designed to alter the status quo pending trial by  
26 requiring Ventura Superior Court to cease denying “same-day access” to civil  
27 unlimited complaints:  
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1. For preliminary and permanent injunctions against Defendant, including his agents, assistants, successors, employees, and all persons acting in concert or cooperation with him, or at his direction or under his control, prohibiting him preliminarily, during the pendency of this action, and permanently thereafter, from continuing his policies resulting in delayed access to new unlimited jurisdiction civil complaints and denying Courthouse News timely access to new civil unlimited jurisdiction complaints on the same day they are filed, except as deemed permissible following the appropriate case-by-case adjudication.

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In addition, CNS asks this Court to enter a declaratory judgment that Ventura Superior Court's failure to provide "same-day access" to newly filed unlimited civil complaints violates the First Amendment, federal common law and California Rule of Court 2.550:

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2. For a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring Defendant's policies that knowingly affect delays in access and a denial of timely, same-day access to new civil unlimited complaints as unconstitutional under the First and Fourteenth Amendments to the United States Constitution and in violation of the federal common law and California Rule of Court 2.550, for the reason that that it constitutes an effective denial of access to court records.

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**D. What CNS's Complaint Fails To Allege.**

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At the motion to dismiss stage, this Court is obligated to assume the truth of the complaint's allegations. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Nonetheless, three notable *omissions* are worthy of comment.



1           **1. CNS Sponsored SB 326 —A Bill That Would Provide The Precise**  
2           **Relief CNS Seeks Here.**

3           CNS's Complaint repeatedly suggests that it is entitled to "same-day access"  
4 to newly filed unlimited civil complaints because such access historically has been  
5 granted. However, CNS fails to disclose that it made the precise opposite claim  
6 when it sponsored a "same-day access" bill known as Senate Bill 326 in the  
7 California Legislature. (RJN, Ex. A<sup>1</sup> [Cal. Senate Bill 326].) There, CNS claimed  
8 that: (a) Government Code section 68150 already "provides the public with  
9 reasonable access to court records;" (b) the term "reasonable access" is not defined;  
10 (c) "many other courts have failed and refused to provide a system whereby the  
11 public has access to court record information in a timely manner;" and (d) for these  
12 reasons, legislation is necessary to "require the Judicial Council of California to  
13 adopt a rule or rules of court to require courts to provide public access to case-  
14 initiating civil and criminal court records, as defined, by no later than the end of the  
15 day on which those records are received by the court." (*Id.*, Ex. B [Cal. Senate  
16 Judiciary Comm. May 3, 2011 Bill Analysis].)

17           CNS also failed to disclose that the Judicial Council of California has  
18 objected to SB 326, advising that, "[w]hile the Council strongly favors timely  
19 public access to court records that are subject to public disclosure, SB 326 sets a  
20 standard for access that cannot be achieved without a significant increase in court  
21 staffing." (*Id.*, Ex. C [Apr. 27, 2011 Letter].) Subsequent revisions were made to  
22 the bill, and Judicial Council changed its position to neutral. (*Id.*, Ex. D [June 9,  
23 2011 Letter].) With those revisions and Judicial Council's neutral position, SB  
24 326 passed in the Senate on May 31, 2011. (*Id.*, Ex. E [Complete Bill History].)

25           After passing out of the Assembly Judiciary Committee with the amendments  
26 required by the Senate Judiciary Committee, the bill was subsequently amended in

27           <sup>1</sup> All citations to "RJN, Ex. \_\_\_" are to the exhibits attached to Mr. Planet's  
28 concurrently filed Request for Judicial Notice in Support of Motion to Abstain and  
Dismiss.

1 the Assembly Appropriations Committee a number of times. The latest version of  
2 CNS's proposed bill eliminated the key facets of the Senate Judiciary Committee's  
3 revisions, and Judicial Council renewed its opposition, which highlighted the  
4 unworkable mandate of SB 326, particularly in light of ever-increasing state court  
5 budget cuts:

6           Subsequent to the Senate Judiciary Committee hearing, the  
7 ongoing cuts to the judicial branch in the budget were increased  
8 by an additional \$150 million. Most courts were not in a  
9 position to comply with the same day mandate in SB 326 before  
10 these additional cuts were enacted, but in the face of even  
11 deeper reductions, courts will not have sufficient staff available  
12 to fulfill the requirements of SB 326.

13 (*Id.*, Ex. F [Aug. 8, 2011 Letter] at 2.) The bill was held in the Assembly  
14 Appropriations Committee at the time the committee reviewed those bills with  
15 significant fiscal impact, and despite a further amendment taken on September 1,  
16 2011, it remains in that committee. (*Id.*, Ex. E [Complete Bill History].)

17 **2. Ventura Superior Court Is *Not* An Electronic Filing Court.**

18 CNS's Complaint purports to make much of the fact that other courts  
19 allegedly provide it with "same-day access" to newly filed unlimited civil  
20 complaints. As its primary examples, CNS alleges that this Court and other U.S.  
21 District Courts in California provide "same-day access." (Compl., ¶ 11.) CNS also  
22 makes lengthy allegations about a state court in Las Vegas, Nevada. (*Id.*, ¶13.)  
23 However, all those courts—and many others in CNS's self-selected summary of  
24 court access policies (*id.*, Ex. 1)—are electronic filing courts. Indeed, all federal  
25 courts throughout the country employ the PACER system for court records  
26 management (*id.*, ¶ 11), which mandates electronic filing of substantially all  
27 documents filed with the court. And the Las Vegas court also recently  
28 implemented a mandatory e-filing protocol. (*Id.*, ¶ 13.) The result is that clerk's  
offices in these courts are not burdened by the substantial additional administrative  
task imposed by the need to process by hand every document filed with the court.

1 CNS does not allege—and cannot allege—that Ventura Superior Court is an  
2 electronic filing court. Rather, the clerk’s office staff at Ventura Superior Court  
3 must process by hand each and every document filed with the court. This  
4 distinction, which CNS ignores, is critical. It is not surprising that many e-filing  
5 courts can provide “same-day access”; they are not burdened with the additional  
6 administrative tasks that non-e-filing courts, like Ventura Superior Court, must  
7 perform. But the fact that e-filing courts are *not* burdened with those tasks does not  
8 somehow compel imposition of an even *greater* burden on non-e-filing courts.  
9

10 **3. CNS Has Not Attempted To Seek Appropriate Relief In State  
11 Court.**

12 As explained above, California law already requires courts to provide  
13 “reasonable access” to court documents once they are filed. *See* Cal. Gov’t Code §  
14 68150(l) & 68151. CNS curiously avoids any reference to this governing statute.  
15 Instead, CNS argues that Ventura Superior Court’s failure to provide “same-day  
16 access” violates California Rule of Court 2.550 as an “exercise of unguided  
17 discretion to effectively seal a court record,” the authority for which “lies only in a  
18 judge of the court.” (*Id.*, ¶ 33.) Even if this claim were well taken (it is not, *see*  
19 *infra* Section III), CNS has not sought relief from this alleged violation from “a  
20 judge of the court.” It has not sought *any* relief from the state courts under the  
21 governing state law.

22 **ARGUMENT**

23 **I. THIS COURT SHOULD ABSTAIN FROM HEARING THIS CASE.**

24 Article III of the Constitution limits federal court review to justiciable “cases  
25 and controversies.” *See generally* U.S. Const., Art. III, §§ 1, 2. As the Supreme  
26 Court recognized in *Los Angeles v. Lyons*, 461 U.S. 95, 112, 103 S. Ct. 1660, 75 L.  
27 Ed. 2d 675 (1983), “[a] federal court . . . is not the proper forum to press” general  
28 complaints about the way in which government goes about its business. *See also*

1 *Missouri v. Jenkins*, 515 U.S. 70, 112-113, 115 S. Ct. 2038, 132 L. Ed. 2d 63  
2 (1995) (O'Connor, J., concurring) ("Article III courts are constrained by the  
3 inherent constitutional limitations on their powers. Unlike Congress, which enjoys  
4 discretion in determining whether and what legislation is needed to secure the  
5 guarantees of the Fourteenth Amendment, federal courts have no comparable  
6 license and must always observe their limited judicial role.") (internal citations and  
7 quotations omitted).

8 Whether a case is justiciable is governed, in part, by important separation of  
9 powers principles. *See Flast v. Cohen*, 392 U.S. 83, 97, 88 S. Ct. 1942, 20 L. Ed.  
10 2d 947 (1968). Thus, the Supreme Court has developed several related abstention  
11 doctrines grounded in principles of comity and federalism to ensure that federal  
12 courts do not improvidently resolve disputes and award relief that will intrude upon  
13 the prerogatives of states to structure and fund their own governmental institutions.  
14 *See Rizzo v. Goode*, 423 U.S. 362, 378-80, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976)  
15 ("When a plaintiff seeks to enjoin the activity of a government agency, even within  
16 a unitary court system, his case must contend with the well-established rule that the  
17 Government has traditionally been granted the widest latitude in the dispatch of its  
18 own internal affairs") (internal quotations and citations omitted).

19  
20 **A. This Court Should Equitably Abstain From Hearing This Matter Pursuant To *O'Shea v. Littleton*.**

21 The Supreme Court first articulated the doctrine of equitable abstention in  
22 *O'Shea v. Littleton*, 414 U.S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974). This  
23 doctrine counsels federal courts to decline to exercise their equitable powers in  
24 cases seeking to reform state institutions, because such suits offend traditional  
25 notions of federalism by calling for "restructuring . . . state government  
26 institutions" and "dictating state or local budget priorities." *O'Shea*, 414 U.S. at  
27 500; *see also Horne v. Flores*, 129 S. Ct. 2579, 2593, 174 L. Ed. 2d 406, 557 U.S.  
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1 \_\_\_ (2009) (“Federalism concerns are heightened when, as in these cases, a federal  
2 decree has the effect of dictating state and local budget priorities. States and local  
3 governments have limited funds. When a federal court orders that money be  
4 appropriated for one program, the effect is often to take funds away from other  
5 important programs.”); *Los Angeles Cnty. Bar Ass’n v. Eu*, 979 F.2d 697 (9th Cir.  
6 1992) (“We should be very reluctant to grant relief that would entail heavy federal  
7 interference in such sensitive state activities as administration of the judicial  
8 system”); *Ad Hoc Comm. on Judicial Admin. v. Massachusetts*, 488 F.2d 1241,  
9 1245-46 (1st Cir. 1973) (“In this nation, the financing and, to an important extent,  
10 the organization of the judicial branches, federal and state, have been left to the  
11 people, through their legislature. . . . [I]t would be both unprecedented and  
12 unseemly for a federal judge to attempt a reordering of state priorities”).

13 Last month, the Ninth Circuit recognized that “[w]hen the state agency in  
14 question is a state court . . . the equitable restraint considerations [of *O’Shea*]  
15 appear to be nearly absolute.” *E.T. v. Cantil-Sakauye*, No. 10-15248, slip op.  
16 17457, 17464 (9th Cir. Sept. 13, 2011) (quoting *Parker v. Turner*, 626 F.2d 1, 7  
17 (6th Cir. 1980)). In that case, the Ninth Circuit affirmed a district court’s decision  
18 to abstain from entertaining a suit seeking a declaration that the caseloads in  
19 dependency courts in the Superior Court of California, County of Sacramento, were  
20 unconstitutionally excessive.<sup>2</sup> Specifically, the court reasoned the lower court had  
21 properly “[h]eed[ed] the teachings of *O’Shea* and cases since” by concluding that  
22 “[P]laintiffs’ challenges to the juvenile dependency court system necessarily  
23 require the court to intrude upon the state’s administration of its government, and  
24 more specifically, its court system.” *Id.*, at 17463 (quoting *E.T. v. George*, 681 F.  
25 Supp. 2d 1151, 1164 (E.D. Cal. 2010)). The court further rejected the plaintiffs’  
26

27 <sup>2</sup> Although a petition for rehearing and rehearing en banc is pending in *E.T.*  
28 before the Ninth Circuit, the original three-judge panel decision remains valid law  
unless and until the court grants the petition. *See* 9th Cir. Gen. Order 5.5(d).

1 invitation to consider only a request for declaratory relief (not injunctive relief):  
2 “For ‘even the limited decree[]’ sought here ‘would inevitably set up the precise  
3 basis for *future intervention* condemned in *O’Shea*.” *Id.* at 17465 (quoting *Luckey*  
4 *v. Miller*, 976 F.2d 673, 679 (11th Cir. 1992)); *see also id.* (“[W]ere we to declare  
5 the current Dependency Court attorney caseloads unconstitutional or unlawful, the  
6 Defendants’ compliance with that remedy and its effect in individual cases could be  
7 subject to further challenges in federal district court.”).

8  
9 **1. CNS’s Complaint Seeks The Exact Sort of Intervention With  
State Judicial Administration That O’Shea Condemns.**

10 The same equitable restraint considerations that underlie *E.T., Ad Hoc*  
11 *Committee* and other cases compel abstention here. CNS seeks a mandatory  
12 injunction that, by its very nature, would require this Court to “inquire into the  
13 administration of [California’s judicial] system, its utilization of personnel,” and the  
14 advisability of requiring it to adopt a “same-day access” policy in light of critical  
15 and competing statewide budgetary concerns. *Ad Hoc Comm.*, 488 F.2d at 1245;  
16 *see also O’Shea*, 414 U.S. at 502 (criticizing the court of appeal’s proposed  
17 “periodic reporting system” as “a form of monitoring of the operation of state court  
18 functions that is antipathetic to established principles of comity”).

19 Most significantly, beyond an injunction requiring this Court’s continuing  
20 oversight to ensure the Ventura Superior Court’s general compliance, CNS seeks an  
21 injunction that necessarily would put the “federal district court in the role of  
22 receiver for a state judicial branch” insofar as CNS seeks “same-day access” to new  
23 civil unlimited jurisdiction complaints “except as deemed permissible *following the*  
24 *appropriate case-by-case adjudication*.” (Compl., Prayer, ¶ 1 (emphasis added);  
25 *see also* Compl., ¶ 34.) Thus, CNS acknowledges that “same-day access” might  
26 not be possible in all circumstances (even if required, which it is not), and wants  
27 this Court to resolve those situations.

28

1           As *Ad Hoc Committee* warned, “[w]hile the state judiciary might appreciate  
2 the additional resources, it would scarcely welcome the intermeddling with its  
3 administration which might follow.” *Ad Hoc Comm.*, 488 F.2d at 1246. This Court  
4 should decline CNS’s invitation to intermeddle with the California court system for  
5 this reason. *See also Kaufman v. Kaye*, 466 F.3d 83, 87 (2d Cir. 2006) (“[W]e  
6 cannot resolve the issues raised here as to present assignment procedures without  
7 committing to resolving the same issues as to the remedy chosen by the state and as  
8 to the subsequent case-by-case implementation of the assignment procedures in the  
9 Second Department. This is exactly what *O’Shea* forbids.”).

10                           **2. CNS’s Current Legislative Attempts For Relief Underscore  
11 The Wisdom In This Court’s Abstention.**

12           Case law consistently recognizes that decisions concerning budgets, staffing,  
13 and procedural matters of local agencies are best left to resolution by a “legislative  
14 or executive, rather than a judicial, power.” *Jenkins*, 515 U.S. at 133; *see also Ad  
15 Hoc Comm.*, 488 F.2d at 1245 (“In this nation, the financing and, to an important  
16 extent, the organization of the judicial branches, federal and state, have been left to  
17 the people, through their legislature.”). And CNS knows this better than anyone.  
18 Before filing its lawsuit here, CNS sought from the California legislature the very  
19 same relief—albeit on a statewide basis—that it seeks here. (RJN, Ex. A.)

20           CNS’s legislative effort supports abstention in at least three respects. First,  
21 SB 326 is still pending with the legislature, which will reconvene in January. Thus,  
22 there is a risk that this Court’s jurisdiction over the case could be mooted by  
23 intervening events. Even worse, this Court could render a decision inconsistent  
24 with the state’s legislative directive, causing confusion and uncertainty and wasting  
25 precious resources.

26           Second, SB 326 demonstrates that CNS’s complaints about access are not  
27 limited to one theoretically anomalous court. CNS actually contends that “timely”  
28 access to newly filed unlimited civil complaints is a problem throughout the state.

1 (Id., Ex. B.) Thus, if the Court were to entertain this action, it is likely to become  
2 embroiled not just in the administration of the Ventura Superior Court, but in the  
3 administration of the entire state judicial branch—an exponentially greater level of  
4 intermeddling that *O’Shea* intended to prevent.

5 Third, SB 326 demonstrates the arbitrariness of CNS’s position. Prior to  
6 2010, CNS did not visit Ventura Superior Court every day (and even then  
7 apparently reported only on new filings from only one of Ventura’s three  
8 courthouses), and therefore had no need for “same-day access.” (Compl., ¶¶ 22-  
9 25.) In late 2010, it changed its business model to increase coverage of that court  
10 and began sending a reporter daily. (*Id.*, ¶ 25.) Now, through its Complaint, CNS  
11 seeks “same-day access” to newly filed unlimited civil complaints filed in Ventura  
12 Superior Court. Through SB 326, however, CNS seeks “same-day access” to  
13 newly filed unlimited civil complaints filed throughout the state. And, as CNS  
14 determines (in its sole discretion) that other types of filings are “newsworthy” (*id.*,  
15 ¶ 15), it may seek “same-day access” to those. Indeed, at some point, CNS may  
16 contend that “same-day access” is no longer sufficient; it must be “within the hour”  
17 access. But this Court has no obligation, much less prudential need, to conform the  
18 law to CNS’s ever-changing business model. If anything, the law should require  
19 CNS to change its model to adapt to the reasonable access that it already is  
20 provided.

21 In short, “the proposed cure” that CNS seeks would be worse “than the  
22 disease.” *Ad Hoc Comm.*, 488 F.2d at 1246. This Court should exercise its  
23 discretion to equitably abstain from hearing this action accordingly.

24 **B. This Court Should Abstain From Hearing This Matter Pursuant**  
25 **To *Railroad Comm’n of Texas v. Pullman Co.***

26 Abstention doctrines do more than prevent federal courts from intruding  
27 upon the prerogatives of states to structure and fund their own governmental  
28



1 institutions. Abstention doctrines also honor comity and federalism by avoiding  
2 “unnecessary friction in federal-state relations, interference with important state  
3 functions, tentative decisions on questions of state law, and premature  
4 constitutional adjudication.” *Pearl Investment Co. v. City and County of San*  
5 *Francisco*, 774 F.2d 1460, 1462 (9th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986)  
6 (internal quotations omitted). Hence, under a separate abstention doctrine first  
7 announced in *Railroad Comm’n of Texas v. Pullman Co.*, 312 U.S. 496, 500-01, 61  
8 S. Ct. 643, 85 L. Ed. 971 (1941), “federal courts should abstain from decision when  
9 difficult and unsettled questions of state law must be resolved before a substantial  
10 federal constitutional question can be decided.” *Hawaii Hous. Auth. v. Midkiff*, 467  
11 U.S. 229, 236, 104 S. Ct. 2321, 81 L. Ed. 2d 186 (1984).

12 In the Ninth Circuit, federal courts have the discretion to abstain under  
13 *Pullman* when: “(1) The complaint touches a sensitive area of social policy upon  
14 which the federal courts ought not to enter unless no alternative to its adjudication  
15 is open[;] (2) Such constitutional adjudication plainly can be avoided if a definitive  
16 ruling on the state issue would terminate the controversy[; and] (3) The possibly  
17 determinative issue of state law is doubtful.” *Smelt v. County of Orange*, 447 F.3d  
18 673, 679 (9th Cir.), *cert. denied*, 549 U.S. 959 (2006); *see generally Canton v.*  
19 *Spokane Sch. Dist. # 81*, 498 F.2d 840 (9th Cir. 1974).

20 *Pullman* and its progeny create a narrow exception to a federal court’s duty  
21 to adjudicate claims properly before it. *E.g., County of Allegheny v. Frank*  
22 *Mashuda Co.*, 360 U.S. 185, 188, 3 L. Ed. 2d 1163, 79 S. Ct. 1060 (1958).  
23 Nonetheless, *Pullman* abstention warrants careful consideration because all three of  
24 the factors enunciated by the Ninth Circuit are present in this case. To start, as  
25 explained above, the Complaint here asks this Court to become the overseer of the  
26 administrative operations of the Ventura Superior Court, and to decide, apparently  
27 on a case-by-case basis, whether access to newly filed unlimited civil complaints  
28

1 must be granted on a “same-day basis.” *Pullman* abstention is appropriate in this  
2 circumstance because “federal courts owe deference to their state counterparts in  
3 situations where public perceptions of the integrity of the state judicial system are  
4 affected.” *Hughes v. Lipscher*, 906 F.2d 961, 967 (3d Cir. 1990); *see also*  
5 *Almodovar v. Reiner*, 832 F.2d 1138, 1140 (9th Cir. 1987) (“the ‘sensitive social  
6 policy’ prong . . . recognizes that abstention protects state sovereignty over matters  
7 of local concern, out of considerations of federalism, and out of scrupulous regard  
8 for the rightful independence of state governments”).

9 As for the second and third *Pullman* factors, resolution of at least *two*  
10 unsettled questions of state law could obviate the need for this action in its entirety.  
11 As noted above, Government Code section 68150(l) already provides that court  
12 records of all types “shall be made *reasonably accessible* to all members of the  
13 public for viewing and duplication . . . .” Cal. Gov’t Code § 8150(l) (emphasis  
14 added). However, as CNS and other sponsors of SB 326 have already  
15 acknowledged, the term, “‘reasonable access’ is not defined under existing law.”  
16 (RJN, Ex. B at 2.)

17 Much the same can also be said of CNS’s third claim for relief for violation  
18 of California Rule of Court 2.550. This Rule of Court provides that “court records  
19 are presumed to be open,” and permits trial courts to seal a court record only when  
20 “(1) There exists an overriding interest that overcomes the right of public access to  
21 the record; (2) The overriding interest supports sealing the record; (3) A substantial  
22 probability exists that the overriding interest will be prejudiced if the record is not  
23 sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive  
24 means exist to achieve the overriding interest.” Cal. R. Ct. 2.550(c) & (d); *see also*  
25 Compl., ¶¶ 41-42 (quoting these provisions). It certainly is an open and unsettled  
26 question whether these Rules of Court somehow recognize an enforceable right to  
27 “same-day access” to newly filed unlimited civil complaints.  
28

1 As explained in greater detail below (*see infra* Section III), the Eleventh  
2 Amendment precludes a federal court from ruling on CNS's state-law claim. In any  
3 event, a state court ruling requiring "same-day access" to newly filed unlimited  
4 civil complaints pursuant to Government Code section 68150(1) *or* Rule of Court  
5 2.550 would, of necessity, obviate the need for this Court to rule on the First  
6 Amendment issues CNS presses here. *Pullman* abstention is warranted for this  
7 reason. *See C-Y Dev. Co. v. Redlands*, 703 F.2d 375, 377-78 (9th Cir. 1983)  
8 ("[T]he assumption which justifies abstention is that a federal court's erroneous  
9 determination of a state law issue may result in premature or unnecessary  
10 constitutional adjudication, and unwarranted interference with state programs and  
11 statutes. A state law question that has the potential of at least altering the nature of  
12 the federal constitutional questions is thus an essential element of *Pullman*  
13 abstention.") (citation omitted); *Canton*, 498 F.2d at 845 ("With regard to elements  
14 (2) and (3) [of the *Pullman* abstention test], it is crucial that the uncertainty in the  
15 state law be such that construction of it by the state courts might obviate, or at least  
16 delimit, decision of the federal (constitutional) question.").

17 **II. CNS'S FIRST AND SECOND CLAIMS FOR RELIEF FAIL TO**  
18 **STATE A CLAIM FOR A CONSTITUTIONAL OR FEDERAL**  
19 **COMMON LAW "RIGHT" OF SAME-DAY ACCESS TO NEWLY**  
20 **FILED UNLIMITED CIVIL COMPLAINTS.**

21 Even if *O'Shea* and *Pullman* abstention doctrines could not be invoked here,  
22 CNS's first and second claims for relief should be dismissed for failure to state a  
23 claim as a matter of law. As noted above, CNS alleges that it has both a  
24 constitutional and common-law right of access to court records, and that such  
25 access must be timely. (Compl., ¶¶ 32, 37.) Ventura Superior Court does not  
26 dispute either proposition; as discussed above, even the California Government  
27 Code mandates "reasonable access" to all court records. Cal. Gov't Code  
28 § 68150(1). But CNS then takes the unsupportable leap that timely access to court

1 records equates to “*same-day access*”. (Compl., ¶¶ 32, 37.) No such right exists  
2 under the law.

3  
4 **A. The First Claim For Relief Should Be Dismissed Because The First  
Amendment Does Not Guarantee Same-Day Access.**

5 **1. First Amendment Public Rights Of Access To Court  
6 Records Are Governed By “Experience And Logic.”**

7 In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-81, 100 S. Ct.  
8 2814, 65 L. Ed. 2d 973 (1980), the Supreme Court held for the first time that the  
9 First Amendment gave the press and public an affirmative *qualified* right of access  
10 to criminal court proceedings. The Court identified two related criteria for  
11 evaluating First Amendment right of access, *id.* at 588-89 (Brennan, Marshall, JJ,  
12 concurring), which it later termed “considerations of experience and logic:” (1)  
13 whether the place and process have historically been open to the press and general  
14 public (i.e., “experience”); and (2) whether public access plays a significant  
15 positive role in the functioning of the particular process in question (i.e., “logic”).  
16 *Press-Enterprise Co. v. Superior Court*, 478 US 1, 8, 106 S. Ct. 2735, 92 L. Ed. 2d  
17 1 (1986) (*Press-Enterprise II*). Both criteria must be satisfied to establish a  
18 qualified right to access. CNS cannot satisfy either.

19 **2. Historic “Experience” Does Not Recognize A Right To  
20 Same-Day Access To Court Records.**

21 **a. There Is No Historic Right To Same-Day Access As A  
22 Matter Of Law.**

23 Since *Richmond*, the Supreme Court has revisited the First Amendment right  
24 of access only in the context of *criminal* proceedings. See *Globe Newspaper Co. v.*  
25 *Superior Court*, 457 U.S. 596, 606-11, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982)  
26 (closing proceedings during testimony of underage rape victim unconstitutional);  
27 *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508-13, 104 S. Ct. 819, 78  
28 L. Ed. 2d 629 (1984) (closing voir dire in criminal case unconstitutional in light of

1 importance of that process to the criminal justice system and the long history of  
2 public voir dire); *Press-Enterprise II*, 478 U.S. at 10-15 (qualified First  
3 Amendment right of access to criminal proceedings applies to preliminary hearings  
4 as conducted in California); *cf. Gannett Co., Inc. v. DePasquale*, 443 U.S. 368,  
5 391-92, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979) (assuming, without deciding, a  
6 First Amendment right of access to attend criminal trial and holding First  
7 Amendment was not violated by orders excluding members of public and press  
8 from pretrial suppression hearing and temporarily denying access to transcript of  
9 suppression hearing).

10 Although several lower federal and state courts have extended the public's  
11 First Amendment right of access to *civil* proceedings and related court records,  
12 none has held that (or even considered whether) access to civil case filings must  
13 occur the same day they are filed or otherwise submitted to a court. *See, e.g., New*  
14 *York Civil Liberties Union v. New York City Transit Auth.*, 652 F.3d 247, 250-51  
15 (2d Cir. 2011) (permanently enjoining on First Amendment grounds City Transit  
16 Authority's policy precluding public access to administrative adjudicatory  
17 proceedings); *Rushford v. New Yorker Mag.*, 846 F.2d 249, 253 (4th Cir. 1988)  
18 (applying "the more rigorous First Amendment standard to documents filed in  
19 connection with a summary judgment motion in a civil case" and ordering sealed  
20 documents unsealed, save those subject to a protective order); *NBC Subsidiary*  
21 *(KNBC-TV), Inc.*, 20 Cal. 4th at 1181-82 (concluding trial court's order excluding  
22 public and press from high profile civil trial violated First Amendment right of  
23 access to "ordinary civil trials and proceedings"); *In re Marriage of Burkle*, 135  
24 Cal. App. 4th 1045, 1052-53, 1060-62, 37 Cal. Rptr. 3d 805 (2006) (holding  
25 facially invalid statute requiring sealing of pleadings in divorce proceedings upon  
26 party request; under First Amendment strict scrutiny statute was not narrowly  
27  
28

1 tailored to serve overriding privacy interests in light of presumption of openness to  
2 civil court proceedings).

3  
4 **b. The Courtesies Extended To CNS By Some Courts Does  
5 Not Otherwise Establish An Historic Right To Same-  
6 Day Access.**

6 CNS alleges a “tradition” of “same-day access” to new unlimited civil  
7 complaints based on its experience with other court procedures. (Compl., ¶¶ 11-14  
8 & Ex. 1.) Closer scrutiny of CNS’s claims, however, shows that they establish no  
9 such right.

10 CNS identifies courts in only 23 of the 50 states where it is allegedly  
11 provided “same-day access” to new civil complaints. (*Id.*) Moreover, many of  
12 those courts employ e-filing systems that dramatically reduce the processing  
13 burdens on clerk office staff, which contrasts sharply with Ventura Superior Court.  
14 And within California, CNS alleges the courtesy of “same-day access” at only  
15 *seven* of approximately 532 court locations within California’s 58 counties. (*Id.* at  
16 23, 25, 27, 29-31.) This deficient sampling does not constitute a “tradition” of  
17 anything, much less warrant imposition of a *right* to “same-day access.”

18 **3. “Logic” Does Not Recognize A Right To Same-Day Access,  
19 Either.**

20 The “logic” prong of the Supreme Court’s two-part test inquires whether  
21 public access plays a significant positive role in the functioning of the particular  
22 process in question. *Press-Enterprise II*, 478 US at 8. CNS suggests that local  
23 court considerations—including budgets constraints, court caseloads, personnel  
24 capacities, and priorities of other court business—must bow to the  
25 “newsworthiness” of newly filed unlimited civil complaints in the short window  
26 between when they are received by the court for processing and then filed. (*See*  
27 *Compl.*, ¶ 10.) But the lack of contemporaneous news reporting does not *itself*  
28 diminish the significance of the news reports, even in the criminal context:

1 We recognize the worth of timely news reported on the front page  
2 and, by contrast, the diminished value of noteworthy, but untimely,  
3 news reported on an inside page. Implicit in that assessment,  
4 however, is the fair assumption that significant news will receive the  
5 amount of publicity it warrants. The value served by the first  
6 amendment right of access is in its guarantee of a public watch to  
guard against arbitrary, overreaching, or even corrupt action by  
participants in judicial proceedings. Any serious indication of such an  
impropriety, would, we believe, receive significant exposure in the  
media, *even when such news is not reported contemporaneously with  
the suspect event.*

7 *United States v. Edwards*, 823 F.2d 111, 119 (5th Cir. 1987) (emphasis added).

8 Thus, even where the Supreme Court historically has been the most protective,  
9 there has been no recognized right of “*same-day access*” to such records.

10 The public’s interest in being on “watch” at the case-initiation stage of a civil  
11 case is far less pronounced, if it exists at all, than in pending criminal proceedings  
12 where it has been held there is no right to contemporaneous access to judicial  
13 records. *See id.* at 118 (concluding that “the first amendment guarantees a limited  
14 right of access to the record of closed proceedings concerning potential jury  
15 misconduct and raises a presumption that the transcript of such proceedings will be  
16 released within a *reasonable time*”) (emphasis added).

17 Moreover, courts have long recognized that alleged delays in case  
18 adjudication—not unlike delays in judicial administration generally—are an “old  
19 story and a traditional source of exasperation to litigants.” *Lucien v. Johnson*, 61  
20 F.3d 573, 574 (7th Cir. 1995) (noting that “when the relief sought is an order to the  
21 delaying agency to hurry up, the seeker’s prospects are, as a practical matter, very  
22 close to nil”). Nevertheless, outside the criminal arena (which constitutionally  
23 mandates the right to a speedy trial), it is “exceedingly difficult to obtain a remedy  
24 against delay by an adjudicative body” because “[h]arm from delay is difficult to  
25 prove, and judges are reluctant to order other judges (or their administrative  
26 counterparts) to hurry up.” *Id.*; *see, e.g., Cleveland Bd. of Educ. v. Loudermill*, 470  
27 U.S. 532, 547, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985); *Los Angeles Cnty. Bar*  
28 *Ass’n*, 979 F.2d at 706-07 (“Given the risks to the quality of judicial decision-

Memo Supporting Motion to Dismiss and  
Abstain Case No. CV 11-08083 R (MANx)

1 making implicit in hasty or forced action, we are unwilling to suggest that the  
2 Constitution may dictate or even countenance a time limit on the consideration a  
3 judge may give to a civil case.”).

4 Here, there is no harm from the reasonable access CNS already receives at  
5 Ventura Superior Court. CNS has failed to identify a single subscriber that has  
6 lamented CNS’s purportedly delayed reporting. CNS has failed to identify one  
7 instance where any alleged delay in processing a new complaint meant that CNS  
8 lost out on an opportunity to timely report on an event. In fact, exactly the opposite  
9 is true. CNS touts itself as such a trusted source for timely reporting on key  
10 litigation events that numerous other news sources use CNS’s reporting as a jump-  
11 off for their own reporting, which often occurs many days after CNS’s reporting.  
12 (See Compl., ¶ 17.) Thus, there is no “logic”-based reason why a same-day right of  
13 access should be recognized, much less compelled, here. The first claim for relief  
14 should be dismissed accordingly.

15 **B. The Second Claim For Relief Should Be Dismissed Because**  
16 **Federal Common Law Does Not Guarantee Same-Day Access.**

17 Although there exists a general common law right to inspect and access  
18 judicial records, that right is likewise qualified and affords even less substantive  
19 protection to the interests of the press and public than does the First Amendment.  
20 *Nixon v. Warner Communications, Inc.*, 435 U.S. at 598; *Rushford*, 846 F.2d at 253.

21 Moreover, CNS’s reliance on this general common-law right of access is  
22 insufficient to state a claim under 42 U.S.C. § 1983 because, despite CNS’s  
23 suggestion to the contrary, Ventura Superior Court does not have a “blanket rule”  
24 preventing CNS from accessing and inspecting all civil unlimited jurisdiction  
25 complaints. (Compl., ¶ 38.) Indeed, that very notion is belied by CNS’s allegations  
26 elsewhere that detail (albeit with questionable accuracy) the number of complaints  
27 to which they have “same-day access.” (*Id.*, ¶ 29.)  
28



1 As with its First Amendment claim, though, CNS fails to identify any  
2 authority that would support a common-law right of access claim for failure to  
3 provide “same-day access” to civil complaints. The second claim for relief should  
4 be dismissed accordingly.

5  
6 **III. THE ELEVENTH AMENDMENT BARS CNS’S THIRD CLAIM FOR RELIEF FOR VIOLATION OF RULE OF COURT 2.550.**

7 The Eleventh Amendment to the United States Constitution operates as a  
8 jurisdictional limit on the Court’s power, and bars suits that seek either damages or  
9 injunctive relief against a State, an arm of the State, as well as the instrumentalities  
10 and agencies of a State. U.S. Const., Amend XI; *Durning v. Citibank, N.A.*, 950  
11 F.2d 1422, 1422-23 (9th Cir. 1991); *Cal. Mother Infant Program v. Cal. Dep’t of*  
12 *Corrs.*, 41 F. Supp. 2d 1123, 1125 (S.D. Cal. 1999).

13 Lawsuits against state officials in their official capacity are nothing more  
14 than attempts to sue the State, and thus also are barred. *Kentucky v. Graham*, 473  
15 U.S. 159, 164-66, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); *Will v. Michigan Dep’t*  
16 *of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1988) (holding  
17 that “‘arms of the State’ for Eleventh Amendment purposes” are not liable under §  
18 1983); *Cent. Reserve Life of N. Am. Ins. Co. v. Struve*, 852 F.2d 1158, 1160 (9th  
19 Cir. 1988) (affirming district court’s conclusion that Eleventh Amendment  
20 precluded prosecution of state claims against a state official). Settled law holds that  
21 state courts are arms of the state for Eleventh Amendment purposes. *Greater L.A.*  
22 *Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987). And the  
23 Ninth Circuit has specifically held that lawsuits against court employees in their  
24 representative capacities are subject to the Eleventh Amendment: “Plaintiff cannot  
25 state a claim against the Sacramento County Superior Court (or its employees),  
26 because such suits are barred by the Eleventh Amendment.” *Simmons v.*  
27 *Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003); *see also*  
28

1 Cal. Gov't Code § 811.9 (“[C]ourt executive officers of the superior courts are state  
2 officers . . .”).

3 Here, CNS alleges a claim for violation of California Rule of Court 2.550  
4 against Mr. Planet, sued in his official capacity as Executive Officer and Clerk of  
5 the Superior Court of California, County of Ventura. That claim is barred by the  
6 Eleventh Amendment. *Pennhurst State School & Hosp. v. Helderman*, 465 U.S.  
7 89, 106, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984) (“[I]t is difficult to think of a  
8 greater intrusion on state sovereignty than when a federal court instructs state  
9 officials on how to conform their conduct to state law. Such a result conflicts  
10 directly with the principles of federalism that underlie the Eleventh Amendment.”).  
11 CNS’s third claim for relief should be dismissed accordingly.

12 **CONCLUSION**

13 For all these reasons, Ventura Superior Court’s motion to abstain and dismiss  
14 should be granted, and this action should be dismissed in its entirety.

15 Dated: October 20, 2011

Respectfully submitted,

16 JONES DAY

17  
18 By: /s/ Robert A. Naeve  
19 Robert A. Naeve

20 Attorneys for Defendant  
21 MICHAEL PLANET, IN HIS OFFICIAL  
22 CAPACITY AS COURT EXECUTIVE  
23 OFFICER/CLERK OF THE VENTURA  
24 COUNTY SUPERIOR COURT

LAI-3151850

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13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 **CV11-08083R-MAN**

17 Courthouse News Service,

CASE NO. \_\_\_\_\_

18 Plaintiff,

**DECLARATION OF CHRISTOPHER  
MARSHALL IN SUPPORT OF  
MOTION OF COURTHOUSE NEWS  
SERVICE FOR PRELIMINARY  
INJUNCTION**

19 v.

20 Michael Planet, in his official capacity as  
21 Court Executive Officer/Clerk of the  
22 Ventura County Superior Court.

Date: Nov. 7, 2011  
Time: 10:00 am  
Courtroom: \_\_\_\_\_  
Judge: \_\_\_\_\_

23 Defendant.

24 I, Christopher Marshall, declare and state as follows:

25 1. I serve as Northern California Bureau Chief for Courthouse News  
26 Service ("Courthouse News"), the plaintiff in the above-captioned action. I have  
27 personal knowledge of the following facts and could testify to them if called as a  
28 witness.

DECLARATION OF CHRISTOPHER MARSHALL  
#68199 v1 sst

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11 SEP 29 AM 11:57

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1           2.     I began working for Courthouse News, a nationwide legal news service,  
2 in August 2006. I started out as the Silicon Valley Reporter, reporting on new civil  
3 filings at the Santa Clara County Superior Court, and then became the San Francisco  
4 Federal Reporter, reporting on new filings at the United States District Court for the  
5 Northern District of California. In June 2007, I was promoted to my current position  
6 as bureau chief, which encompasses both administrative and editorial duties.  
7 Although my official title is Northern California Bureau Chief, it is somewhat a  
8 misnomer, in that the reporters I supervise are not exclusively located in Northern  
9 California, but are also located in Southern California and Nevada. In all, I supervise  
10 fourteen reporters and five researchers who are assigned to provide coverage of new  
11 civil complaints filed in state and federal courts in California and Nevada, including  
12 California superior courts for the counties of Alameda, Contra Costa, Kern, Marin,  
13 Monterey, Napa, Sacramento, San Benito, San Francisco, San Joaquin, San Luis  
14 Obispo, San Mateo, Santa Barbara, Santa Clara, Sonoma, Stanislaus and Ventura; the  
15 Eighth Judicial District Court in Las Vegas; and United States District Courts for the  
16 Northern District of California, the Eastern District of California, and the District of  
17 Nevada. In addition, I continue to serve as the San Francisco Federal Reporter for  
18 Courthouse News. As such, I make daily visits to the U.S. District courthouse in San  
19 Francisco to report on new civil complaints filed in that court.

20           3.     In the course of my duties as Northern California Bureau Chief, I am in  
21 frequent contact with the reporters that I supervise regarding their reporting activities  
22 at the courts that they cover. From time to time, I visit state and federal courts that are  
23 under my supervision in order to stay current with access and other procedures that are  
24 in place in these courts, and frequently engage clerk's office officials at the various  
25 courts in discussions regarding news coverage of new civil complaints filed at those  
26 courts. As such, I have developed personal knowledge of the procedures at state and  
27 federal courts in California for providing news reporters with access to case-initiating  
28 documents in civil cases. In both state and federal courts, it is both traditional and

1 common to provide reporters who visit every day with access to the civil complaints  
2 filed earlier that same day. Courthouse News frequently refers to this traditional and  
3 timely access as "same-day access." This access has traditionally and continues to be  
4 provided regardless of whether the day's new complaints have been fully processed at  
5 the time of the reporter's visit to the court.

6 4. For example, at the San Francisco Division of the U.S. District Court for  
7 the Northern District of California, the court that I personally cover on a daily basis,  
8 reporters go behind the counter and review new complaints filed earlier that day,  
9 regardless of whether the complaints have been fully processed or posted on PACER.  
10 (In the Northern District, complaints are not e-filed, but rather are filed in paper form.)  
11 They also have access to the "transfer boxes" of new actions being sent to different  
12 divisions of the court, and are provided with a copy of the intake log that lists newly  
13 filed complaints. At the San Jose Division of the U.S. District Court for the Northern  
14 District of California, which is one of the courts under my supervision, reporters go  
15 behind the counter to review a list of all new civil complaints filed earlier that day,  
16 and then obtain complaints directly from individual clerks' desks. Reporters can then  
17 review and scan any newsworthy complaints before returning them to the clerks'  
18 desks.

19 5. At the California superior courts for the counties of San Francisco and  
20 Santa Clara, both of which I also supervise for Courthouse News, new complaints are  
21 placed in a media box, available to news reporters for viewing before they have been  
22 fully processed. At the San Francisco County Superior Court, the reporter provides  
23 identification and then is allowed to go behind the counter in the clerk's office to  
24 conduct this review. At the Santa Clara County Superior Court, the reporter conducts  
25 her review on the public side of the counter, but the procedures are essentially the  
26 same: new unlimited civil jurisdiction complaints are made available for review upon  
27  
28

1 receipt of the filing fee, the assignment of a case number, and the assignment of a first  
2 status conference date, even though processing of the complaint is far from over at  
3 this juncture. Same-day access to newly filed complaints is also provided at the  
4 California superior courts for the County of Alameda (at the Rene C. Davidson  
5 Courthouse) and the County of Contra Costa, both of which are also under my  
6 supervision in my work for Courthouse News. Those courts provide access after a  
7 certain amount of additional processing has been completed but they still provide the  
8 traditional same-day access. In all of these courts, complaints are filed in traditional  
9 paper form.

10 6. The Eighth Judicial District Court in Las Vegas, Nevada, another of the  
11 courts that I supervise as a regional bureau chief for Courthouse News, also provides  
12 Courthouse News' reporter with same-day access to newly filed civil complaints.  
13 Indeed, Courthouse News' experience with that court shows that providing the news  
14 media with same-day access to new complaints is possible both in the traditional  
15 paper and e-filing environments. Prior to that court's transition to mandatory e-filing  
16 in February 2010, court officials provided Courthouse News' reporter with paper  
17 complaints filed earlier that day, regardless of whether they had been fully processed.  
18 Following the switch to mandatory e-filing, which included e-filing of complaints, the  
19 court began requiring news reporters to review new complaints at a computer terminal  
20 in the clerk's office, but this system resulted in complaints not being available for  
21 viewing until the day *after* they were filed. The reason for these delays was that new  
22 complaints did not appear on the computer terminals until after they had been  
23 "accepted" by the clerk's office, and only after the terminals had been updated to  
24 reflect the new filings. After Courthouse News brought these delays to the attention  
25 of the court, the court adopted a new system: an electronic in-box (or, more precisely,  
26 a feature called "Daily Documents") through which reporters essentially see exactly  
27 what staffers in the clerk's office see as new complaints flow in throughout the day.  
28 Complaints can be viewed on a computer terminal as soon as they cross the electronic

1 equivalent of the intake counter at the clerk's office, even if court staff has not yet had  
2 a chance to review the complaint, process it, and/or manually upload it for electronic  
3 viewing. Thus, in both the traditional paper and new e-filing environments, the  
4 Eighth Judicial District Court has provided Courthouse News' reporter with same-day  
5 access to new civil complaints whether or not those complaints have been fully  
6 processed.

7         7. The Courthouse News reporter assigned to cover the Ventura County  
8 Superior Court is Julianna Krolak. It is my understanding that she has been covering  
9 the court since 2001, although I did not begin supervising her work at the court until  
10 April 2007, when I began training for the position of bureau chief, which I took over  
11 in full in June 2007. At the time, Ms. Krolak was visiting the court once each week.  
12 In the Ventura County Superior Court, as with all other California superior courts, it is  
13 Courthouse News' practice to only review the new "unlimited" jurisdiction civil  
14 complaints (in general, those complaints where the amount in controversy exceeds  
15 \$25,000). Ms. Krolak does not review limited jurisdiction complaints – *i.e.*, the  
16 claims that were filed with the former municipal courts and where the amount in  
17 controversy cannot exceed \$25,000. Ms. Krolak also does not review other case  
18 types, such as criminal or small claims cases.

19         8. Up until early 2008, on each of her weekly visits to the Ventura County  
20 Superior Court, it is my understanding that Ms. Krolak was able to review the large  
21 majority of the new unlimited civil jurisdiction complaints that had been filed since  
22 her last visit. I reached this understanding based on my conversations with Ms.  
23 Krolak and by examining her weekly reports, which include the filing date for each  
24 complaint. Based on my discussions with Ms. Krolak, it is my understanding that the  
25 procedure she used to review new unlimited civil complaints was as follows: since  
26 new unlimited civil complaints were numbered sequentially, court staff simply  
27  
28

1 provided her with all cases falling within a specified number range. Even though  
2 there often were a large number of complaints, it is my understanding that because the  
3 complaints were consecutively numbered and grouped together, they were easily  
4 retrieved from the shelves. Ms. Krolak could then review each individual complaint  
5 and, based on the case type and cause of action, determine whether the complaint  
6 warranted news coverage. Ms. Krolak also reviewed complaints located in the court's  
7 designated "media bin," which contained complaints the court considered to be of  
8 likely press interest.

9 9. Beginning in early 2008, however, the clerk's office made a series of  
10 small and large changes that made Ms. Krolak's review of new civil complaints less  
11 timely and more difficult. First, Ms. Krolak informed me that the court had limited  
12 the number of files that she could review per visit to 200, even though the cases she  
13 was requesting were sequentially numbered and grouped together and could be  
14 retrieved from a single location. In many instances, she was not provided with all of  
15 the sequentially numbered complaints that she had requested, which meant she had to  
16 stand in a new line to request the missing cases. She also was not permitted to review  
17 both cases that she had requested and cases that were located in the media bin at the  
18 same time, which again made it necessary to stand in another line to obtain the media  
19 bin cases. Ms. Krolak informed me that the lines were often long, and therefore  
20 requiring her to stand in multiple lines to review all of the complaints that had been  
21 filed since her previous visit made it significantly more difficult for her to conduct her  
22 news reporting. I attempted at various times to resolve these issues with Linda  
23 Daniels, a supervisor in the clerk's office, as well as Records Manager Peggy Yost.  
24 Unfortunately, these efforts proved unsuccessful, and Ms. Krolak told me that she  
25 continued to have difficulty with respect to her news reporting activities.

26 10. Then, in March 2009, Ms. Krolak informed me that the court had  
27 instituted a new rule limiting reporters to viewing only twenty-five complaints per  
28 day. As Ms. Krolak explained to me, because of these limitations, she determined that



1 rather than simply reviewing a stack of sequentially numbered files as she had done in  
2 the past, she would need to request specific complaints individually by filling out a  
3 separate request form for each complaint she wished to see in order to report on the  
4 most newsworthy new filings. Ms. Krolak further explained to me that since there  
5 were often more than fifty potentially newsworthy civil unlimited cases filed in any  
6 given week, this meant she could no longer monitor all of the newsworthy new  
7 complaints by simply visiting the court once a week, as she had done in the past. In  
8 addition, Ms. Krolak was only allowed to request five complaints at a time, and not all  
9 of the cases she requested were made available to her for review. Even if none of the  
10 five cases she requested was provided to her, she was required to wait in line again –  
11 usually for thirty minutes and sometimes for an hour or more – to request her next  
12 batch of five cases. Each case she requested counted toward her twenty-five-file limit,  
13 even if it was not made available for review. These procedures resulted in significant  
14 delays in access to newly filed complaints.

15 11. By letter dated April 29, 2009, Courthouse News' counsel wrote to Court  
16 Executive Officer Michael Planet to bring these concerns to his attention, outline  
17 some possible solutions and suggest an in-person meeting to discuss the matter  
18 further. A true and correct copy of this letter is attached as Exhibit 1. It is my  
19 understanding that after this letter was sent, Mr. Planet and Cheryl Kanatzar, the  
20 Deputy Executive Officer, had a telephone conversation with Courthouse News'  
21 counsel in which they discussed the matter further.

22 12. By letter dated May 13, 2009, the court sent a written response to our  
23 counsel's letter. In that letter, Ms. Kanatzar explained that the court had implemented  
24 a new electronic case management system (which I now understand to be the  
25 California Case Management System, often referred to as "CCMS"), and that it had  
26 since changed the numbering system of the court's files. Instead of each case type  
27 having a separate sequentially numbered system, a single sequential numbering  
28 system now covered many case types, including limited civil, unlimited civil, small

1 claims, mental health, and probate. Thus, Ms. Kanatzar wrote, it would no longer be  
2 possible for the court to simply provide reporters with a block of sequentially  
3 numbered cases without first verifying the case types. However, Ms. Kanatzar  
4 suggested that certain other changes might be possible that would facilitate Ms.  
5 Krolak's review of unlimited civil filings. A true and correct copy of Ms. Kanatzar's  
6 May 13, 2009, letter is attached as Exhibit 2.

7 13. On June 9, 2009, I participated in an in-person meeting at the Ventura  
8 County Courthouse together with Ms. Kanatzar, Ms. Yost and Ms. Daniels to further  
9 discuss potential solutions to the access problems Ms. Krolak had been experiencing.  
10 That meeting led to a solution ultimately devised by the clerk's office that, as I  
11 understood it, involved placing newly filed civil unlimited jurisdiction complaints  
12 directly into the media bin for review after only minimal processing. Ms. Krolak  
13 would be permitted to access all of the complaints contained in the media bin, as well  
14 as up to twenty-five additional complaints, per visit, from the shelves. Of the  
15 additional twenty-five complaints that Ms. Krolak would be permitted to request,  
16 however, she was still only allowed to request five complaints at a time. Around this  
17 same time, Ms. Krolak began visiting the clerk's office twice each week, instead of  
18 only once a week as she had previously been doing.

19 14. Initially, these procedures, in combination with her twice-weekly visits,  
20 worked reasonably well to provide Ms. Krolak with timely and complete access to the  
21 court's new unlimited civil complaints. A true and correct copy of an unsigned thank-  
22 you letter to Ms. Kanatzar, which my records indicate was the final version of this  
23 letter, and which I subsequently signed and sent to Ms. Kanatzar on or about July 23,  
24 2009, is attached as Exhibit 3.

25 15. Unfortunately, this access quickly deteriorated. Based on my discussions  
26 with Ms. Krolak, my conclusion was that staffers in the clerk's office were waiting  
27 until newly filed complaints were fully processed before placing them in the media  
28 bin, contrary to my understanding that new complaints would be placed in the bin

1 after just minimal initial processing. The deterioration of the media bin procedure  
2 also led to a backlog of newly filed unlimited civil jurisdiction complaints that Ms.  
3 Krolak needed to review, and she therefore had to request numerous individual  
4 complaints as part of her daily reporting activities. On many of her visits, she found  
5 that she had to request up to twenty-five complaints (her limit for cases that were not  
6 contained in the media bin) in order to see the entire flow of newly filed unlimited  
7 civil jurisdiction complaints, standing in a new and lengthy line for each group of five  
8 complaints she wished to review. Even with respect to those twenty-five additional  
9 complaints she requested, many were not available. Delays in access ranged for the  
10 most part from one to three calendar days, but were sometimes significantly longer.

11 16. In an effort to improve the quality of the Central Coast Report through  
12 more timely reporting on new civil unlimited jurisdiction complaints filed in the  
13 Ventura County Superior Court, in November 2010, at my instruction, Ms. Krolak  
14 began covering the court on a daily basis. Given that Courthouse News had switched  
15 to daily coverage, and in light of the delays in access, I contacted the clerk's office  
16 about the possibility of adjusting its procedures so that Ms. Krolak could have same-  
17 day access to newly filed unlimited jurisdiction civil complaints, as news reporters do  
18 in other courts they visit on a daily basis. A true and correct copy of an unsigned  
19 letter to Ms. Kanatzar in which I made this request, and which my records indicate  
20 was the final version of this letter, which I subsequently signed and sent to Ms.  
21 Kanatzar on or about February 7, 2011, is attached as Exhibit 4.

22 17. It is my understanding from Ms. Krolak that approximately fifteen new  
23 unlimited complaints are filed with the court each day, so my request that Courthouse  
24 News be given access to all of the new unlimited complaints filed on a particular day  
25 did not seem to me to be unreasonable. I spoke by telephone with Ms. Kanatzar in  
26 early March 2011 to discuss options. While Ms. Kanatzar indicated a desire to  
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1 improve on the delays, she also stated that the clerk's office would not provide same-  
2 day access to newly filed unlimited jurisdiction civil complaints. At best, she said, the  
3 court would attempt to provide next-day access. Subsequently, Ms. Kanatzar left me a  
4 voice mail message advising me that beginning on March 14, 2011, the clerks would  
5 reprioritize how cases are processed, and Courthouse News should begin seeing  
6 complaints within two days of filing.

7 18. Working with Ms. Krolak, for the next three months, I monitored the  
8 availability of new unlimited civil complaints to determine what effect, if any, the new  
9 procedures would have in terms of delays in access. Unfortunately, things went from  
10 bad to worse, with same-day access to new complaints a rare occurrence and delays in  
11 access ranging from between one day and several weeks after filing.

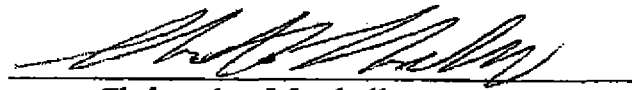
12 19. Having gotten nowhere in my attempts to resolve these delays in access  
13 on my own, Courthouse News' counsel wrote to Mr. Planet on June 20, 2011, once  
14 again requesting that Courthouse News' reporter be given timely access to new  
15 unlimited civil filings and suggesting possible ways in which this could be  
16 accomplished. A true and correct copy of that letter is attached as Exhibit 5.

17 A true and correct copy of Mr. Planet's July 11, 2011, response is attached as Exhibit  
18 6. In that letter, Mr. Planet, citing the court's budget difficulties, stated, "While I  
19 appreciate the Courthouse News Service's interest in same-day access, the Court  
20 cannot prioritize that access above other priorities and mandates. Further, the Court  
21 must ensure the integrity of all filings, including new filings, and cannot make any  
22 filings available until the requisite processing is completed."

23 20. By letter dated August 2, 2011, Courthouse News' counsel respectfully  
24 registered its disagreement with Mr. Planet's assertion that public access to new  
25 complaints could not be provided until after the complaints had been processed and  
26 that delaying public access to new unlimited civil complaints was thus necessitated by  
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1 budget difficulties that were delaying processing. A true and correct copy of that  
2 letter is attached as Exhibit 7. It is my understanding that neither Courthouse News  
3 nor its counsel has received any response to its August 2 letter. In the meantime, the  
4 delays in access are continuing.

5 I declare under penalty of perjury under the laws of the United States that the  
6 foregoing is true and correct. Executed at San Francisco, California on this 28th day  
7 of September 2011.

8 

9 Christopher Marshall  
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**EXHIBIT 1**



**Holme Roberts & Owen LLP**  
*Attorneys at Law*

SAN FRANCISCO

April 29, 2009

BOULDER

Michael D. Planet  
Court Executive Officer  
Superior Court of California  
County of Ventura  
Hall of Justice  
800 South Victoria Avenue  
Ventura, California 93009

COLORADO SPRINGS

Re: Media Access to New Civil Filings

Dear Mr. Planet:

DENVER

We represent Courthouse News Service, a nationwide news service for lawyers and the news media. You may recall Courthouse News' Northern California Bureau Chief Christopher Marshall writing to you in June 2007 about certain difficulties Courthouse News' reporter was then having in accessing new civil filings at the Court. Following that letter, the problems were quickly resolved. Unfortunately, the ability of the news media to access new court filings has deteriorated since that time, and Courthouse News is once again asking for your help in resolving the situation.

LONDON

**About Courthouse News Service**

LOS ANGELES

To refresh your recollection, Courthouse News is similar to other news wire services, such as the Associated Press, except that Courthouse News focuses on a narrower subject area: civil lawsuits, from the date of filing through the appellate level. Courthouse News' subscribers include nearly 2,500 law firms throughout the country, including most of California's major firms. In addition, subscribers include other media organizations such as the *Los Angeles Times*, *The Dallas Morning News*, *The Boston Globe*, the Associated Press, and Fox News, all of whom rely on Courthouse News to provide them with timely information about new civil court filings. Courthouse News' web site, [www.courthousenews.com](http://www.courthousenews.com), also features news reports about civil cases and appeals. Courthouse News does not report on criminal, family law, or other non-civil actions, and in California, it reviews only unlimited jurisdiction civil complaints.

MUNICH

PHOENIX

SALT LAKE CITY

Courthouse News' core news publications are its new litigation reports, which are emailed to subscribers and contain a summary of all significant new unlimited civil complaints filed in a particular jurisdiction. For example, Courthouse News' Central

Rachel Matteo-Boehm 415.268.1996 [rachel.matteo-boehm@hro.com](mailto:rachel.matteo-boehm@hro.com)  
560 Mission Street, 25th Floor San Francisco, California 94105-2694 tel 415.268.2000 fax 415.268.1999

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Exhibit 1  
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**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael D. Planet  
April 29, 2009  
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Coast Report provides coverage of new complaints filed in the superior courts for Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara and Ventura counties.

**Access To Civil Records At Ventura County Superior Court**

Courthouse News reporter Julianna Krolak has covered the Ventura County Superior Court since 2003, and currently visits twice each week to review new unlimited jurisdiction complaints. Up until early 2008, Ms. Krolak was able to review all of the new unlimited jurisdiction complaints filed since her prior visit, typically waiting only five to ten minutes to request and receive records. As cases are numbered sequentially, court staff would simply provide Ms. Krolak with all cases falling within a specified number range. Ms. Krolak also reviewed the Court's designated "media bin," which contains cases the Court considers of likely press interest. These procedures allowed Ms. Krolak to review all of the newsworthy unlimited jurisdiction complaints filed since her previous visit without imposing any apparent burden on court staff.

Beginning last year, however, media access began to deteriorate. In early 2008, Ms. Krolak was informed that she would only be allowed to review up to 200 consecutively numbered cases on each of her visits. Ms. Krolak was not advised of the reason for the new limitation, and it is not clear to Courthouse News why such a limitation would be imposed, since it has been Courthouse News' experience that requests for consecutively-numbered cases are relatively easy to fulfill.<sup>1</sup> In addition, in many instances Ms. Krolak was not provided with many of the cases within the number range she had requested, requiring her to stand in line again to receive the missing cases. To make matters more difficult, Ms. Krolak was often told she would not be provided with both the cases she had requested and the media bin cases at the same time, requiring her to stand in line yet again to obtain the media bin cases. Because the lines can often be long, these procedures made it significantly more burdensome for Ms. Krolak to conduct her news

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<sup>1</sup> A number of other California courts, including Superior Courts in Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Joaquin, Sonoma, and Tulare Counties, provide media access in this manner. The consecutive numbering means that the clerks in these courts can easily gather even a large number of files quickly and place them on a cart for the reporter, and need not spend time locating particular cases. The reporter then reviews the cases and returns them to the clerks when his or her review has been completed.



**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael D. Planet  
April 29, 2009  
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reporting activities. Courthouse News attempted at various times to work out these issues with Linda Daniels, a supervisor in the clerk's office, as well as Records Manager Peggy Yost. Unfortunately, these efforts have proved unsuccessful.

The situation became much worse several months ago, when the court instituted a new rule limiting members of the media to only 25 files each day. Rather than reviewing a stack of sequentially-numbered files, Ms. Krolak must now request new complaints individually by filling out a separate request slip for each complaint she wishes to see. Since there are often more than 50 potentially newsworthy civil unlimited cases filed in any given week, the 25-file limit frequently prevents Ms. Krolak from reviewing and reporting on all of the week's newsworthy filings.

In addition to the overall file limit, Ms. Krolak may request only 5 cases at a time. Even if none of the 5 cases is available, Ms. Krolak must wait in line – usually for at least 30 minutes and sometimes for an hour or more – to ask for another 5 cases. Each requested case counts toward Ms. Krolak's 25-file limit, even if it is not available. In addition, court staff sometimes count every case in the media bin towards Ms. Krolak's 25-case quota, even if all of the media bin cases turn out to be older cases that she has already reviewed on previous visits.

**Right Of Access To Civil Court Records**

At most California courts, and in state and federal trial courts across the nation, news reporters who regularly visit the court are provided with the opportunity to review all of the new complaints filed since that reporter's last visit. In California, courts have adopted a variety of procedures that achieve this result. As noted above, some courts simply provide news reporters with a stack of sequentially numbered cases filed since their last visit. Others ask that reporters request individual cases based on docket information provided on a list or via a computer terminal, but either do not impose limits on the number of cases that may be viewed, or impose limits that are set high enough so as to not prevent news reporters from reviewing all of the potentially newsworthy new complaints filed since their last visit. Still others make all new filings – and not just selected filings – available for media review in a designated press box. In addition, these court have developed procedures that eliminate the need for members of the news media

**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael D. Planet  
April 29, 2009  
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who review new filings from having to stand in line several times as part of a single visit to the court.

The media access procedures imposed in Ventura County are not only significantly more restrictive than access policies at other California courts, but are also inconsistent with California's strong presumption of public access to civil court documents. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4<sup>th</sup> 1178, 1208 n.25 (1999) (recognizing First Amendment right of access to civil court records); *accord, e.g., Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4<sup>th</sup> 588, 596 (2007); *Burkle v. Burkle*, 135 Cal. App. 4<sup>th</sup> 1045, 1062 (2006); Cal. Rule Ct. 2.550(b) & (c) (once a record has been filed or lodged with a court, it is presumed to be open to public inspection).

In addition, the United States Supreme Court has recognized that the media function "as surrogates for the public," which today acquires information about court proceedings "chiefly through the print and electronic media." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). Thus, in the context of courtroom proceedings, although "media representatives enjoy the same rights of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard." *Id.* at 573. For the same reason, it is appropriate to provide news reporters who visit the court on a regular basis with special procedures for obtaining timely access to new complaints, even if those exact same procedures are not provided to researchers and/or the general public.

**Potential Solutions To Improve Access**

There are at least two possible solutions that would resolve the current media access problems at this Court:

**Option #1** – Courthouse News respectfully suggests that the simplest solution would be to reinstate the system of allowing members of the news media such as Ms. Krolak to review all of the consecutively numbered cases filed since their last visit. This would seem to be the easiest and least time-consuming option for the Court, as it would entail simply gathering all files within a certain case-number range and placing them on a cart rather than locating individual file numbers. Although the total number of requested

Holme Roberts & Owen LLP  
*Attorneys at Law*

Michael D. Planet  
April 29, 2009  
Page 5

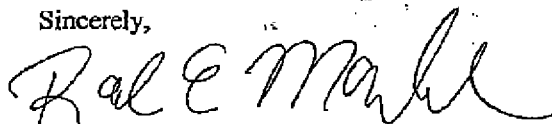
cases might be large, staff in other courts can generally gather even a relatively large number of cases in a given case number range within a matter of minutes.

**Option #2** – In the event the Court determined for whatever reason that it did not want to reinstate its prior procedures, the Court could instead simply eliminate the limit on the number of non-sequential cases that accredited members of the news media such as Ms. Krolak could request on each of their visits, or at least increase that limit. Ms. Krolak estimates that she would seldom need to see more than 50 files each visit, but to allow some breathing room, Courthouse News respectfully suggests that members of the news media such as Ms. Krolak be permitted to review up to 60 files per visit.

Whatever procedures the Court ultimately adopts, Courthouse News also respectfully requests that the procedures be revised so that members of the media such as Ms. Krolak can obtain access to all potentially newsworthy new filings, whether from the media bin or from the shelves, at the same time, without needing to stand in line multiple times during the same visit to the Court.

It has been CNS's experience that when the media and court officials work together in a cooperative and creative manner, solutions can almost always be found that give the media prompt and efficient access to court filings without imposing any significant burden on court staff. I will call you next week follow up on this matter, in the hopes that we can discuss whether one of the solutions outlined above could be adopted to resolve the current access problems. In the event you determine that neither of the above solutions would be workable, perhaps we could meet in person to discuss the matter further. Although I am based in San Francisco, I have family in Ventura (recently-retired City Attorney Bob Boehm is my father) and always welcome another opportunity to visit the area.

Sincerely,



Rachel Matteo-Boehm

Michael D. Planet  
April 29, 2009  
Page 6

cc: Hon. Kevin J. McGee, Presiding Judge, Superior Court of California, County of  
Ventura  
Cheryl Kanatzar, Deputy Executive Officer  
Bill Girdner, Editor, Courthouse News Service  
Christopher Marshall, Northern California Bureau Chief, Courthouse News Service  
Julianna Krolak, Reporter, Courthouse News Service

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Exhibit 1  
Page 17

**EXHIBIT 2**



*Superior Court of California*

COUNTY OF VENTURA  
Hall of Justice  
800 South Victoria Avenue  
Ventura, CA 93009

*Michael D. Planet*  
*Executive Officer/Clerk*  
*and Jury Commissioner*

May 13, 2009

Ms. Rachel Matteo-Boehm  
Holme Roberts & Owen, LLP  
560 Mission St., 25<sup>th</sup> Floor  
San Francisco, CA 94105-2994

Dear Ms. Matteo-Boehm,

This is in response to your letter dated April 29, 2009 regarding access to new unlimited civil case files by Ms. Jullanna Krolak, representative of Courthouse News Service. After looking into the matter, I believe there are several contributing factors which are creating our current situation.

In 2007 the Court implemented a new case management system, which changed the numbering system of our case files. Instead of each case type having a sequential numbering system, the sequential numbers now cover many different case types including limited civil, unlimited civil, small claims, mental health, and probate. It is no longer possible for us to easily pull a block of sequentially numbered files without verifying the case types first.

The Records Department not only provides access and information to the public regarding court records, but is also responsible for pulling and preparing the calendars for twenty-eight courtrooms daily. It has become necessary for us to reallocate our resources in several areas of the department, and we simply don't have the manpower to pull an unlimited number of case files each day for all the requests we receive. As a result, we have had to limit the number of files we pull for all researchers.

Before making the change to our policy, we did research the number of files being pulled by several other Southern California courts. We found that 25 non-sequentially numbered cases per day is still generous in comparison to what some other courts pull.

Mailing Address: P.O. Box 6489, Ventura, California 93006-6489

Exhibit 2  
Page 18



*Superior Court of California*

COUNTY OF VENTURA  
Hall of Justice  
800 South Victoria Avenue  
Ventura, CA 93009

Ms. Krolak's main focus appears to be new unlimited civil filings. Those case files remain in the media bin in our Records Department for a minimum of one week before being placed on our shelves, and are available for her to view in addition to any other files she is requesting.

Neither Ms. Daniels nor Ms. Yost has personally spoken with Ms. Krolak about her concerns, but Ms. Yost did speak with Mr. Christopher Marshall. They were able to establish a procedure for Ms. Krolak, in which she would e-mail a list of the cases she was interested in reviewing to the supervisor, and they would be pulled and ready for her to view upon her arrival.

For reasons unknown this practice was discontinued, but we would gladly resume doing this for her. Our request would be that she e-mail the list at least one full day in advance of her visit, and send it to both of the Records supervisors. By doing this she could have the full limit of 25 files all at once, in addition to any of the new case files that are in the media bin.

Those addresses are:

[Linda.Daniels@ventura.courts.ca.gov](mailto:Linda.Daniels@ventura.courts.ca.gov); and  
[Leticia.Guereca@ventura.courts.ca.gov](mailto:Leticia.Guereca@ventura.courts.ca.gov).

Also, our lines tend to be longer in the afternoon, as that is when many attorney services, along with the general public, come in to conduct their business with the court. If possible, Ms. Krolak might consider arranging her schedule so that she is able to visit our Records Department earlier in the day to avoid the longer lines.

Please feel free to contact me directly if you have any further questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Kanatzer".

Cheryl Kanatzer  
Deputy Executive Officer  
(805) 654-2607

Mailing Address: P.O. Box 6489, Ventura, California 93006-6489

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**EXHIBIT 3**



## **Courthouse News Service**

July 23, 2009

Cheryl Kanatzar  
Deputy Executive Officer  
Superior Court of California  
County of Ventura  
Hall of Justice  
800 South Victoria Avenue  
Ventura, CA 93009

Re: Media Access to New Civil Filings

Dear Ms. Kanatzar:

On behalf of Julianna Krolak and all of us at Courthouse News Service, I would like to thank you and your professional and helpful staff for assisting us in ensuring new civil unlimited filings make it to the media bin for media review before being placed on the shelf.

If you ever have any questions for me, I am always available and we will not hesitate to contact you in the future if we have questions. Once again, thank you for your assistance.

Sincerely,

Chris Marshall  
Northern California Bureau Chief

Encl..  
bcc:

Bill Girdner  
Editor

Julianna Krolak  
Courthouse Reporter

Exhibit 3  
Page 20

**EXHIBIT 4**

**COURTHOUSE NEWS SERVICE**

30 N. Raymond Avenue, Suite 310, Pasadena CA 91103, (626) 577-6700, [home@courthousenews.com](mailto:home@courthousenews.com)

Chris Marshall  
Northern California Bureau Chief  
Courthouse News Service  
(415) 861-7361  
[sanfran@courthousenews.com](mailto:sanfran@courthousenews.com)

February 7, 2011

Cheryl Kanatzar  
Court Executive Officer  
Ventura County Superior Court  
800 South Victoria Avenue  
Ventura, California 93009

Dear Ms. Kanatzar:

I am writing for Courthouse News Service (CNS), on behalf of reporter Julianna Krolak, regarding media access to newly-filed civil complaints at the Ventura County Superior Court. Courthouse News Service appreciated your willingness to work with us to set up the media bin a few years ago and we trust we will be able to work together again in a cooperative manner to address our present concerns.

As you may recall, Courthouse News Service is a legal news service for lawyers and the news media. Founded in 1990, Courthouse News is similar to other news wire services, such as the Associated Press, except that it focuses on civil lawsuits, from the date of filing through the appellate level. Courthouse News does not report on criminal or family law matters. The majority of Courthouse News' nearly 2,500 subscribers nationwide are lawyers and law firms, including many prominent California firms. However, law schools and media outlets are increasingly looking to Courthouse News for information about newsworthy civil filings, and include such well-known California media outlets and law schools as the *San Jose Mercury News*, the *Los Angeles Times*, the *Los Angeles Business Journal*, UCLA Law Library, Stanford Law School, and Loyola Law School. Courthouse News' core news publications are its new litigation reports, which are e-mailed to subscribers daily and contain coverage of all significant newly-filed civil complaints filed in a particular jurisdiction. In addition, Courthouse News' website ([www.courthousenews.com](http://www.courthousenews.com)), which features news reports and commentary about civil cases and appeals, receives an average of 600,000 unique visitors each month.

Until a few months ago Ms. Krolak had been visiting the main division of the Ventura Superior Court on a twice-a-week basis to review new civil unlimited complaints (Courthouse News does not cover criminal or family actions, nor does it review limited civil actions). In recognition of the increasing importance of Ventura County as a source of newsworthy litigation, Ms. Krolak began visiting the Court on a daily basis in November, with each of her visits occurring near the end of each court day.

Exhibit 4  
Page 21

Given these now-daily visits, Courthouse News hoped that it would be able to review and report on new civil complaints at the end of the same day on which those complaints are filed. This same-day access is provided to news reporters who make daily visits to other major superior courts, including the California Superior Courts in Los Angeles, Riverside, San Francisco, and Santa Clara, as well as other major courts across the nation. A survey that further describes the same-day access that news reporters have in other courts is enclosed for your review.

Unfortunately, access to new civil complaints at the Ventura County Superior Court is nowhere near same-day. In a recent one-week survey of unlimited jurisdiction cases covered by Courthouse News, Ms. Krolak saw only one case on the day it was filed. Of the remaining cases, a majority was three days to one week old and a large minority was one to two weeks old.

For example, a case against Rubio's Restaurant alleging sexual harassment (56-2010-00387332) was not made available for media review until 13 days after it was filed; a complaint claiming The Bonaventure denied a worker's medical leave request (56-2010-00387945) was not available until 8 days after the filing date; another complaint charging Rite-Aid with refusing to accommodate a worker's medical restrictions (56-2010-00387942) was delayed by 9 days and finally a complaint where an investor allegedly took advantage of the elderly (56-2011-00389425) was not made available until 13 days after it was filed.

In an age where the average news cycle is less than 24-hours, these delays eliminate the newsworthy nature of new cases filed in this court.

In most courts that Courthouse News visits on a daily basis we have been able to work with staff to ensure that we have access to all newly-filed civil unlimited cases on the day they are filed.

I recently spoke with Leticia Tueraca, Records Division Supervisor, about achieving access to cases on the day they are filed. While Ms. Tueraca was helpful and willing to adjust procedures to assist our endeavor, she told me that ultimately it was not in her power to affect a switch to same-day access as almost every case does not make it to the Records Division until days after it is filed. Courthouse News thus requests your assistance in setting up procedures to ensure access to newly-filed complaints on the day they are filed for any media entity that assigns a reporter to cover the courthouse on a daily basis, regardless of whether all administrative tasks associated with those cases have been completed.

The current use of a media bin could be incorporated into these procedures. One possible solution would be for the media bin to be placed in the Civil Division where the intake counters are located, which Ms. Krolak could access near the end of the day. Such a system would allow Ms. Krolak access to cases soon after they are filed without requiring the court to speed up processing, which Courthouse News is not requesting. In fact it has been Courthouse News' experience that attempts to speed up processing rarely result in

Exhibit 4

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lasting results, due to staff sick days, vacations, breaks and other variations in work schedules. Courthouse News welcomes the opportunity to discuss procedures that will ensure access to unlimited civil cases on the day they are filed.

While I am not a lawyer, it is my understanding that the law provides for a right of timely access to new court filings, and that the law also recognizes it is appropriate to create special access procedures for the media so they can convey that information to other interested members of the legal, academic and business communities.

As shown in the enclosed survey, many other courts in California and around the nation have set up systems to allow members of the media to review newly-filed cases on the day they are filed, regardless of whether all of the administrative tasks associated with new complaint intake have been completed.

Courthouse News Service has worked cooperatively with courts across the country to ensure all members of the media are able to access civil complaints on the day they are filed. We are confident that by working together we can find a solution to ensure similar timely access at the Ventura County Superior Court. To this end, Ms. Krolak and I would gladly meet with you to discuss ways to secure that access at this court.

Sincerely,

Chris Marshall

Enclosure

cc: William Girdner, Editor, Courthouse News Service  
Rachel Matteo-Boehm, Esq., Holme Roberts & Owen LLP

**EXHIBIT 5**



**Holme Roberts & Owen LLP**  
*Attorneys at Law*

SAN FRANCISCO

June 20, 2011

BOULDER

Michael Planet  
Court Executive Officer  
Ventura County Superior Court  
800 South Victoria Ave.  
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

As you may recall, we represent Courthouse News Service, a nationwide news service for lawyers and the news media. Over the past two years, Courthouse News has written to and met with various officials at this Court regarding delays in access to newly filed civil unlimited complaints. Although your office has undertaken to decrease the amount of time between the filing of a complaint and its availability to members of the news media, news reporters are rarely permitted to see any new civil complaints on the same day they are filed. Rather, delays in access range anywhere from one day to several weeks.

DUBLIN

LONDON

It appears that the Court is not currently releasing newly filed complaints for press review until after a certain amount of processing has been completed. However, as explained below, the press's right of access to court records is not dependent on a court having completed processing. Indeed, the delays at this Court are effectively denials of access, and are contrary to the fundamentally public nature of adjudicative court records and the media's legitimate interest in timely access to those records.

LOS ANGELES

We therefore respectfully ask that you address these delays immediately by adopting simple procedures to ensure that members of the media have access to new complaints on the same day they are filed.

SALT LAKE CITY

**About Courthouse News Service**

Courthouse News Service is a 21-year-old, Pasadena-based legal news service for lawyers and the news media. It is similar to other news wire services, such as the Associated Press, except that it focuses on civil lawsuits, from the date of filing through the appellate level. Courthouse News does not report on criminal or family law matters, and in California it focuses only on unlimited jurisdiction civil cases.

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com  
560 Mission Street, 25th Floor, San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

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Exhibit 5  
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**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael Planet  
June 20, 2011  
Page 2

The majority of Courthouse News' nearly 3,000 subscribers nationwide are lawyers and law firms, including numerous prominent California firms. In addition, other news outlets are increasingly looking to Courthouse News to provide them with information about newsworthy new civil filings. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *Los Angeles Business Journal*, the *San Jose Mercury News*, and *Forbes*, all of which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' core news publications are its new litigation reports, which are e-mailed to subscribers daily and contain coverage of all significant new civil complaints. Its website, [www.courthousenews.com](http://www.courthousenews.com), also features news reports and commentary about civil cases and appeals, and receives an average of 850,000 unique visitors each month.

**Access to Court Records at Ventura County Superior Court**

Courthouse News' reporter Julianna Krolak has covered the Ventura County Superior Court since 2003. Until recently, Ms. Krolak visited the court twice each week to review new civil unlimited jurisdiction complaints. In recognition of the growing importance of this Court, starting in November 2010, Ms. Krolak began visiting the Court on a daily basis.

Up until early 2008, Ms. Krolak was able to review the vast majority of new complaints filed since her prior visit. This was achieved through a combination of a media bin procedure (which, at the time, contained complaints that the Court determined would be of interest to the press) as well as the clerk's office's practice of providing Ms. Krolak with all additional complaints falling within a specific number range, since cases are numbered sequentially. In general, these procedures allowed Ms. Krolak to review all of the newsworthy unlimited jurisdiction complaints filed since her previous visit without imposing any apparent burden on court staff.

Beginning in 2008, however, media access at the Court began to deteriorate on a number of fronts. Among other things, the clerk's office began limiting the number of files that members of the media could request to 25 each day, and only permitted reporters to request five at a time, which meant Ms. Krolak had to wait in line – usually for at least 30 minutes, and sometimes more than an hour – to ask for each batch of five cases. Each requested case counted toward her 25-file limit, even if the complaint was not made available for

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Exhibit 5  
Page 25



**Hohne Roberts & Owen LLP**  
*Attorneys at Law*

Michael Planet  
June 20, 2011  
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review, and Court staff sometimes counted every case in the media bin toward Ms. Krolak's 25-case quota. Since there were often more than 50 potentially newsworthy civil unlimited cases filed in any given week, the 25-file limit frequently prevented Ms. Krolak from reviewing and reporting on all of the week's newsworthy filings, thereby resulting in significant delays in access to newly filed civil complaints.

Courthouse News' Northern California Bureau Chief, Chris Marshall, attempted at various times to resolve these issues with Supervisor Linda Daniels, as well as Records Manager Peggy Yost, but these efforts proved unsuccessful. Thereafter, in April 2009, we wrote to you. We subsequently spoke on the phone, together with Deputy Court Executive Officer Cheryl Kanatzar, about potential solutions to the access problems. In June 2009, Ms. Kanatzar, as well as Ms. Yost and Ms. Daniels, met in person with Mr. Marshall to further discuss potential solutions. The solution ultimately devised by the Court involved placing newly filed civil unlimited jurisdiction complaints directly into the media bin for review only after minimal processing. Ms. Krolak would be permitted access to all of the complaints contained in the media bin, as well as up to 25 additional complaints, per visit, from the shelves. Of the additional 25 complaints that Ms. Krolak would be permitted to request, she could only access five complaints at a time.

While these procedures initially worked reasonably well to provide Ms. Krolak with timely access to newly filed complaints, access again quickly deteriorated, as it seemed that the clerks were waiting until newly filed complaints were fully processed before placing them in the media bin (contrary to the agreement that new complaints would be placed in the bin after just minimal processing). The deterioration of the media bin procedure led to a backlog of newly filed unlimited civil jurisdiction complaints that Ms. Krolak needed to review, and she therefore had to request numerous additional complaints as part of her daily reporting activities. On many of her visits, she found that she had to request up to 25 complaints (her limit for cases that were not contained in the media bin) in order to see the entire flow of newly filed unlimited civil jurisdiction complaints, standing in a new and lengthy line for each group of five complaints she wished to review. Even with respect to those 25 additional complaints she requested, many were not available, with delays in access ranging for the most part from one to three days, but sometimes significantly longer.

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As noted, late last year, Courthouse News began covering the Court on a daily basis. Given the ongoing delays and problems with the media bin procedure, Mr. Marshall contacted Ms. Kanatzar by letter in February 2011 in an attempt to come up with mutually agreeable procedures that would provide same-day access to all newly filed unlimited jurisdiction complaints, and Ms. Kanatzar spoke with Mr. Marshall by phone in early March 2011 to discuss options. While Ms. Kanatzar indicated a desire to improve on the delays, the message conveyed to Courthouse News was that the clerk's office would not provide same-day access to newly filed unlimited jurisdiction civil complaints. At best, the Court would attempt to provide next-day access. Mr. Marshall was disappointed to hear this, but agreed to wait and see what solution the Court came up with to resolve delays. Subsequently, Ms. Kanatzar left Mr. Marshall a voice mail message advising him that beginning on March 14, 2011, the clerks would reprioritize how cases are processed, and Courthouse News should begin seeing complaints within two days of filing.

Over the past three months, Courthouse News has monitored the availability of complaints to determine what effect, if any, the new procedures would have in terms of delays in access. Unfortunately, things have gone from bad to worse, with same-day access to new complaints a rare occurrence.<sup>1</sup> Rather, actual delays in access are anywhere between one day and several weeks after filing for virtually all civil unlimited jurisdiction complaints filed in this Court.

**There Is A Right Of Access, And Timely Access, To All New Civil Court Filings**

As we have related to you in our previous correspondence and discussions, the press has a presumptive, constitutional right of timely access to newly filed complaints, which necessarily means same-day access. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4<sup>th</sup> 1178, 1208 & n.25 (1999) (recognizing First Amendment right of access to civil litigation documents submitted to a court as a basis for adjudication); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9<sup>th</sup> Cir. 1983) (even short delays in access constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time"); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d

<sup>1</sup> During one recent four-week period, only one complaint out of 145 was available for review on the same day it was filed.

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893, 897 (7th Cir. 1994) (“[I]n light of values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous”); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”); *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, at \*10-11, 14 (S.D. Tex. 2009) (“the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional”).

Likewise, once a record has been filed or lodged with the court, Rule of Court 2.550(c) provides that the record is “presumed to be open” to public inspection. The Rule of Court thus recognizes that the public character of new complaints comes not from the court’s taking any particular action with respect to a complaint, but from a person’s invoking the power of the judiciary by submitting it to the court. See also *Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986) (the right of access springs into being the moment a person “undertake[s] to utilize the judicial process”); *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (“By submitting pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny.”) (quotation omitted; emph. added).

In light of this right of access, it is not appropriate for this Court to deny media requests to examine newly filed complaints on the ground that the Court has not yet completed its administrative tasks associated with the processing of those complaints (tasks that vary from court to court, but can include such items as inputting information about the complaint into a computer system, formal acceptance, scanning, and/or posting the complaint online for remote viewing). As you can see from the enclosed city-by-city survey, courts around the country have implemented a variety of procedures to ensure that the press has access to *all* new civil complaints at the end of the day on which those complaints are filed, regardless of whether they have been fully processed and/or other administrative procedures have been completed. Indeed, given the media’s role as “surrogates for the public,” see, e.g., *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), it is appropriate to provide news reporters who visit the Court every day with procedures for obtaining same-day access to new filings, so that those reporters may in turn disseminate information about those filings to interested persons, thereby keeping the public informed as to what transpires in the courts.

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With these considerations in mind, Courthouse News once again respectfully requests that the Court adopt procedures to ensure that reporters who visit the court every day (which would include but not necessarily be limited to Courthouse News) can review new unlimited civil complaints at the end of the day they are filed, even if they have not been fully processed. As the enclosed survey demonstrates, there are a variety of specific ways this can be accomplished, but fundamentally, what we are asking for is for Ms. Krolak to simply be allowed to see the day's new unlimited civil filings at the end of each court day.

We thank you for your attention to this important matter, and look forward to hearing from you.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge  
Courthouse News Service

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## **Media Access to Courts Around the Nation**

**Prepared By Courthouse News Service  
June 2011**

Courts around the country have developed a variety of procedures to provide the media with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed, regardless of whether processing has been completed (or in federal courts that have adopted e-filing, the so-called "quality assurance" process is completed), and regardless of whether the complaint or petition has been made available for electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in courts throughout the nation.

### **Albuquerque**

At the Second District Court of New Mexico (Bernalillo County), both paper and electronically filed civil complaints are made available to the media in a "review pile" on the day of filing, before they have been fully processed or made available to the public. Courthouse News' reporter has been granted behind-the-counter access to the "review pile" and provided with a small work space, where he can review the new cases and scan any newsworthy complaint using a portable scanner. Any complaint that does not make it to the review pile enters a 3 - 4 day docketing process, during which Courthouse News Service's reporter can typically track down any case that needs to be seen.

### **Atlanta**

At the Fulton County Superior Court in Atlanta, Georgia, new complaints are scanned immediately upon filing and made available at computer terminals at the courthouse, most within minutes of filing. In addition, complete docket information for civil cases is available from a publicly accessible web site on the day the complaint is filed.

At the United States District Court for the Northern District of Georgia, where e-filing is voluntary, reporters review new civil actions on the same day they are filed. New complaints that are filed in paper form are scanned into a computerized press box before they go to docketing and are accessible on a computer terminal in the Clerk's office. E-filed complaints are made available to CNS's reporter, prior to any processing, via PACER by using a shell case number code to access an online press queue of new same-day filings.

### **Austin**

At the Travis County District Courthouse in Austin, where e-filing is mandatory for civil cases, Courthouse News' reporter gets a list of all of the new civil petitions filed earlier that same day upon arriving at the courthouse. She then views newly filed petitions using a public access terminal at the courthouse. Before leaving the court, Courthouse News' reporter gets an updated copy of the list of newly filed petitions to see whether there are any that have been filed since her first review, which she also views using the court's public access terminal.

### Beaumont

At the Jefferson County District Court in Beaumont, Texas, reporters are allowed behind the counter to access paper copies of petitions filed that day, before the cases are put through the docketing process. Reporters can make copies of newsworthy cases.

At the Beaumont Division of the United States District Court for the Eastern District of Texas, reporters have same-day access to newly filed actions regardless of whether docketing has been completed. Reporters review scanned copies of new complaints via PACER, and if a new case is not yet scanned and available on the court's computer system, reporters can request and are given a paper copy of the new action based on a listing of new filings in a red log book made available to the press.

### Brooklyn

At the Kings County Supreme Court, newly filed cases are typically scanned into electronic form immediately after they are filed, and the paper copies are then placed in a designated media box for same day review. However, in the event that a new complaint is not scanned until the following day, the paper copy remains in the press box until Courthouse News' reporter has reviewed it. Courthouse News' reporter has been provided with a media pass that allows her to remove the new filings from the media box and review them in a different area behind the counter in the clerk's office on the same day the complaints are filed. Courthouse News' reporter is free to make her own copies for a small fee.

At the United States District Court for the Eastern District of New York, parties file "press copies" of new complaints, which are placed into a press box that is made available to reporters throughout the day, thereby allowing them same-day access to the vast majority of new filings, even if the new filings have not been fully processed or posted to PACER.

### Chicago

At the Cook County Circuit Court in Chicago, Courthouse News' reporter, or any other member of the media who is first to arrive at the courthouse, begins each visit by going behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. The reporter sees complaints on the same day they are filed, regardless of whether the complaints have been fully processed. Reporters can stay as late as they like to review the new complaints.

At the United States District Court for the Northern District of Illinois, where newly filed complaints are available on a same-day basis, the court had previously provided the media with a special case number code for the PACER web site that granted reporters access to a press queue where the new complaints were posted before they had even been assigned a case number or appeared on the public PACER website. However, the Court is now making newly-filed civil complaints immediately available on PACER, as well as the court's own independent website, making access to the press queue unnecessary.

### Cincinnati

At the Hamilton County Court of Common Pleas in Cincinnati, Ohio, new complaints are placed in the intake area for review by the media on the same day the complaints are filed. Complaints are made available after they have been date-stamped, but before any other processing occurs. Courthouse News' reporter sees between 30-60 complaints each day. If Courthouse News' reporter misses a complaint, he may request the file from the paper room staff the next day. Court employees will make copies of newsworthy complaints available upon request for 10 cents per page.

At the United States District Court for the Southern District of Ohio, many of the newly filed complaints are made available on the day of filing via PACER. However, for cases not available electronically, the court places a copy of new cases into a press box at the intake counter, where Courthouse News Services' reporter may review them until 4:00 p.m. when the court closes to the public. The reporter may request copies of new complaints for 50 cents per page.

### Cleveland

At the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, Courthouse News' reporter has behind-the-counter access to new filings on the same day they are filed, regardless of whether they have been fully processed. Complaints are available as soon as they have been date-stamped. Court officials provide Courthouse News' reporter with desk space to set up a laptop and allow him use of the office copy machines.

At the United States District Court for the Northern District of Ohio, new civil cases can be filed either in person or electronically. Both cases filed electronically and in person are made available on PACER on the same day they are filed. However, to view cases that are restricted from access via PACER or cases that have not yet been posted to PACER, Courthouse News' reporter visits the courthouse, where the court staff will print out a copy of any case he requests, even if docketing has not been completed and regardless of how those complaints were filed.

### Columbus

At the Franklin County Court of Common Pleas in Columbus, Ohio, Courthouse News' reporter has same-day access to new civil complaints after they have been date-stamped and before processing. Courthouse News' reporter works at a desk behind the intake counter. Complaints that are filed before the reporter arrives to the courthouse are placed in an "outbox" tray where CNS's reporter is able to review them on the same day they are filed. Once the reporter has finished reviewing those cases, a member of the court staff retrieves complaints that have been filed since the reporter's arrival directly from the various tellers and makes them available for immediate review. Copies are available for a nominal fee.

At the United States District Court for the Southern District of Ohio in Columbus, all new complaints are made available on PACER promptly upon filing. The court will also provide

hard copies of any civil filings not available on PACER on a same-day basis, but the speed with which cases are posted to PACER generally makes this unnecessary.

#### Dallas

At the Dallas County District Court in Dallas, Texas, Courthouse News' reporter is provided with behind-the-counter access to new petitions as soon as they are filed and before any docketing has taken place. The court provides the reporter with a place to work, where staffers in the clerk's office provide him with access to the new petitions filed in paper form. As for e-filed petitions, Courthouse News Service's reporter views some on a computer terminal in the clerk's office. In many instances, however, petitions are not available on the terminal on a same-day basis, and the clerk's office provides him with paper printouts of those petitions so that he can see them same-day.

The United States District Court for the Northern District of Texas has developed a process that ensures reporters have same-day access to all new complaints, regardless of how far those complaints have progressed through the intake process. On his daily afternoon visits to the court, Courthouse News' reporter goes through a three-step process, described below. Leigh Lyon, Assistant Chief Deputy of Operations, Dallas Division of the Northern District of Texas, has informed us that she would be happy to speak with court officials in other jurisdictions about this system. Ms. Lyon can be reached at (214) 753-2186.

- First, Courthouse News' reporter checks a computer terminal in the clerk's office to view summaries of the day's new complaints that have already been made available on PACER. Courthouse News' reporter then uses his own internet connection to immediately download documents he needs to his laptop computer at the courthouse.
- Second, Courthouse News' reporter checks for complaints that have been scanned by the clerk's office, but are not yet available on PACER. These complaints have been assigned a bar code and case number, and are made available for electronic viewing at a public computer kiosk located in the clerk's office, where the media can then review the new complaints on the same day they are filed.
- Finally, for complaints that are so new they have not yet been scanned, Courthouse News' reporter views the paper versions of those new cases in their case folder and makes copies of newsworthy complaints.

#### Detroit

At the Wayne County Circuit Court, complaints are placed in a drawer in the intake area of the clerk's office immediately after they are filed. Upon arriving at the clerk's office at approximately 3 p.m., Courthouse News' reporter goes behind the counter and first double-checks the previous day's complaints, which are located in bundled folders behind the intake drawer, for any missed or last-minute filings from the day before. Then he turns to the intake drawer, where he is permitted to review the newly filed complaints while standing behind the counter. Most new complaints are in the drawer, but some are with the intake clerks, who will share the complaints with the reporter for review. The reporter is permitted to make his own



copies of complaints using a copier located also behind the counter, as well as an alternate copier on the other side of the cashier station, near the death certificates/marriage license area.

At the United States District Court for the Eastern District of Michigan, the court provides copies, on a same-day basis, of all newly filed complaints in a media box located in a public area, but only after the complaints have been fully docketed. Courthouse News' reporter can either visit the courthouse to view complaints or he can view the new filings electronically on PACER, which is just as timely as the hard copy press box.

#### Fort Worth

At the Tarrant County District Court in Fort Worth, most petitions appear on the court's on-line system the day they are filed, except those cases that are filed electronically after 5:00 p.m., when the court is closed, which are made available the following day. If any petition that was filed during court business hours is not available online the day it is filed, court staff either make a copy for Courthouse News' reporter or arranges for the petition to be immediately scanned and posted to the on-line access system. The end result is that Courthouse News' reporter is able to access all petitions filed during court hours on the same day they are filed.

#### Houston

The Harris County Civil District Courts in Houston provided same-day access for many years by permitting reporters to go behind the intake counters and review newly-filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's web site before they could be reviewed, which delayed their availability by a day or more – sometimes several days. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office failed to lead to a resolution, Courthouse News reluctantly filed suit under 42 U.S.C. § 1983. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, and finding that "the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional." *Courthouse News Service v. Jackson, et al.*, 2009 WL 2163609, at \*4 (S.D. Tex. July 20, 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's web site the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in March 2010, the clerk's office became obligated not only to continue to provide same-day access to new civil filings, but to pay more than \$250,000 to Courthouse News to compensate it for the attorneys fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's web site. Those petitions can be viewed, and printouts can be made, free of charge by the media and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. Details about this program can be found on the Harris County District Clerk's web site, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx> (see button: "Search Today's Filings").

At the United States District Court for the Southern District of Texas, where electronic filing is required for new cases, Courthouse News' reporter can view electronic versions of complaints that are already docketed and posted to PACER on the same day they are filed. For any new complaint that has not yet been fully docketed, the Court will usually provide a hard copy regardless of how far along the complaint is in the docketing process, also on the same day they are filed.

#### Indianapolis

At the Marion County Circuit and Superior Courts in Indianapolis, Indiana, reporters view all new filings on a same-day basis in the clerk's office. Reporters are given stacks of the new filings, before they are processed or sent to the proper court division, and are allowed to go through them at tables in the public viewing area from 4:00 p.m. to 4:30 p.m. Reporters can then make copies themselves on court copy machines, which are then billed to Courthouse News Service monthly.

At the United States District Court for the Southern District of Indiana, reporters are provided with access to all complaints filed on a same-day basis, even if docketing has not been completed. When Courthouse News' reporter arrives at the end of the day, the court staff gathers all of the civil cases filed throughout the day and allows the reporter to review the complaints. The court staff will then make copies at a rate of 50 cents per page.

#### Las Vegas

At the Eighth Judicial District Court in Las Vegas, Nevada, reporters saw the majority of new civil complaints on a same-day basis until the court switched to mandatory e-filing in February 2010. Following that switch, the court began requiring news reporters to review new complaints at a computer terminal in the clerk's office, but this system resulted in complaints not being available for viewing until the day after they were filed. The reason for these delays was that new complaints did not appear on the computer terminals until after they had been "accepted" by the clerk's office, and only after the terminals had been updated to reflect the new filings. After Courthouse News brought these delays to the attention of the court, the court adopted a new system: an electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been fully processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), Courthouse News is now seeing new e-filed complaints on a same-day basis.

At the United States District Court for the District of Nevada, Courthouse News' reporter can view electronic versions of the majority of new complaints on a same-day basis on PACER. Complaints that are not made available on the day they are filed are usually made available on the following day.

### Los Angeles

At the Downtown (Stanley Mosk Courthouse) branch of the Superior Court of California in Los Angeles, reporters can review all new actions that are filed on a particular day through the court's computer system, which includes terminals for the general public and additional terminals in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public view cases close at 4:30 p.m., but the press room remains open later and even the latest filings of the day are available and can be reviewed by 7:00 p.m. About 90 new civil, general jurisdiction cases are filed each day.

At the Santa Monica Courthouse of the same court, face pages of each day's newly-filed complaints are made available for review at 3:30 p.m. on the same day the complaints are filed. Courthouse News' reporter then requests copies of those complaints for which she wants to see the full-text versions. The full text of late-filed complaints is made available at 4:30 p.m., when the filing room court closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Courthouse News' reporter can then request copies of any of those late-filed complaints, and they are generally provided right away.

At the United States District Court for the Central District of California, a room is set up directly off the docketing department with a set of pass-through boxes. At 4:45 p.m., a messenger places all of the civil complaints filed that day in the pass-through boxes so that the media can review them. Inside the reviewing room is a copy machine maintained by the press. Reporters that cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they want to look over the complaints and rulings, copy those of interest, and put the documents back in the pass-through boxes.

### Louisville

At the Jefferson County Circuit Court in Louisville, Kentucky, the clerk's staff makes a copy of the front page of all complaints filed throughout the day and places the coversheets on a table in the public area of the office. Courthouse News' reporter then reviews the stack of coversheets and requests any complaints he determines to be newsworthy on the same day they are filed. The clerk's office will make copies for him at a rate of 25 cents per page.

The United States District Court for the Western District of Kentucky in Louisville has adopted an e-filing system requiring initiating documents to be filed electronically. The court has provided the media with an "MC" case number code. Using this code at a designated computer terminal in the clerk's office, reporters can review newly filed complaints in exactly the same format as they are received in the clerk's office, prior to being docketed and before they are available to the public on PACER. If a reporter needs a copy of a complaint, he requests the copy from court staff at a rate of 50 cents per page.

### Manhattan

At the New York County Supreme Court, where certain case types are required to be e-filed, new complaints are made available to reporters on the same day they are filed, whether they are filed in paper or electronic form. E-filed cases are posted online to a court website by the end

of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically via an internal computer system on terminals set up throughout the courthouse. At 4:00 p.m., and then at regular intervals until 5:00 p.m., the paper versions of the new complaints are then placed by court officials in a secure area behind the counter where reporters are free to review them on a same-day basis.

At the United States District Court for the Southern District of New York, reporters are permitted to view new civil complaints three times a day – between 9:00 a.m. and 9:45 a.m., between 11:30 a.m. and 12:15 p.m., and between 3:35 p.m. and 4:30 p.m. – on the same day the complaints are filed.

#### Miami

In Miami-Dade County Circuit Court, the clerk's office closes to the general public at 4 p.m., but security personnel remain until 6:45 p.m., allowing Courthouse News Service's reporter to review new filings. The reporter is permitted to go behind the intake counter and pull same day complaints directly from each intake clerks' desk from 4:45 p.m. until the office closes at 6:45 p.m. The complaints that Courthouse News' reporter reviews have been assigned a case number and checked for all required documentation and payment, but have not been entered into the court's computer system. If the reporter needs copies she is able to make her own copies at a Court copy machine for \$1 per page.

At the United States District Court for the Southern District of Florida, electronic filing of new civil complaints is mandatory, and new complaints that are filed before 5 p.m. appear on PACER on the same day they are filed. Cases filed after 5 p.m. appear on PACER the following day.

#### Milwaukee

At the Milwaukee County Court in Wisconsin, reporters have access to new complaints on the day they are filed, even if they have not yet been fully processed, and are permitted to go behind the counter. Reporters can request copies of complaints from court personnel for a small fee.

At the United States District Court for the Eastern District of Wisconsin, most new complaints are e-filed and available electronically through PACER on the same day they are filed. However, for those cases that are not immediately posted to PACER, court staff provides reporters with the original paper versions of the new complaints, also on the same day they are filed. Reporters are then able to make copies at a copy machine for a nominal fee.

#### Minneapolis/St. Paul

At both the Hennepin County District Court in Minneapolis and the Ramsey County District Court in St. Paul, where many of the new complaints are filed by mail, Courthouse News' reporter is permitted to go behind the counter to review the stack of original complaints on the same day they are filed and before they are docketed. Because the reporter visits Ramsey County only three times per week, she is unable to review all cases on the same day they are

filed, but is able to search for and view the cases she has missed on a computer terminal at the courthouse the next time she visits the court. The reporter is able to make her own copies in Hennepin County, where Courthouse News has established a copy account. In Ramsey County, for cases the reporter reviews on the day of filing, the court staff will make copies of any complaint the reporter requests. For cases she reviews after the day of filing, the reporter is able to print a copy directly from the computer terminal.

At the United States District Court for District of Minnesota, reporters begin their visit by using a computer terminal at the courthouse to view an intake log of new cases. From there, reporters review complaints available on PACER using a public computer terminal in the clerk's office. If a complaint shown on the intake log of new cases is not yet available on PACER, the court will print out a copy for the reporter. The Clerk charges 10 cents per page for any copies that reporters request.

#### Nashville

At the Davidson County Chancery Court in Nashville, Courthouse News' reporter reviews an intake log of the day's new filings on a public computer terminal at the courthouse. She then compiles a list of the relevant cases and presents the list to the court staff, who retrieve the requested cases and allow her to review the complaints regardless of whether the docketing process has been completed.

At the Davidson County Circuit Court, most new complaints are scanned throughout the day and are made available through a government website on the same day they are filed.

At the United States District Court for the Middle District of Tennessee, the clerk's staff are required to stay one hour after closing in order to scan all new filings and post them onto PACER on the day they are filed.

#### Oakland

Although the Alameda County Superior Court in Oakland, California, endeavors to make newly-filed complaints available for viewing on its web site on a same-day basis, it has implemented procedures to ensure that news reporters who visit the René C. Davidson courthouse can obtain same-day access to those complaints that would otherwise not be posted for electronic viewing on a same-day basis. Under those procedures, reporters are provided with access to a workstation behind the intake counter. The station is equipped with a computer connected to the Internet. Courthouse News' reporter first reviews the cases that are made available online. For those cases that are not available online by the end of the work day but are of media interest, court staffers scan and make those cases available on their web site.

#### Oklahoma City

At the Oklahoma County Court, intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped, but have not been fully docketed - only indexed. A member of the clerk's staff then provides the petitions to Courthouse News' reporter, and the reporter is instructed to sign the back of each petition to

ensure that she has seen them all. After she has completed her review of the petitions in the basket, Courthouse News' reporter is permitted to review any further petitions that have been filed, indexed and placed in the basket after 3:15 p.m. The reporter may request copies of petitions at a rate of \$1.00 for the first page and 50 cents for all subsequent pages.

#### Omaha

At the Douglas County District Court, new complaints are filed in paper form and then added to an internal computer database that is updated live when a new case is received and indexed. Courthouse News' reporter reviews the index information for relevant cases on a courthouse computer terminal and a filing clerk retrieves the complaints he requests before they have been fully processed or scanned. Courthouse News' reporter can review the new complaints on the day of filing in the public area of the clerk's office and is free to make copies on public machines.

#### Orlando

At the Ninth Judicial Circuit Court, Courthouse News' reporter reviews hard copies of newly filed complaints at a designated desk behind the counter. The staff places new complaints that have not undergone any processing (i.e., docketed, jacketed or assigned a case number) near the reporter's desk each day for same-day viewing. Since some complaints have been docketed by the time Courthouse News' reporter arrives, these complaints are placed in a separate pile for the reporter's review before they are moved to a separate desk for scanning by 4 p.m. In addition, Courthouse News' reporter is permitted to review e-filed complaints and complaints that have been docketed and scanned by the time the reporter arrives on a same-day basis using one of the Clerk's terminals located behind the counter.

At the United States District Court for the Middle District of Florida in Orlando, where electronic filing is mandatory, the court posts the majority of new civil filings to PACER on the same day they are filed.

#### Palm Beach

In the Palm Beach County Circuit Court, members of the press review new civil cases at the intake counter at 4 p.m. on the day they are filed. The new cases are given to the press as a stack of folders.

#### Phoenix

At the Maricopa County Superior Court in Phoenix, Arizona, court staff recently implemented new procedures to ensure same-day access to civil complaints filed at its downtown location. Under the new procedures, court staff scan and upload for electronic viewing all complaints filed before 3 p.m., which are then made available on a designated press computer located in the Customer Service Center for Courthouse News' reporter to review and, if necessary, print. Complaints filed between 3 and 5 p.m. are immediately placed in a bin at a designated intake window in the Central Court Building, where Courthouse News' reporter may review those complaints between 4 and 5 p.m.

### Pittsburgh

At the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, where the Court has implemented an internally operated electronic filing system, nearly all of the day's new filings are available on-line on a same-day basis. Complaints not posted to the court's website on the day of filing are made available the following day.

In the United States District Court for the Western District of Pennsylvania, where electronic filing is mandatory, Courthouse News' reporter has been provided with an "MC" case number code for PACER that allows her to view the new filings before they are docketed.

### Portland

At the Multnomah County Court in Portland, Courthouse News' reporter is given a stack of the current day's newly filed complaints, which she reviews at a cubicle behind the counter. The reporter can make any needed copies herself using her own portable scanner.

At the United States District Court for the District of Oregon, Courthouse News' reporter first searches for newly filed complaints through the court's "electronic in-box," which is available on a public access terminal at the courthouse and contains those complaints that the clerks have scanned but not yet processed and posted to PACER. She then searches for processed complaints on PACER, which are also available at a public access terminal at the courthouse. Finally, the clerks give Courthouse News' reporter paper copies of those complaints that have not yet been scanned and posted either to the electronic in-box or to PACER. The clerks will also review the court's record book with Courthouse News' reporter at the end of the day to make sure that no filings have been missed.

### Riverside

At the Superior Court for the State of California, County of Riverside, new complaints are scanned and made available for electronic viewing via the Court's web site and at computer terminals in the courthouse. The press had been experiencing delays in access for years until a new clerk, formerly from the United States District Court for the Central District of California, came on board. The clerk found that same-day access could be achieved simply by shifting the schedules of the personnel who scan complaints so that they begin and end work later in the day, thus ensuring that new complaints would be made available for electronic viewing on a same-day basis.

### St. Louis

At the St. Louis City Circuit Court in Missouri, Courthouse News' reporter goes to the intake window where cases are filed and clerk's office staff members hand the reporter a stack of new cases filed that same day. Courthouse News' reporter works at the counter next to the intake window; however, members of the media can also work at a table near the window. Staff members in the clerk's office will provide members of the media with copies of newsworthy new cases free of charge.

At the United States District Court for the Eastern District of Missouri, where new complaints must be electronically filed, each case is assigned a case number upon filing by the attorney and is immediately made available on PACER; even if it has not been fully reviewed and processed. Courthouse News' reporter is able to view the new complaints on a computer terminal in the clerk's office and print out copies for a small fee.

#### San Francisco

At the Superior Court of California for the County of San Francisco, news reporters are allowed behind the counter into the stacks to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. The number of new filings per day varies, but often exceeds 50. Courthouse News views new complaints regardless of whether they have been fully processed. San Francisco Superior has established a written protocol for members of the press. The key provisions are quoted below:

If media personnel want to review files already on the shelves, they can pull these files themselves and return them to the shelves.

All new filings will be held in a Media Box during the day. Between 3:00 and 4:30 each day, this box will be available to the media for viewing in the Records department, whether or not the cases have been entered in the computer. At 4:00 PM, when the office closes to the public, media personnel may ask to view any additional filings that may have come in since 3:00 PM. The Records supervisor or an assigned clerk will retrieve those files for the media to view. Any member of the media viewing new filings must return them to the box for eventual return to the Records supervisor or assigned clerk.

Media personnel may come in anytime before 3:00 PM to view new filings. However, they will only be viewing cases newly filed up until that time.

Copy machine from the second floor Media Room will be moved to Room 103 and located behind the Records department. This machine belongs to Courthouse News Service, but has been made available to all media personnel for their use.

At the San Francisco Division of the United States District Court for the Northern District of California, reporters go behind the counter and review actions filed that same day, regardless of whether the complaints have been fully docketed or posted on PACER. They are also permitted access to the so-called "transfer boxes" of new actions being sent to different divisions of the court, and are provided with a copy of the intake log. Reporters are permitted to make copies of cases they determine to be newsworthy using a portable scanner.

#### San Jose

At the Santa Clara County Superior Court in San Jose, California, the Court recently implemented new procedures to ensure that reporters receive same-day access to the vast



majority of each day's new civil unlimited jurisdiction complaints. Under those procedures, civil unlimited complaints are made available to Courthouse News' reporter upon receipt of the filing fee, the assignment of a case number, and the assignment of a first status conference date, even though processing of the new complaint is far from over at this juncture. Complaints that are filed over the counter by 3:30 p.m. are made available to Courthouse News' reporter on the same day they are filed. All unlimited jurisdiction complaints that are in the drop box by 4:00 p.m. are also made available to Courthouse News on the same day they are filed. Unlimited jurisdiction complaints that are filed over the counter between 3:30 p.m. and the clerk's office closing at 4:00 p.m. have been designated as a staff priority, and the court endeavors to make them available for review on the same day they are filed. Courthouse News' reporter is permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases. The court makes copies of complaints as requested by the reporter.

At the San Jose Division of the United States District Court for the Northern District of California, clerks print out a list of all new complaints filed earlier that day. Reporters go behind the counter, obtain complaints from individual clerks' desks, report on and scan any newsworthy complaints, and then return the complaints to the clerks' desks.

#### Seattle

At the King County Superior Court, Courthouse News' reporter is provided with a docket sheet print-out of new cases two times per day -- once at 11 a.m. and again at 3 p.m. The 11 a.m. list includes all cases that have been filed from 3 p.m. on the previous day through 11 a.m. on the current day, while the 3 p.m. list includes new cases that have been filed from 11 a.m. to 3 p.m. that day. The reporter reviews each list to find relevant cases, then searches for and views new complaints on a computer terminal at the courthouse. She is able to print out relevant complaints for 15 cents per page.

#### Tampa

At the Hillsborough County Circuit Court, new complaints that are hand-filed in the main courthouse are made available for review by reporters at the end of the day they are filed. Most complaints are scanned by court staff and made available on the court's public access terminals for review. Those complaints that are not scanned and available on the public access terminals by 4 p.m. are provided in paper form for news reporters, who have until the court closes at 5 p.m. to review those late-filed complaints.

**EXHIBIT 6**



*Superior Court of California*

COUNTY OF VENTURA  
Hall of Justice  
800 South Victoria Avenue  
Ventura, CA 93009

**Michael D. Planet**  
*Executive Officer/Clerk  
and Jury Commissioner*

July 11, 2011

Rachel Matteo-Boehm  
Holme Roberts and Owen LLP  
560 Mission Street, 25th Floor  
San Francisco, CA 94105

*Re: Media Access to New Complaints*

Dear Ms. Matteo-Boehm:

I am writing in response to your June 20, 2011 letter regarding media access to new complaints at the Ventura Superior Court.

As you have noted, the Court has met and spoken with you and representatives of Courthouse News Service several times over the past couple of years to both explain the Court's serious resource shortages as a result of budget reductions, and steps that could reasonably be taken to make new complaints available to the media. The budget recently signed by the Governor imposes even more drastic reductions to the Courts, which makes it even more difficult to provide same-day access to new filings.

While I appreciate the Courthouse News Services' interest in same-day access, the Court cannot prioritize that access above other priorities and mandates. Further, the Court must ensure the integrity of all filings, including new filings, and cannot make any filings available until the requisite processing is completed. We will continue to make every effort to make new filings available as early as is practicable given the demands on limited court resources.

Sincerely,

Handwritten signature of Michael D. Planet in black ink.

Michael D. Planet  
Executive Officer

MDP/vjb

Mailing Address: P.O. Box 6489, Ventura, California 93008-6489

Exhibit 6  
Page 43

**EXHIBIT 7**



Holme Roberts & Owen LLP  
Attorneys at Law

SAN FRANCISCO

August 2, 2011

BOULDER

Michael Planet  
Court Executive Officer  
Ventura County Superior Court  
800 South Victoria Ave.  
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

On behalf of Courthouse News Service, we write to briefly respond to your assertion, in your July 11, 2011 letter, that budgetary difficulties prevent the Ventura County Superior Court from providing the media with timely, same-day access to newly-filed civil unlimited jurisdiction complaints.

DUBLIN

Respectfully, our experience working with other courts shows that providing prompt media access to new civil complaints – fundamentally, the simple act of letting reporters see the new complaints that, because they are newly-filed, are already centrally located in the intake area – need not involve any extra expense or staff time beyond the *de minimis* effort of handing a stack of complaints to a reporter (and even that *de minimis* effort can be eliminated if a credentialed reporter is simply allowed to go behind the counter to pick up the stack, as reporters do at the federal district court in San Francisco, for example).

LONDON

Indeed, it has been our experience that providing prompt access is largely a matter of will on the part of the court and its leaders.

LOS ANGELES

SALT LAKE CITY

For example, at the San Francisco Superior Court and Santa Clara County Superior Court, new filings are placed in a media box, available to news reporters for viewing whether or not those complaints have been fully docketed. In the past, in San Francisco, reporters gathered the complaints from the intake window and put them in the box, actually saving some work for the court. Courthouse News has also observed that the *de minimis* staff effort required to administer this type of "review box" is much less than the substantial effort involved when staff are required to track down fully processed complaints for press review, as is currently the case in Ventura County. State courts in Alameda, Los Angeles and Riverside also provide same day access to the press. All four federal courts in California provide the media with same-day access to new civil complaints without undue expenditures of staff time or expense.

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com  
560 Mission Street, 25th Floor San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

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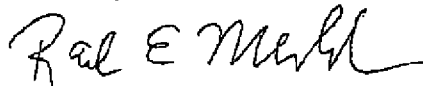
Exhibit 7  
Page 44

**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael Planet  
August 2, 2011  
Page 2

At bottom, press access only results in increased costs where the court imposes the requirement of complete processing before providing access. But newly filed complaints become public records upon filing, and this status is not contingent on the court having first completed processing. We must therefore respectfully but firmly disagree with your assertion that providing timely access can only be accomplished at a monetary cost to the Court.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge  
Courthouse News Service

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Exhibit 7  
Page 45

**COPY**

1 Rachel Matteo-Boehm (SBN 195492)  
2 rachel.matteo-boehm@hro.com  
3 David Greene (SBN 160107)  
4 david.greene@hro.com  
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10 Telephone: (415) 268-2000  
11 Facsimile: (415) 268-1999

12 Attorneys for Plaintiff  
13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 Courthouse News Service,  
17 Plaintiff,  
18 v.

19 Michael Planet, in his official capacity as  
20 Court Executive Officer of the Ventura  
21 County Superior Court.

22 Defendant.

CV 11-08083 R (MANX)  
CASE NO.

DECLARATION OF WILLIAM  
GIRDNER IN SUPPORT OF  
MOTION OF COURTHOUSE NEWS  
SERVICE FOR PRELIMINARY  
INJUNCTION

Date: Nov. 7, 2011  
Time: 10:00 am  
Courtroom: \_\_\_\_\_  
Judge: \_\_\_\_\_

11 SEP 29 PM 12:00  
RECEIVED  
CLERK OF COURT  
COURT HOUSE  
SAN FRANCISCO

23 I, William Girdner, declare and state as follows:  
24  
25 1. I am the founder and editor of Courthouse News Service ("Courthouse  
26 News"), a nationwide legal news service and the plaintiff in the above-captioned  
27 action. I have personal knowledge of the following facts and could testify to them if  
28 called as a witness.

1           2.     Courthouse News employs a nationwide network of reporters to provide  
2 reports on appellate rulings, legislation, and new civil cases from federal and state  
3 courts around the country. Courthouse News is similar to other news wire services,  
4 such as the Associated Press, except that Courthouse News specializes in news  
5 reporting about civil lawsuits, from the date of filing through the appellate level.

6           3.     I began the news service in 1990 out of a belief that the traditional news  
7 media did not cover civil litigation as well as it could, and that significant news from  
8 courthouses was being left unreported. Courthouse News' coverage of rulings,  
9 ongoing trials, and new civil complaints initially focused on the United States District  
10 Court for the Central District of California. In 1993, Courthouse News expanded its  
11 coverage to include the Los Angeles County Superior Court. Within a few years,  
12 Courthouse News had expanded its regional coverage in California to include the  
13 Orange and San Francisco county superior courts. Courthouse News moved into  
14 Texas in 1999 with coverage of the United States District Court for the Southern  
15 District of Texas and the Harris County Civil District Court in Houston. By 2001,  
16 Courthouse News was also covering state and federal courts in New York, Chicago,  
17 and Boston. Courthouse News has continued expanding its coverage of trial courts  
18 over the years, first in major metropolitan areas and gradually extending into less  
19 populous areas.

20           4.     Courthouse News began covering appellate rulings on a comprehensive  
21 basis in California in the late 1990s, slowly adding courts as the years went by.  
22 Today, Courthouse News covers almost all the appellate courts in the United States.  
23 Courthouse News also reports on newly proposed and passed federal laws and  
24 regulations. Earlier this year, Courthouse News also started covering Ninth Circuit  
25 oral arguments. As of September 2011, Courthouse News covers approximately  
26 2,300 courts around the nation, spanning all 50 states.

27           5.     The media Courthouse News has used to deliver news has evolved over  
28 the years. Beginning as a print publication, Courthouse News introduced delivery of



1 court news via facsimile within its first six months of publication. Courthouse News  
2 began delivering news reports via e-mail in approximately 1996. In 2000, Courthouse  
3 News began publishing news reports and commentary about civil cases and appeals on  
4 its web site at [www.courthousenews.com](http://www.courthousenews.com).

5 6. Courthouse News' web site has become an increasingly important  
6 component of its reporting. Readership of the web site has grown steadily. Just two  
7 years ago, in mid-2009, the web site was receiving an average of 300,000 unique  
8 visitors each month. Since then, readership has spiked almost threefold. In July 2011,  
9 the site had 938,000 unique visitors; in August 2011, it had 800,000 unique visitors;  
10 and we are on pace to top 1 million visitors for September 2011. Taking one recent  
11 news day as an example, on September 1, 2011, Courthouse News' web site featured  
12 articles on the confirmation of Justice Goodwin Liu to the California Supreme Court;  
13 a ruling by the International Court of Justice finding that Ecuador owes Chevron \$96  
14 million over delays in rulings on commercial disputes; funding for the San Francisco  
15 Superior Court; U.S. District Court Judge Edward Davila's dismissal of a class action  
16 against Google over the connectivity of its Android phones; Arizona's challenge to the  
17 "preclearance" sections of the Voting Rights Act requiring federal approval for any  
18 changes in its voting law; and an action in Los Angeles Superior Court by the writer  
19 of the comedy "Napoleon Dynamite" over studio accounting. A true and correct copy  
20 of a screen shot of Courthouse News' September 1, 2011 home page is attached as  
21 Exhibit 1.

22 7. Reports from Courthouse News' web site are frequently picked up by  
23 news outlets and other Internet content providers, and in this way are disseminated to  
24 a much broader audience. Attached hereto as Exhibit 2 are true and correct copies of  
25 recent examples of reports from other media outlets and content providers, including  
26 *The New York Times*, *Chicago Tribune*, *The Globe and Mail*, *New York Post*, PBS,  
27 CNN, the *New York Daily News*, Gawker, SCOTUSblog, *Financial Times*, *SF Weekly*,  
28 Associated Press, Foreign Policy, and *ABA Journal*, in which Courthouse News is

1 credited as the source of the information on which those news reports are based.

2 8. Although the web site is growing in popularity, Courthouse News' core  
3 news publications are its new litigation reports, which are e-mailed to subscribers and  
4 contain a summary of all significant new civil complaints filed in a particular court.  
5 For major courts, reports are e-mailed to subscribers each evening, and where the  
6 court provides same-day access, those reports cover new civil complaints filed earlier  
7 that same day. The new litigation reports do not cover criminal or family law matters,  
8 and in California superior courts, they only cover unlimited jurisdiction cases, i.e.,  
9 cases in which the amount in controversy is usually more than \$25,000. Although not  
10 all complaints are significant enough to merit coverage – decisions as to which ones  
11 receive coverage are made by the individual reporters and editors after reviewing all  
12 of the new civil complaints – the new litigation reports cover many more civil actions  
13 than would normally be found in a daily newspaper. Subscribers tell us it is the  
14 comprehensive and at the same time *timely* nature of this coverage that makes it so  
15 useful.

16 9. In all, Courthouse News publishes sixteen new litigation reports for its  
17 California subscribers, which include daily coverage of new litigation filed in all four  
18 federal district courts as well as the California Superior Courts for the counties of  
19 Alameda, Contra Costa, Fresno, Kern, Los Angeles (downtown and Santa Monica  
20 courthouses), Orange, Riverside, Sacramento, San Bernardino, San Diego, San  
21 Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma,  
22 Stanislaus, and Ventura. In addition, Courthouse News offers its subscribers alerts  
23 about new civil filings, which are delivered by e-mail. For example, a subscriber can  
24 sign up to receive an alert anytime a particular company is sued, and in a court with  
25 timely access, we are able to notify them by the end of the same day.

26 10. In addition, Courthouse News offers four print publications. These  
27 include the Four Districts Almanac (reporting on all four of California's federal  
28 district courts), the Environmental Law Report, the Securities Law Report, and the

1 Entertainment Law Digest.

2 11. Courthouse News' comprehensive and timely coverage of civil litigation  
3 has made it a go-to source of information about the nation's civil courts, with nearly  
4 3,000 subscribers nationwide. The majority of these subscribers are lawyers and law  
5 firms, including approximately 740 in California. In addition, it has many media  
6 organization subscribers, including but not limited to the *Los Angeles Times*, the *Los*  
7 *Angeles Business Journal*, the *Pacific Coast Business Times*, the *San Jose Mercury*  
8 *News*, *Forbes*, the *Boston Globe*, the *Dallas Morning News*, the *Detroit Free Press*,  
9 the *Atlanta Journal-Constitution*, and FOX, all of whom rely on Courthouse News to  
10 provide them with timely information about new civil cases so they can provide  
11 further information about those cases to their own subscribers. A number of academic  
12 institutions and law libraries -- including California institutions such as UCLA,  
13 Stanford Law School and the L.A. Law Library -- also subscribe to Courthouse News'  
14 reports.

15 12. To provide the timely and comprehensive coverage contained in its new  
16 litigation reports, Courthouse News employs more than one hundred reporters across  
17 the country who are assigned to cover one or more individual courts. At most major  
18 courts, Courthouse News' reporters visit their assigned court every day, typically near  
19 the end of each court day, to review new civil complaints filed earlier in the day. The  
20 reporter prepares an original summary of each complaint or other case-initiating  
21 document that is considered of likely interest to Courthouse News' subscribers for  
22 inclusion in the report. Given the nature of this publication, any delay in the ability of  
23 a reporter to obtain and review a newly filed complaint necessarily creates a delay in  
24 Courthouse News' ability to inform interested persons of the factual and legal  
25 allegations in those complaints. These delays are especially problematic when there is  
26 an intervening weekend and/or holiday, which creates a situation in which a delay of  
27 even one court day results in actual delays of three or even four calendar days.

28

1           13. Through my experience covering civil litigation during the past twenty-  
2 one years, including but not limited to my own in-person visits to many state and  
3 federal courts, discussions with court officials, and my activities in supervising  
4 Courthouse News' reporters and editors around the country, I have developed  
5 extensive personal knowledge of the procedures that courts throughout the country  
6 currently use, and have used in the past, to provide access to new complaints. I have  
7 observed that when a reporter visits a court every day, it has been traditional for courts  
8 to provide that reporter with access to the large majority of the complaints filed earlier  
9 that same day. Attached hereto as Exhibit 3 is a true and correct copy of a summary  
10 of media access procedures used in state and federal courts across the nation, which  
11 was prepared by Courthouse News Service under my direction (the "Access  
12 Summary").

13           14. As is reflected in the Access Summary, in many courts, this same-day  
14 access is provided before the clerk's office has completed the full range of tasks  
15 associated with the processing of a new case. This is true regardless of whether the  
16 document in question is electronically filed ("e-filed") or submitted to the court in  
17 paper form.

18           15. For example, at the Los Angeles Division of the United States District  
19 Court for the Central District of California, a room is set up directly off the docketing  
20 department with a set of pass-through boxes. Between 4:30 p.m. and 5:00 p.m. each  
21 day, a staffer places all of the civil complaints filed that day in the pass-through boxes  
22 so that the media can review them. Through this method, the great majority of new  
23 civil complaints are made available for review on a same-day basis, before they have  
24 been fully processed. Reporters that cover the courthouse on a daily basis have a key  
25 to the room, which is otherwise locked, and they can stay as long as they want to look  
26 over the complaints and put the documents back in the pass-through boxes. At the  
27 San Francisco Division of the United States District Court for the Northern District of  
28 California, reporters go behind the counter and review actions filed that same day,

1 regardless of whether the complaints have been fully processed or posted on PACER.  
2 They are also permitted access to the so-called "transfer boxes" of new actions being  
3 sent to different divisions of the court, and are provided with a copy of the intake log.  
4 Same-day access to new civil complaints is also provided at the Southern and Eastern  
5 Districts of California.

6 16. Similarly, at major state superior courts in California, reporters are also  
7 provided with same-day access to new civil filings, a practice that is consistent with  
8 other major state trial courts across the country. For example, at the San Francisco  
9 Superior Court, reporters review new civil complaints at the end of the day on which  
10 they are filed, before they have been fully processed, after providing a driver's license  
11 and filling out a temporary name tag. At the Santa Clara County Superior Court, new  
12 civil complaints are made available for same-day review by Courthouse News'  
13 reporter upon the receipt of a filing fee, the assignment of a case number, and the  
14 assignment of a first status conference date, even though processing is far from over.  
15 At the Los Angeles County Superior Court, the clerk's office scans new complaints on  
16 intake, links the complaints to a case number, and makes those complaints available  
17 for immediate electronic review in the press room at the courthouse. The following  
18 day, the clerk's office docket the complaints and makes them available for online  
19 viewing. The Superior Courts in Alameda and Contra Costa also provide same-day  
20 access to the press. Those courts provide access after a certain amount of additional  
21 processing has been completed but they still provide the traditional same-day access.  
22 The procedures through which these and other state and federal courts make new  
23 filings available on a timely basis are described in more detail in the attached Access  
24 Summary.

25 17. Attached as Exhibit 4 are true and correct copies of recent editions of  
26 Courthouse News new litigation reports for both the United States District Court for  
27 the Central District of California and the Superior Court for the County of Los  
28 Angeles. As reflected in both of these reports, the large majority of new complaints

1 filed in these courts were made available to Courthouse News' reporter on the same  
2 day of filing.

3 18. The variety and effectiveness of the procedures for providing same-day  
4 access that have been implemented in so many state and federal courts has convinced  
5 me that access is largely a matter of will, and any individual clerk's office can provide  
6 prompt access to newly filed complaints if those running the clerk's office have the  
7 will to do so.

8 19. Traditionally, and as demonstrated by the examples above, courts have  
9 provided same-day access after initial intake tasks, for example accepting the filing  
10 fee, assigning a case number, and/or noting the first-named plaintiffs and defendants  
11 on an intake log, but well before full processing. In most instances where we  
12 encounter resistance by clerk's offices to providing same-day access, the reason given  
13 is as follows: First, we are told that the court will not allow anyone to see the  
14 complaint until *after* staffers in the clerks' office have completed an array of  
15 administrative procedures associated with the clerk's office processing of a new  
16 complaint, which over the years has encompassed an ever-growing list of tasks. Next,  
17 we are told that due to budget constraints and accompanying staffing shortages, these  
18 tasks cannot always be completed quickly, with the end result that, as is the case in  
19 Ventura County, the press is not permitted to see new complaints until days or even  
20 weeks after they have been filed.

21 20. The tasks associated with the processing of a new complaint vary from  
22 court to court, but can include, for example, inputting information about the new  
23 complaint into the new California Case Management System or another electronic  
24 case management system, checking the complaint to make sure it complies with  
25 applicable court rules, "quality control," and/or putting new complaints into file  
26 folders.

27 21. Based on my experience covering civil litigation during the past twenty-  
28 one years, including but not limited to my own in-person visits to many state and

1 federal courts, telephone discussions with officials from state and federal courts, and  
2 my activities in supervising Courthouse News' reporters and editors, I have observed  
3 that it is entirely possible, where the clerk's office has the will to do so, to provide  
4 prompt media access while still attending to processing in a similarly prompt manner.  
5 New complaints are not being actively worked on all the time. Reporters can review  
6 the new complaints not being actively worked on, return them, and then review any  
7 remaining complaints that were being worked on at the time of their initial request.  
8 As reflected elsewhere in this declaration and in the Access Summary, it is both  
9 common and traditional for courts to provide credentialed reporters with access in this  
10 manner, before the clerk's office has completed all of the administrative tasks  
11 associated with the processing of new complaints. To make sure that new complaints  
12 are accounted for, clerk's offices often couple such review with procedures such as  
13 requiring reporters to provide collateral such as a driver's license or setting aside a  
14 secure area for the media to review the day's new complaints. In a few instances,  
15 courts have asked our reporters to obtain a Live Scan background check, which they  
16 have done.

17       22. Based on my experience on working with other courts, it is apparent to  
18 me that providing same-day media access to newly filed civil complaints –  
19 fundamentally, the simple act of letting reporters *see* the new complaints that, because  
20 they are newly-filed, are already centrally located in the intake area – is as simple as  
21 opening a door. It need not involve any extra expense or staff time beyond the *de*  
22 *minimis* effort of handing a stack of complaints to a reporter, and even that *de minimis*  
23 effort is eliminated if the reporter is simply allowed to go behind the counter to pick  
24 up a stack of complaints to review, as reporters do at the San Francisco Division of the  
25 U.S. District Court for the Northern District of California and in several other courts.

26       23. Despite this traditional practice of providing reporters who visit the court  
27 every day with same-day access to new complaints, and despite Courthouse News'  
28 efforts to work cooperatively with the clerk's office of the Ventura County Superior

1 Court to come up with mutually-agreeable procedures to allow its reporter to obtain  
2 the same timely access to new complaints at Ventura Superior, the clerk's office of the  
3 Ventura County Superior Court has refused to do so.

4 24. Courthouse News' access problems at the Ventura County Superior  
5 Court began in 2008 and are detailed more fully in the declarations of Julianna Krolak  
6 and Christopher Marshall. At the outset of these problems, I instructed Christopher  
7 Marshall, the editor at Courthouse News who supervises our coverage of the Ventura  
8 County Superior Court, to see if he could resolve those issues directly with the clerk's  
9 office. These efforts proved unsuccessful. Accordingly, at my direction, by letter  
10 dated April 29, 2009, Courthouse News' counsel wrote to Court Executive Officer  
11 Michael Planet to bring to his attention Courthouse News' concerns about access to  
12 new complaints at the Ventura County Superior Court, including problems with the  
13 timeliness of that access, and to suggest an in-person meeting to discuss the matter  
14 further. A true and correct copy of that letter is attached as Exhibit 5. This letter led  
15 to procedures being implemented by the clerk's office that, at least temporarily,  
16 provided Courthouse News with reasonably timely access to that court's new civil  
17 unlimited complaints. However, the situation soon deteriorated and the access delays  
18 resumed.

19 25. In November 2010, Courthouse News moved from twice a week to daily  
20 coverage of the Ventura County Superior Court. At about the same time, I instructed  
21 Mr. Marshall to once again try to work with the court to resolve the access delays.  
22 After those efforts proved unsuccessful, at my direction, Courthouse News' counsel  
23 once again wrote to Mr. Planet to request that its reporter have same-day access to  
24 new civil complaints as is common and traditional in other courts where a reporter  
25 visits on a daily basis, and provide information as to the procedures used by other  
26 courts to provide such access. A true and correct copy of that letter is attached as  
27 Exhibit 6.

28



1           26. Mr. Planet responded by letter dated July 11, 2011, a true and correct  
2 copy of which is attached as Exhibit 7. In that response, Mr. Planet cited the court's  
3 budget difficulties and then went on to state, "While I appreciate the Courthouse News  
4 Service's interest in same-day access, the Court cannot prioritize that access above  
5 other priorities and mandates. Further, the Court must ensure the integrity of all  
6 filings, including new filings, and cannot make any filings available until the requisite  
7 processing is completed."

8           27. At my direction, Courthouse News' counsel responded by letter to Mr.  
9 Planet dated August 2, 2011, a true and correct copy of which is attached as Exhibit 8.  
10 That letter noted that other courts provide same-day access to new complaints before  
11 those complaints have been fully processed, and that press access only results in  
12 increased costs where the court imposes the requirement of complete processing  
13 before providing access. As of this date, Courthouse News has not received a  
14 response to its counsel's August 2 letter.

15           28. In the course of running Courthouse News for the last twenty-one years, I  
16 have observed that delays in access to new civil complaints present a range of  
17 problems. Delay means that the public does not know and cannot know who and why  
18 a person or entity is being hailed into the courts, a powerful institution of government,  
19 because the action is hidden from view. In purely practical terms, delay makes it  
20 extremely difficult for journalists to cover new civil complaints because with each  
21 passing day, those complaints begin to move from the intake area to different parts of  
22 the courthouse and a reporter must chase down complaints one by one just to find out  
23 what is alleged in those complaints. Delay also means that information about new  
24 complaints comes out only in bits and pieces, through a court posting limited docket  
25 information, messengers who recognize an important action, or plaintiffs who,  
26 because of the delay, are given the power to manipulate the news because a public  
27 filing has not been made public. And delay causes subscribers to question why we are  
28 reporting on stale events, thus damaging the worth of our publications.

1           29. More fundamentally, news about what is happening in our courts is  
2 central to an informed public and our open way of government. It is at the same time  
3 highly perishable. When I started out in journalism, I was taught to write a "second  
4 day lead" on stories that were not from that day, generally by emphasizing reaction to  
5 the original news. More than anything, it was a device to cover the fact that we were a  
6 day late. In Ventura, we are currently reporting new civil actions with such delays  
7 that there is no way to disguise their lack of timeliness, with the result that their  
8 importance as news is greatly diminished.

9           30. Articulating to state court officials what it is that makes timely access so  
10 important is difficult because it seems to me so obvious, so innate, that information is  
11 interesting and grabs the public's attention while it is fresh. The power and personal  
12 impact of information is at its highest point in the actual moment that it is happening.  
13 Every day, every week that passes, events fade further into the shades of the past.  
14 Time takes away the vibrancy and immediacy of events as they move, hour by hour,  
15 day by day, into the realm of what was, soon to be recent history and then history.

16           31. To illustrate, a reader of news looks for the most recent football scores,  
17 the latest swing in the stock market, or, on the political front, the fate of the most  
18 recent dictator to be toppled. Even a day's delay diminishes the power and relevance  
19 of the news. In the case of a new civil legal action, I call it the gong of war. Recent  
20 actions such as Apple's battle against Samsung over iPhones, or the U.S. Justice  
21 Department's challenge to the merger of AT&T and T-Mobile signal enormous legal  
22 contests. While not all new civil cases have such broad significance, they are often of  
23 great importance to the parties and their lawyers, as well as to other businesses and  
24 individuals whose business operations or matters of a personal nature may be affected  
25 by the lawsuit. Delay of the kind we are seeing in Ventura County is contrary to basic  
26 principles of open government and contrary to the interest of the public, in all its  
27 variations and subsets, in knowing that a legal battle has begun.

28

1           32. Working as a journalist, I have observed courts where newspapers sent  
2 reporters to review and report on new civil complaints but then abandoned the  
3 coverage when new filings were no longer available on a same-day basis. In other  
4 words, where access to a new complaint is delayed, it is far less likely that the  
5 existence of that lawsuit will ever come to the attention of interested members of the  
6 public. The converse is also true. Where a court provides prompt and open access to  
7 new actions, at the Los Angeles Superior Court, for example, reporters flock to the  
8 source of news.

9           I declare under penalty of perjury under the laws of the United States that the  
10 foregoing is true and correct. Executed at Pasadena, California on this 27<sup>th</sup> day of  
11 September 2011.

12 

13 \_\_\_\_\_  
14 William Girdner  
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**EXHIBIT 1**

HOME PAGE ABOUT US BACK ISSUES COLUMNS DARKROOM ALMANAC ENTERTAINMENT LAW REPORTS APPELLATE OPINIONS MASTHEAD

Subscribers



# Courthouse News Service

Thursday, September 01, 2011 Last Update: 4:31 PM PT



### Bob Marley's Family to Stir It Up on Witness Stand

By ADAM KLASFELD

MANHATTAN (CN) - Bob Marley's widow and children can testify against the UMG record label in an upcoming trial over the copyrights to the reggae legend's master recordings, a federal judge ruled.

### Goodwin Liu Confirmed to California Supreme Court

By MARIA DINZEO



SAN FRANCISCO (CN) - The California Supreme Court rang with applause as the Commission on Judicial Appointments unanimously confirmed University of California Berkeley Professor Goodwin Liu to the bench late Wednesday.

### Wham

By ROBERT KAHN

BRATTLEBORO, Vt. - It's been a rough year for Brattleboro, even before Hurricane Irene took out a block of businesses.

Last winter a big old apartment building burned and water from the fire hoses ruined six stores on its ground floor on Main Street. An Italian restaurant and a bookstore are gone for good, I imagine. The lady who runs Firefly giftshop is going to try to make it as an online store, so that's gone too. All those jobs.

Down Main Street, Baker's stationery-drug-toy store, which has been there forever, closed and moved into its branch outlet in a strip mall on the outskirts of town. The Home Depot that anchored that mall closed during the recession. Across the street, a chain restaurant just closed too - gave its employees about an hour's notice and boom.

Three law offices that have been here for more than a generation closed up. Our favorite Indian restaurant shut down. The Mile's Eye Tavern closed. A restaurant that was ruined by the fire, water and smoke moved even farther away. And Brattleboro Books, the best used bookstore in a 50-mile radius, just cut itself in half to save rent.

### Sterling Balks at Prosecutor's 'Fishing Expedition' Allegations

By RYAN ABBOTT



ALEXANDRIA, Va. (CN) - Former CIA agent Jeffrey Sterling told a federal judge that that the four subpoenas he wants to serve the U.S. Senate Select Committee on Intelligence is not what prosecutors call "a fishing expedition."

### No Trial on Google's 3G Smartphone Promises

By CHRIS MARSHALL

SAN JOSE, Calif. (CN) - A federal judge tossed two class actions that claimed Google misled smartphone owners about consistent 3G connectivity, finding that the plaintiffs could not pinpoint any such promises.

### Fuel Rans Out for Premium Gas Class Action

By TIM HULL

CN - California consumers cannot sue gasoline retailers over pump nozzles that allegedly dispense a small amount of lower-grade gas during high-grade fuel purchases, the 9th Circuit ruled Thursday.

### Hague Orders Ecuador to Pay Chevron \$96 M

By ADAM KLASFELD



CN - An arbitration tribunal at The International Court of Justice at The Hague ordered the government of Ecuador to pay Chevron and its current subsidiary Taseco \$96 million for "undue delays" of 15 years in ruling on seven commercial disputes in the early 1990s.

### Teen Says Sheriff's Deputy Made Her Strip

By JONNY BONNER

SALT LAKE CITY (CN) - A sheriff's deputy made a 17-year-old girl strip for him in his squad car so he could "check for a vaginal piercing" after falsely telling her she was wanted on an out-of-state warrant on a heroin charge, the teen says in Federal Court.

### Science Gives Birth to Odd Maternity Lawsuit

By ILLIA FILIP

BOSTON (CN) - A mother of twins sued her employer for refusing to grant her maternity leave because she did not physically give birth but used a "gestational carrier."



### SF Court Strikes Deal to Save 100 Jobs

By MARIA DINZEO

SAN FRANCISCO (CN) - After four days of negotiations, financially desperate San Francisco Superior Court struck a deal with the judiciary's central administrators that will save 100 jobs and keep 11 courtrooms open. The deal comes days after Presiding Judge Katherine Feinstein said the Administrative Office of the Courts had offered only a

### Pot-Based Religion Blew Smoke at Probation

By TIM HULL

CN - A convicted meth dealer who claims to be a celebrant of a cannabis-based religion in Montana cannot smoke marijuana during his probation, the 9th Circuit ruled Thursday.

### Hunters Can't Bring Elephant Trophies to U.S.

By RYAN ABBOTT

WASHINGTON (CN) - Americans who hunted and killed endangered African elephants in Zambia cannot bring trophies of their prey back home, a federal judge ruled.

### No Shortcuts in Retrial for Egypt Bid-Rigging

By DAN MCCUE

WASHINGTON (CN) - The U.S. government cannot stipulate that it lost \$30 million because of a bid-rigging conspiracy for Egyptian development contracts in a retrial of some purported conspirators, a federal judge ruled.

### Truckers Rebuff Call for Electronic Hour Gauges

By JOE DELENTINO

CHICAGO (CN) - The 7th Circuit struck down a regulation requiring long-haul trucks operated by companies with consistent safety violations to monitor their drivers' hours electronically.

### EU Report Hails Reduce, Reuse, Recycle Ethos

By SONYA ANGELICA DIEHN

BONN, Germany (CN) - Better solid-waste management in the European Union could cut 86 million tons of carbon dioxide equivalent, according to a new report from the European Environment Agency.

### Texas Strip Club Fees Upheld by High Court

By CAMERON LANGFORD

CN - The Texas Supreme Court upheld a law that forces strip clubs serving alcohol to pay the state \$5 for every patron they serve, a fee that one state judge said amounted to an unconstitutional tax of protected expression.

### Court Won't Revisit Decision to OK Jail Mail

By TIM HULL

### Arizona Challenges Parts of Voting Rights Act

By JAMIE ROSS

PHOENIX (CN) - Arizona challenged the constitutionality of "preference" sections of the Voting Rights Act, which require it to seek approval from the federal government to change its election laws and regulations.

### 'Napoleon Dynamite' Creator Sues Fox

By LIZ POTOSNAK

SANTA MONICA, Calif. (CN) - The company that made the comedy hit "Napoleon Dynamite" on a \$400,000 budget says Fox Searchlight Pictures used Hollywood accounting to cheat it of \$10 million in royalties for home video sales and TV licensing of the oddball cult hit.

### Habitat for Salamander Ozarks Developed Areas

By TRAVIS SANFORD



WASHINGTON (CN) - The U.S. Fish and Wildlife Service has designated 47,383 acres in Sonoma County as critical habitat for the endangered California tiger salamander.

### In Brief: Throw Away the Key

BOSTON - A former inmate who was coerced into sex with a prison guard up to 100 times while serving time can collect over \$213,000 in attorney's fees, a federal judge ruled, on the heels of upholding the jury's \$73,000 verdict.

### Taser Death

SAN BERNARDINO - A widow claims three San Bernardino County sheriff's deputies Tasered her husband

Exhibit 1

Page 14

9/1/2011

Then Irene blew through town. Whetstone Brook jumped its banks and filled all the basements on Flat Street with water and their ground floors with mud: New England Youth Theater, a machine shop, a brew pub and restaurant, an Indian import shop, the Latchie Hotel, Movie Theater and restaurant, and the ground floor of Sam's, the biggest outdoor outfitter in town, all soaked and muddy.

Their workers will be laid off, some of them for a long time. Some of the owners have said they wonder if they'll be able to reopen at all.

Battleboro is a small town and losing all those jobs, and all those empty storefronts on Main Street, really hurt.

And the destruction in the towns on the way to old country, 45 minutes away, is indescribable. They look like Tibet after an earthquake in the Himalayas.

It's hard to say how many people in Vermont are still cut off from everything: roads out, no power, no food unless they hike out of the mountains for it.

Just in that one stretch of mountains where I take my bicycle rides as many as 5,000 to 10,000 people have suffered loss of everything, from their power to their roads to their jobs to their homes.

I saw one house fallen into the river, and another one dumped into the middle of the road.

It's situations like this that show why we need government. A government that functions, that has reserves to call upon, be it money, workers, equipment.

One of the little towns in the mountains here, Wardeboro, population 854, was totally out off by floods Sunday. Its people received no help until government agencies airlifted supplies to them on Wednesday.

Airlifted supplies. To people in Vermont.

In how many countries in the world are people truly grateful to see the government come to their door? Fewer than half of them, I bet.

While all this has been going on, politicians of all stripes, but particularly of one stripe, have continued to holler that our country is broke, that we cannot afford to "feed government" anymore by paying taxes, that we have to starve government, to make it worse, and even weaker, than it already is.

That's nonsense. The United States is not broke. Our gross domestic product is around \$15 trillion a year. We have plenty of money. But we have even more personal greed and political cowardice.

Countries facing true sovereign

"taken" deal she had no intention of accepting.

**Ex-Mayor Gunned Down in Pot-Grow Search**  
By TISH KRAFT



**FT. BRAGG, Calif. (CN)** - Former Mayor and City Councilman Jere Melo was gunned down investigating reports of a marijuana grow on private timber land, the Eureka Times-Standard reported. Melo's co-worker at Hawthorne Timber Company told the Times-Standard that a man "opened fire on the pair with a high-powered rifle,

hitting Melo multiple times."

**'This Lawsuit May Pinch a Bit'**

By PHILIP A. JANQUART

**NAMPA, Idaho (CN)** - A Native American hunting and fishing guide claims a dentist used his daughters as pawns in a scheme to get free trips in return for unnecessary dental work.



He claims the dentist said: "As long as the girls are in braces, I have an Indian in my back pocket."

**Wisconsin Teachers Staggered by New Rules**  
By USA BUCHHEIMER

**(CN)** - Teachers this week saw how one school district will implement Gov. Scott Walker's "Budget Repair Bill," which prohibits collective bargaining for anything but salary - and they don't like it. The New Berlin School District's new Employee Handbook takes effect today (Thursday); teachers call it the most "punitive" in the state.

**Unsolved Killing Creates \$1 Million Problem**  
By REUBEN KRAMER

**PHILADELPHIA (CN)** - A man was shot to death in his driveway 18 days after his wife became the beneficiary of a \$1 million policy on his life, and the insurer wants to deposit the \$1 million with a federal court.

**'Hangover II' Stoutman Hurt in Car Trick**  
By MATT REYNOLDS



**LOS ANGELES (CN)** - An Australian stuntman who suffered serious brain injuries when a seat-piece went awry on the set of "The Hangover Part II" in Bangkok has sued Warner Bros. He claims the stunt coordinator changed the trick while it was occurring.

**Bar Tussies With A.G. Over Records**  
By CAMERON LANGFORD

**AUSTIN (CN)** - The State Bar of Texas claims the state's attorney general "failed to apply the proper legal standard" when he decided "certain sensitive State Bar personnel memorandums must be released to the public" under Texas open records laws.

**Judge Freezes Funds of Quant Start-Up**

**CHICAGO (CN)** - A federal judge has frozen the assets of a

**(CN)** - The 9th Circuit said Thursday that it will not revisit a February ruling that allowed a California publisher to distribute a free magazine in state prisons and jails.

**Cops May Be Liable for Activist's Death in Jail**  
By JOE CALVINO

**CHICAGO (CN)** - The 7th Circuit revived claims that Chicago police officers caused the death of a prominent civil rights activist by refusing to provide her with medication when she was under arrest.

**Jamaican Drug Lord Pleads Guilty in NYC**

**MANHATTAN (CN)** - Jamaican drug dealer Christopher Coke pleaded guilty Wednesday to racketeering conspiracy and conspiring to commit assault with a deadly weapon, stemming from a 20-year drug ring he allegedly ran out of the Caribbean nation.

No Trademark for the Fatsy's of New York  
By MATT REYNOLDS  
**(CN)** - Neither of the Italian eateries in a long-running trademark dispute can lay claim to the "Fatsy's" name, the 2nd Circuit ruled.

**Obama Goes Tit-for-Tat With Boehner on Regs**  
By TRAVIS SANFORD

**WASHINGTON (CN)** - President Obama responded to Speaker of the House John Boehner's request for a list of all proposed regulations that would cost more than \$1 billion annually with a list of seven such programs.

**Obama Goes Tit-for-Tat With Boehner on Regs**  
By TRAVIS SANFORD

**WASHINGTON (CN)** - President Obama responded to Speaker of the House John Boehner's request for a list of all proposed regulations that would cost more than \$1 billion annually with a list of seven such programs.

**In Brief**

**Tempest in a Teapot**

**COLUMBUS, Ohio** - Liberty Counsel, a litigator for conservative causes, claims the Ohio Liberty Council, a tea party coalition, violates its trademark.

**Inside Trading Ring**

**MANHATTAN** - Anthony Scoloro Jr. and Diamondback Capital Management, where he was a portfolio manager, are the latest to be charged with involvement in the inside trading ring that used information attorneys Arthur Cuttilo and Brian Santorlas misappropriated from their firm in exchange for kickbacks; Scoloro allegedly made \$1.1 million from it.

**Illegal Deportation**

**BROWNSVILLE, Texas** - U.S. citizen brothers say the United States and Jim Wells

to death because he honked when a deputy turned in front of him at an intersection, and that other deputies laughed as the three "taunted the dying man five times."

**Medical Marijuana**

**EL CAJON, Calif.** - A man with a prescription for medical marijuana claims Entertainment Worker fired him for refusing to supply his boss and other employees "marijuana for their recreational purposes."

**Old Meat**



**WEST PALM BEACH** - A man claims Wal-Mart did Sam's Club fired him for complaining about being ordered "to alter the expiration dates on meat that had already expired" and "to grind up expired meat to sell to the unsuspecting public as 'fresh ground beef'."

**Boss of the Day**

**FORT WORTH** - A woman claims her boss at Sprint U.S.A. forced "everyone in his group" to watch paragrahpic videos, and discuss them, on pain of firing if they refused.

**Inside Trading**

**NEWARK** - James F. Turner II and his company, Clay Capital Management, reaped \$9.9 million in "illicit gains" from inside trading for Turner and his cohorts, including Scott A. Vollmar, Scott A. Robarge and Mack A. Darbin, the SEC says.

**TV Station Bankruptcy**



**WILMINGTON, Del.** - MTB Bridgeport-NY Operating LLC (the Television Station WSAH (DTV Channel 42) filed for bankruptcy, listing less than \$50 million in assets and more than \$100 million in debts.

**Suing the Whoblies**

**MANHATTAN** - Par Par claims the Industrial Workers of the World breached a confidential settlement agreement by leaking its terms to (nonparty) Crain's New York Business, which ran an Aug. 18 story under the headline,

debt crises today - Iceland, Ireland, Portugal and Greece - may actually not have the money to pay off their government debt.

The United States has the money, we just don't want to do it. Because we are selfish, short-sighted and greedy, and we elect leaders who are even worse than we are.

But some things only governments can do. To run for government office by claiming that government is evil, that it must be starved, weakened and debilitated, is perverse at best. And to vote for people who say they will do that is stupid.

**Should Radiation Exposure to Workers' Eyes Be Reduced?**

WASHINGTON (CN) - The U.S. Nuclear Regulatory Commission requests comment on whether to create regulations based on new recommendations regarding limiting the annual dose of radiation to workers' eyes.

**Entire Communities Stranded in Vermont**

WILLIAMSVILLE, Vt. (CN) - Entire communities in Southern Vermont remain out off by flooding that washed out roads and bridges, took out houses, and dumped one in the middle of the road to sid country.

money manager and his hedge fund advisory firm, whom the SEC accused of lying to potential investors about the startup quantitative hedge fund, the SEC said Wednesday in announcing the unmaking of its federal complaint.

**Laurence Maroney Beats Pot Charge**

By JOE HARRIS  
ST. LOUIS (CN) - NFL running back Laurence Maroney was found not guilty of misdemeanor marijuana possession in a bench trial before a city judge.

**Los Angeles Sees Shrinking Court, Does Not Expect Legislative Bailout**

By MARIA DINZEO  
LOS ANGELES (CN) - As the biggest trial court in California fights for a way to deal with enormous layoffs of 4,000 people in the next three years, Presiding Judge Lee



Edmon said the leaders of California's judiciary should stop hoping the Legislature will bail them out and make hard decisions on priorities that will keep courts open.

**Walt Girdner Photos: Night Street 2**



**'Remarkable Corporate Arrogance' at a Hilton**

By JULIA FILIP  
DALLAS (CN) - A doctor sued a Hilton Hotel, claiming that in a show of "remarkable corporate arrogance," after an employee secretly

videotaped her undressing, other staff members interrogated her for more than an hour, then showed the video repeatedly to a roomful of men "while the plaintiff wept."

**Mother of Driver Whose Truck Killed 6 Sues Organizers of California 200 Race**

By JAMIE ROSS  
SAN DIEGO (CN) - A mother sued organizers of The California 200 off-road race for the distress she suffered when she saw her son's truck "veer off the racetrack ... flip over, and kill eight people and injure dozens who were permitted to stand on or near" the track.

County illegally detained them, and illegally deported one of them to Mexico, even though they had valid documents.

"Queens biz settles wage-theft suit for \$470K."

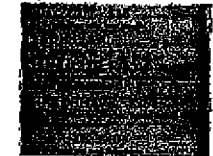
**Rehabilitation in L.A.**

LOS ANGELES - An "older Hispanic couple" claim Los Angeles County sheriff's deputies harassed and violently retaliated against their family for their peaceful protest of a deputy's shooting to death his son, Ezequiel Jacobo, on Aug. 8, 2009.

**Publishing**

MANHATTAN - Midpoint Trade Books claims Eric Kampmann damaged it by "self-dealing, impropriety and malfeasance" for 6 years, including transferring \$400,000 of Midpoint's money to (nonparty) Benefort, of which Kampmann is president, for "costs associated with the O.J. Simpson book, 'If I Did It.'"

**Illegal Haircut**



WOODLAND, Calif. - A father claims Woodland Joint Unified District employees took his son out of school and drove him to a barber shop where his hair was cut against his will, and to his distress.

**EXHIBIT 2**



*The New York Times*

## Goal

The New York Times Soccer Blog

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SEPTEMBER 9, 2008, 12:21 PM

### Mexican League on Univision: Check Your Local Listings

By JACK BELL

A dispute between two Spanish-language television giants, Univision and Grupo Televisa, could result in the games of three top Mexican league teams being pulled from Univision, which shows the games in the United States.

Televisa — which owns Club América, Necaxa and San Luis — has filed a suit in Superior Court in Los Angeles in which it says Univision must stop its broadcasts of games involving the three teams by Sept. 28, according to a report by the Courthouse News Service. Televisa is asking the court to invalidate a contract, which Univision asserts runs through 2017. Televisa said it is prepared to begin broadcasting the games of the three teams it owns.

Univision's broadcast of Mexican league games in the United States draw impressive numbers of viewers who generally fall under the radar. Univision claims that more Hispanic viewers between the ages of 18 and 49 watched the 2007 league tournament finals than watched that year's Super Bowl.

Club América, based in Mexico City, is one of the country's most popular teams. San Luis made it to the semifinals of the 2008 Clausura tournament. Necaxa was the subject of an offer from the state of Aguascalientes, which reportedly offered Televisa \$30 million for the club.

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Exhibit 2

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<http://goal.blogs.nytimes.com/2008/09/09/mexican-league-on-univision-check-your-local-l...> 9/16/2011

FER147

**The New York Times**  
**Arts Beat**  
**The Culture at Large**

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JANUARY 21, 2011, 12:14 PM

## Gallery Challenges Jeff Koons's Balloon Dog Claim

By PATRICIA COHEN

You may not have realized that the balloon dog you bought for a buck from a street clown might be a collector's item. But the artist Jeff Koons, who constructed a 10-foot tall "Balloon Dog" that has been exhibited in the Metropolitan Museum of Art and elsewhere, sent a cease-and-desist letter to a Canadian manufacturer and San Francisco gallery for producing and selling "Balloon Dog" bookends. Now the gallery, Park Life, has asked a federal court for a declaratory judgment that states the canine shape cannot be copyrighted, according to Courthouse News Service. "As virtually any clown can attest, no one owns the idea of making a balloon dog, and the shape created by twisting a balloon into a dog-like form is part of the public domain," the gallery says in its federal complaint. "Any similarities between the Balloon Dog Bookend compared with the Balloon Dog Structure are driven by the wholly unprotectable idea of depicting the shape of a balloon dog in a solid form."

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Exhibit 2  
Page 18

<http://artsbeat.blogs.nytimes.com/2011/01/21/gallery-challenges-jeff-koons-balloon-dog-cl...> 9/16/2011

Exhibit 2  
Page 19

HAIR LOSS makes men's hair reversible! ZIERING MEDICAL  
BECOME HAPPY



Chicagoland pictures from the 9/11 anniversary



Gallery: Photos from Bears' opener against the Falcons



NBC 6 to replace Ginger Zee with 2 weathercasters

Home > Business > Chicago Breaking Business

## United Airlines, Huntleigh may have burden of proof in last Sept. 11 suit

Comments 1

Share 3



From the Courthouse News Service.  
8:41 a.m. CDT, September 9, 2011

United Airlines and its security consultant Huntleigh USA may assume the burden of proof in the only remaining wrongful death lawsuit stemming from the Sept. 11 attacks, a federal judge ruled.

### Related



STORY: 'No credible threat to Chicago'

Mary Bavis, whose 31-year-old son, Mark, died on United Airlines Flight 175, has not accepted a settlement, months away from her November trial date.

Ninety-five other wrongful death suits stemming from the attacks have been settled for a reported \$500 million.

Get the full story>>



STORY: Irene to cost United Continental \$40M in sales

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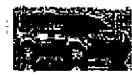
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WayneBradley at 5:28 PM September 08, 2011  
 Good luck to Mrs. Davis. I hope she prevails.

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# Courthouse News Service



Friday, September 09, 2011 Last Update: 10:00 AM PT

## United Airlines May Get the Burden of Proof in Sept. 11 Negligence Trial By ADAM KLASFELD

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MANHATTAN (CN) - United Airlines and its security consultant Huntleigh USA may assume the burden of proof in the only remaining wrongful death lawsuit stemming from the Sept. 11 attacks, a federal judge ruled.

Mary Bavis, whose 31-year-old son, Mark, died on United Airlines Flight 175, has not accepted a settlement, months away from her November trial date.

Ninety-five other wrongful death suits stemming from the attacks have been settled for a reported \$500 million.

"Defendants acknowledge that the events of September 11, 2001, were tragic, but deny that they were negligent," U.S. District Judge Alvin Hellerstein wrote in his Sept. 7 Order and Opinion Regulating Burdens of Proof and Issues for Jury Instructions.

As the parties wrap up their pre-trial motions, Hellerstein ruled on whether Bavis may pursue state law claims, and where the burden of proof should fall at trial.

The order states that the Supremacy Clause of the Constitution settled the first question, booting state claims in favor of federal law.

Hellerstein did not decide where the burden of proof would fall at trial, but he indicated that it may not rest - as conventionally expected - with the plaintiff.

"Where a defendant has superior access to knowledge of relevant facts, courts may shift a burden to the defendant, hyperpermitting the plaintiff to make an initial showing and obtain the benefit of a presumption," the order states. "Courts should not do so lightly, but should consider whether particular circumstances warrant such burden-shifting."

The judge appears to believe this is such a case.

"Defendants are in the best position to show what they did and why they did it," the order states. "It is appropriate to require defendants to assume the burden to come forward with this evidence. If defendants succeed, plaintiff will have the ultimate burden of proving some overall failure of due care, if due care is shown to be the standard. If defendants' substantial compliance with regulations and procedures is shown to be a defense, defendants will have that ultimate burden of persuasion, as well as of coming forward with sufficient evidence."

Nevertheless, Judge Hellerstein continued: "I defer this question to later proceedings."

He said he would decide what categories of damages Bavis can recover in a separate order.

The New York Times reported that Hellerstein indicated in a recent hearing that he would grant damages for the "11 minutes of terror" Mark Bavis suffered before the flight crashed.

"My thinking is tending toward allowing terror damages," Hellerstein said, according to the Times.

He also said the case would revolve around how the attackers boarded the airplane, according to the Times.

"I don't know how the terrorists got through," he said, the Times reported. "I don't know how the weapons got through. And I don't know if negligence is the only explanation."

The next court date is Sept. 19; trial is slated for Nov. 7.

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**THE GLOBE AND MAIL**

September 5, 2011

## Grieving mother told to remove pictures from cubicle

By Madeleine White  
Globe and Mail Blog

*A court rules there was nothing wrong with employer telling woman to stop talking about deceased daughter*

The death of a child is devastating to any parent, but being told to suck it up at work? Talk about rubbing salt in a wound.

Cecelia Ingraham, a former employee of big pharma giant Ortho-McNeil Pharmaceutical (<http://www.janssen-ortho.com/joi/en/about/history.asp>) (now Janssen Pharmaceuticals, Inc.), lost her teenaged daughter in 2006 to leukemia. As a tribute, the grieving mother put up pictures of her daughter and hung her ballet shoes in her cubicle at work.

But after a year and a half, her boss, Carl DeStefanis, ordered her to take them down and to "no longer speak of her daughter because she is dead," according to a new report from Courthouse News Service [<http://www.courthousenews.com/2011/09/02/39527.htm>].

He was also accused of telling Ms. Ingraham to act as if her daughter "did not exist."

Ms. Ingraham's behaviour was off-putting and distracting to her colleagues, making them feel uncomfortable at work, Mr. DeStefanis explained. But that's not how the anguished mother saw things. She felt that her workplace had become inhospitable and sued for discrimination, constructive discharge and infliction of emotional distress.

"I was still in shock. Nothing was coming out of my mouth at the time because I was still in shock and I was in disbelief," Ms. Ingraham testified, according to a report by ABC News [<http://abcnews.go.com/blogs/health/2011/09/05/mourning-mother-forced-to-remove-photos-from-cubicles>]. "And I said to him, I cannot believe that. I says, I don't see anybody avoiding me. They always come over, they give me my work."

A county court judge ruled against Ms. Ingraham, prompting her to file an appeal, which she also lost.

The presiding appellant judge pointed out that it is difficult for a plaintiff to prove intentional infliction of emotional distress, citing that it has to be outrageous and beyond what would be tolerated in civilized society.

"We have previously said that conduct in the workplace will rarely be so egregious as to give rise to a claim of intentional infliction of emotional distress," Judge Victor Ashrafi wrote.

He also said that while many would view telling a parent who is mourning to forget about their dead child as insensitive, it's not the employer's fault if the parent overreacts and quits his or her job.

**Would you stay at a job where your boss told you to stop mourning?**

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**NEWYORKPOST**

Updated, Sat., Apr. 9, 2010, 6:46 AM

## Lawsuit a fine wine

Last Updated: 6:46 AM, April 9, 2010  
Posted: 2:56 AM, April 3, 2010

A Norwegian wine collector is suing Christie's for \$5 million for allegedly botching the sale of his world-class collection of rare wines, Courthouse News reported yesterday.

The 2007 Los Angeles auction was "a severe failure," Christen Sveaas said after many of his vintage bottles failed to sell or did so below market value.

A dozen bottles of his Chateau Mouton-Rothschild 1945 drew \$100,000, \$70,000 less than Christie's got for the same lot in New York, the suit says.

And his 1999 Domaine de la Romanée-Conti Richebourg, "one of the most sought-after wines in the world," sold for \$1,250 a bottle in LA -- but \$8,867 a bottle in London just three days later.

The suit charges Christie's with failing to promote the sale properly, twice delaying it unnecessarily and then holding it at "the tail end of an overcrowded auction season."

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A BLOG OF NEWS AND INSIGHT

LAW -- November 17, 2010 at 7:03 PM EDT

## Guantanamo Detainee Ghailani Convicted on Just 1 Charge by N.Y. Jury

BY: NEWS DESK

Like

The first suspect transferred from Guantanamo military prison to stand a civilian trial was acquitted late Wednesday of nearly every charge that he helped with terrorist attacks on two American embassies in Kenya and Tanzania that killed 224 people in 1998.

After a week of deliberation, a federal jury convicted Ahmed Ghailani, 36, a Tanzanian from Zanzibar of one count of conspiracy and acquitted him of all more than 280 other counts, including murder and murder conspiracy.

The verdict deals a setback to President Obama's plans for trying terrorism suspects on U.S. soil and marks a rare defeat for the U.S. Attorney's Office in New York, which has a near perfect record in prosecuting terrorism cases.

Prosecutors branded Ghailani a cold-blooded terrorist, but the defense portrayed him as a clueless strand boy, exploited by senior al-Qaida operatives and framed by evidence from contaminated crime scenes.

Ghailani was convicted of one count of conspiracy to destroy U.S. property. He faces a minimum of 20 years and a maximum of life in prison at sentencing on Jan. 25.

Adam Klasfeld<sup>4</sup>, a reporter for Courthouse News Service, was in the courtroom and spoke with The Rundown shortly after the verdict was read.

"At first, everyone was tense," Klasfeld said. "People were not expecting this."

The jurors only looked at the judge and did not make eye contact with Ghailani or those gathered in the room, Klasfeld said. "A hushed silence fell on the reading of the verdict. A string of 'not guilty's' were read until count five, which was conspiracy to destroy government buildings and property."

Despite the charge he was convicted on still carrying the potential for life in prison, Klasfeld said the defense team seemed very positive after the rest of the charges were read as not guilty. Ghailani hugged his lawyer before guards handcuffed him and took him out of the room.

The judge told the jurors, "you have the right to be proud of your service in this case," and added, "your nation is better for people like you," according to Klasfeld. The jurors were also not immediately talking to the press and were cautioned to be careful about giving out personal information.

When Ghailani was transferred to New York last year to stand trial, Jim Lehrer spoke with Benjamin Weiser of The New York Times for some background on the case and the controversial venue for prosecution.

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George Griffin, Mike Melia, Dave Gustafson, The Associated Press and Reuters contributed to this report.

■ An earlier version of this post had the incorrect first name.

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## Valedictorian sues school: Was she snubbed because of race?

July 26th, 2011  
04:56 PM ET

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A recent high school graduate from Arkansas is suing her school district, claiming it refused to recognize her as the school's sole valedictorian because she is black.

Kymerly Wimberly, 18, earned the highest grade point average in McGhee Secondary School's 2011 graduating class. She did so as a young mother, according to the complaint she submitted to the U.S. District Court for Arkansas' Eastern District. She was named the school's valedictorian and then later given co-valedictorian status with a white student who had lower grades, her complaint says.

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http://news.blogs.cnn.com/2011/07/26/valdictorian-sues-school-was-she-snubbed-becaus... 9/16/2011





Kymberly Wimberly

No legal response has been filed by lawyers for the school district or any other school or district representatives, according to court officials. Superintendent Thomas Gathen said he has yet to be served with any sort of court documents. Because of this, Gathen said he was unable to comment on several individual issues brought up in Wimberly's complaint.

"The issue that someone's trying to paint is that this was a racially motivated," Gathen told CNN. "That wasn't an issue with (the co-valedictorians). This is strictly an academic issue and a policy issue, not a racial issue."

Wimberly is seeking punitive damages of \$75,000 and recognition as the sole valedictorian of her class. Wimberly's complaint also argues the McGehee school district, in southeastern Arkansas not too far from the Mississippi River, habitually withheld access to challenging classes from black students.

Wimberly said students were told at a schoolwide assembly that advance placement classes were very rigorous and that only those who really thought they would thrive with intense workloads should elect to take them. Then, individual students were taken aside and told that the classes really weren't all that bad, she told CNN. The overwhelming majority of those students were white, she said, adding that she was the only black student in her AP literature class and one of two in calculus.

"Black students are meant to stay in regular course levels and mostly play sports," Wimberly said. "That's what were good at that that's what we should stick to - that's the mentality of McGehee."

Wimberly said she had one teacher, for AP biology, who encouraged all students to take the class. Its racial makeup was half black, half white, and was more reflective of McGehee's student population, which is 46% black.

The case has been gaining increasing attention since Courthouse News Service reported on it Monday.

According to the complaint, Wimberly's mother, Molly Bratton, works as the McGehee district's media specialist. On May 10, Bratton learned from the school's counselor that her daughter had earned the top grade point average in her class. After sharing the exciting news with her daughter, she overheard someone in the school's copy room saying the accolade would cause "a big mess," according to the complaint.

Later that day, the complaint says, Bratton confirmed her daughter's status with Superintendent Gathen.

Then things began to unravel, according to Wimberly.

The next day, the school's principal, Darrell Thompson, told Bratton that he had decided to appoint another student, who was white, as a co-valedictorian. CNN was unable to reach Thompson for comment.

The complaint says Thompson attributed the decision to something in the student handbook, though the complaint says he did not list a specific policy.

In regards to recognition of a valedictorian, the McGehee handbook says that "students must be continuously enrolled at McGehee High School the last two semesters without transferring during this time to be considered in class ranking or eligible for valedictorian or salutatorian status."

The handbook says students will be given the same class rank only if their grades are the same, but in deciding class rank, students with lower GPAs who are taking more or harder classes will not be penalized. Gathen said the Wimberly's co-valedictorian had half a credit more than Wimberly and the difference in the students' GPAs was .03 or .05. Gathen said the outcome would have been the same were the situations reversed.

"I would have made the same decision," he said. "I was the one who made the ultimate decision."

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12:06 pm ET September 16, 2011

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An exclusive look at the NEW Connect The World with @PeeckyCNN <http://t.co/rR77kaas>



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Excellent question! RT @FortuneMagazine: Does anybody actually use QR codes?

<http://t.co/GehEjkD>



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#158

Wimberly said she knew of students sharing the valedictorian position in the past, but only if their GPAs were the same, "down to the very last decimal point."

When she found out that her daughter would have a co-valedictorian, Bratton called Gathen, who told her he had OK'd Thompson's decision, court documents state. The school's counselor had already sent out a news release to the local community about Wimberly's achievement, but the school then sent out an additional one about the co-valedictorian.

Bratton sought to bring up the issue at a school board meeting but was told by Gathen that it would have to wait for a meeting after the school's graduation ceremony because of an error in the form she filled out, according to the documents.

In addition to these details of the case, the complaint also claims that the district places more emphasis on challenging its white students than its black ones.

"African-American students were not encouraged to take Honors or Advanced Placement classes," the complaint says. "Caucasian students had to almost opt out (of advanced classes)."

Wimberly said she was lucky in that she had parents who would support her academic pursuits, even if many of her teachers would not.

"(Other students') parents aren't as active as mine," Wimberly said. "Think about children who don't have parents who are active in the school."

Post by: [Journalist AJ Elkij](#)

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soundoff (2,089 Responses)

**1. Carol Snyder**

Do you think they would have thought this hard about it had they originally named the white student valedictorian?

August 16, 2011 at 9:44 pm | [Reply](#)

**2. Carol Snyder**

I think she is suing for too little. The lawyer gets 1/3 of it, and that barely leaves enough for four years of college at a good school. Hopefully she will get a full scholarship somewhere and she can put this money aside for her next step in life. I wish her the best! The school needs to learn a lesson and this may be the only way they can learn it - via their pocketbook! Without the suit, they would probably just continue on their merry way - and unwilling to have a valedictorian who is an African-American.

August 16, 2011 at 9:53 pm | [Reply](#)

**3. Megan**

I need more information on their GPA's and how many credit hours they took. If the white student took more hours, they would have a lower GPA due to how AP classes work, even if they got an "A" in the class. Having more credit hours actually dilutes your GPA. Many schools will account for that and take the extra credit off one student to make it comparable to the other student. It is very possible and very likely that these two students actually have the

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same exact GPA when you hold credit hours constant. People should take that into account before they start speculating discrimination. It could be that the counselor wasn't taking this extra credit issue into consideration when she told her she had the highest GPA. I was co-valedictorian with two other students in my class. We made sure we took the same amount of credit hours so we wouldn't have this issue.

August 18, 2011 at 4:38 pm || [Reply](#)  
• *patric*

Taking more credit hours does not dilute your GPA. The "A" stands for "average." If you take 4 classes and get an A in each (A=4 points) you earn 16 points. 16 divided by 4 = 4; your GPA is 4.0 or A. If you take 5 classes and earn an A in each, your GPA is still 4.0 (4 x 5 = 20 / 5 = 4.0). The inequality comes in when a person who is taking EASIER classes earns an equal or higher grade than one taking harder classes and therefore ends up with a higher GPA.

August 19, 2011 at 7:45 pm ||  
• *george*

Many school districts give extra points for advanced placement or honors classes, to reduce any penalty for the harder classes. I don't know about this school district in particular, but my school district assigns 6 points (on a 4-point scale) for an "A" in an advanced placement class, 5 points for an "A" in an honors class, and the usual 4 points for an "A" in a regular class - because of that, someone with mostly A's and a few of these advanced or honors classes can have a GPA greater than 4.0 (My valedictorian had something crazy like a 5.1).

August 23, 2011 at 10:22 pm ||  
4. *Claire*

You're probably correct, that it was about morals and not race, but if they didn't have any policy in place that stated anything other than GPA was considered, she still has a case. I doubt she'll get \$750K - she's obviously viewing this as a golden opportunity.

July 26, 2011 at 5:09 pm || [Reply](#)  
5. *George*

I don't understand how having an unwed mom would make her have the highest GPA in the entire school, which made the white school principal so uncomfortable that he chose a white student with a lower GPA to be a "co-valedictorian". Can you please explain?

July 26, 2011 at 5:24 pm || [Reply](#)  
6. *CO.SENS*

DISLIKE!!!

July 26, 2011 at 5:29 pm || [Reply](#)  
7. *CO.SENS*

OBVIOUSLY YOUR MOTHER DID NOT DO A GOOD JOB. YOU ARE JUDGING HER AND YOU DON'T EVEN KNOW HER.....

July 26, 2011 at 5:31 pm || [Reply](#)  
8. *LOL*

I know you are trolling, maybe, but your comment cracked me up! Thanks for the laugh! ☺

July 26, 2011 at 6:08 pm || [Reply](#)  
9. *justice*

Either way... Morality based or racially based. It's flat out wrong.

July 26, 2011 at 6:16 pm || [Reply](#)  
10. *lisa*

So you're assuming she's trying to cash in and not making a very valid point? Really? You're right, she must be a lazy deadbeat to be at the top of her class as a mother. Think about that just for a minute. Lawsuits SHOULD be about social justice, and this one is, IMHO.

July 26, 2011 at 6:27 pm || [Reply](#)  
11. *lisa*

That's right, a golden opportunity - for WHAT? An attempt to make a lot of money without having to work for it? I'm sure that's how she got to be valedictorian, by being a leazy opportunist and whining. AP classes are weighted into the GPA so I think this whole argument is nonsense. Either her GPA was tied for first or it wasn't. She deserves every single thing she has worked her butt off for.

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If she said she should get special treatment because she's black or because she's a single mother then she'd be way off base. She earned her status as the number one student in her class. Why is it OK to dilute that?

July 26, 2011 at 6:36 pm | [Reply](#)  
12. *nypoint2012*

Obviously you're not too smart. It's 75k, not 750k. Maybe you should take an AP class in math.

July 26, 2011 at 6:43 pm | [Reply](#)  
13. *LastDinosaur*

Well, it says she sued in federal court. Her lawyer may have been desperate for a jurisdictional basis that would stick, so s/he threw in the kitchen sink of "qualifiers." You need \$75k + parties from different states to bring a diversity suit in federal court; and although there may not be diversity of citizenship, the case promotes educational diversity (see the second allegation, regarding the racial composition of AP classes), which is close enough, right?

But seriously, it's probably a good idea to shoot for a federal forum rather than let the Arkansas state court system decide what to do with a black plaintiff's novel race-based claim.

July 26, 2011 at 8:44 pm | [Reply](#)  
14. *Rodney*

Read the story. She's asking for \$75,000...not \$750,000. Probably just enough to pay for her college degree now that a scholarship is out of the question because she went from Valedictorian to Co-Valedictorian.

July 26, 2011 at 9:42 pm | [Reply](#)  
15. *dehillo*

note that she is asking only \$75,000, not \$750,000. Does anyone realize how important valedictorian status is to a college bound person? I'm thrilled she's taking them on. Arkansas has always been a racially stunted state, and this proves to me that things haven't changed much since Brown vs the Board of Education. This white grandma says "You go, Girl!"

July 26, 2011 at 9:47 pm | [Reply](#)

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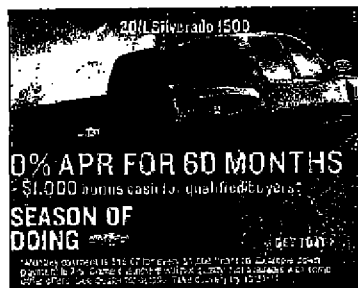
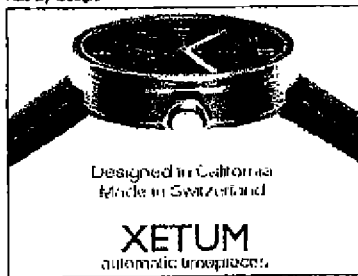
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**Black high school student says school wouldn't let her be sole valedictorian because of race**

BY LARRY MCSHANE  
 DAILY NEWS STAFF WRITER  
 Tuesday, July 26, 2011

A black teen-age mom with the highest GPA in her class was forced to share valedictorian honors with a white classmate by a racist Arkansas school district, a lawsuit charges.

The federal suit was filed last week on behalf of Kymberly Wimberly, 18, against the McGehee school district, its superintendent and her high school principal.

"Defendants did not support African-American students and did not want to see Wimberly, an African-American young mother, as valedictorian," the nine-page suit charges.

"But for Wimberly's race, defendants would not have selected a student with a lower GPA than Wimberly to also be a valedictorian."

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The lawsuit was first reported on Monday by the Courthouse News Service. Both Wimberly and the white student spoke at the McGehee Secondary School graduation in May, the lawsuit said.

A message left with the school superintendent for comment was not returned on Monday, according to MSNBC.com.

According to the lawsuit, Wimberly - who missed three weeks of her junior year after delivering a baby - earned all A's except for a single B during her four years at the school.

Her grade point average was the highest of any student in the Class of '11 - but school officials opted to name a second valedictorian, a white student with a lower GPA, the suit said.

Wimberly's mother Molly Bratton said she was blocked from addressing the school board about the flap until after the graduation ceremony.

The lawsuit seeks punitive damages of \$75,000 or more, as well as a declaration that Wimberly is the sole valedictorian of her class.

lmcshane@nydailynews.com

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A student says she was denied the honor of being the sole valedictorian because... (AP)

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## Black Student Barred from Being Valedictorian, Says Lawsuit

18-year-old Kimberly Wimberly is suing her McGehee, Arkansas public high school for barring her from being valedictorian because of her race. (As opposed to the equally unfair but way less depressing "funny name issue.") Kym's federal lawsuit claims she had the highest GPA in her class and was told she would be valedictorian, but got pushed out last minute for white students.

Wimberly's mother, who works at the school, says she overheard an official calling Kym's valedictorian status a "big mess." Courthouse News reports:

McGehee Secondary School is predominantly white, and 46 percent African-American, according to the complaint. [Wimberly's mother] Bratton says that the day after she heard the "big mess" comment, McGehee Principal Darrell Thompson, a defendant, told her "that he decided to name a white student as co-valedictorian," although the white student had a lower G.P.A.

Bratton says she tried to protest the decision to the school board, but defendant Superintendent Thomas Gathen would not let her speak, because she allegedly had "filled out the wrong form. Instead of 'public comments,' Gathen [sic] said Bratton should have asked for 'public participation.'" The superintendent told her she could not appeal his decision until the June 28 school board meeting; graduation was May 13.

BY MAUREEN O'CONNOR JUL 26, 2011 4:53 PM  
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McGehee High School faced a similar lawsuit in 1983, when a black homecoming queen candidate challenged an election. Apparently the tiny town of 4500 has been trapped in a time warp of conflicts from 1960 for multiple decades, now. [Courthouse News, Justia, image via McGehee High School]


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DISCUSSION THREADS FEATURED ALL START A NEW THREAD


 mlle.penelope 25 Jul 2011 5:22 PM  
 Maybe this is just me, but if a school is 46% African American, does that really make it "predominately white"?

 Proofers3 @ mlle.penelope  
 Yes. The school is over half white. That's called the "percentages" part of mathematics.

 mlle.penelope @ Proofers3  
 Sigh. Back again?


 Hey\_Blinkon @ mlle.penelope  
 Meh, technically. I mean, it could be 1001 whites and 999 blacks and people who care about that shit would scream it from the rooftops.

 EasttoMidwest @ Proofers3  
 "Predominately" has a more complex meaning than "mostly." It implies a skewed balance of power and influence. It was poorly used in the context, mostly because it overstates proportion.

 Proofers3 @ Hey\_Blinkon  
 3% is regarded as a usual margin of error in polling. They would have got the numbers from the school roll, so, there is no margin of error.

Why is everyone so mad that the article used an exact percentage?  
 Kymberly Wimberly is getting fucked-y-wucked-y out of her vali-wali-dictorianship.  
 Isn't that the most important thing?

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 svzpdq @Profer3

**pre-dominant** adj \-nant: Most common or conspicuous; main or prevalent: *the predominant color in a design.*


A school that is 54 percent white and 46 percent black is **NOT** predominantly white.

AMessageToRudy @EasttoMidwest

What you said. Thanks for saving me the trouble.

Also, the city has a slight Hispanic population, which means this "predominance" of whites could be even less.

[www.city-data.com]

 Profer3 @AMessageToRudy

*Nobody cares about the other loser students!*  
What about the SMARTEST ONE?  
She's BLACK! and she has a SILLY NAME!  
Aren't there LAWS?

rachel723 @mille.penelope


I agree - and that figure is only assuming that there are no other ethnicities in the school other than white. If there were 10% Asian American and 5% Native American, for instance then no, the school would not be predominately white.

Probably a better term would be "dominatingly white". Look at at apartheid - you don't need to have a majority to be dominant


promoted by Profer3

AMessageToRudy @Profer3

OK, you lost me...

 HappyThoughts @mille.penelope

agreed


 Profer3 @rachel723

Hey isn't there a real word for "dominatingly"? Wait, there is - it's **predominantly**.

Edited by Profer3 at 07/25/11 5:38 PM


 mille.penelope @rachel723

I think "mostly" would suffice. If it was indeed "mostly". I have a feeling the school is at least 20% Hispanic, which would make this statement completely incorrect. Not to mention this story has no legs, and has been brought to us by someone who named their kid Kimberly Wimberly.

 Profer3 @mille.penelope

The Kimberly Wimberly part IS the legs.

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<http://gawker.com/5824557/black-student-barred-from-being-valedictorian-says-lawsuit>

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**Conor McEvily** *Petition of the Day*  
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## Tuesday round-up

Coverage of yesterday's decisions in *Plata* and *General Dynamics*

Yesterday the Court issued two opinions: in *Brown v. Plata*, it affirmed a decision by a three-judge district court panel ordering California officials to release state prisoners; and in *General Dynamics Corp. v. United States* it vacated a Federal Circuit decision and held that when, to protect state secrets, a court dismisses a contractor's prima facie valid affirmative defense to the government's allegations of breach of contract, a proper remedy is to leave the parties where they were on the day they filed suit.

The decision in *Plata* dominated the news coverage and commentary. In yesterday's evening round-up, Kalk collected many of the early news stories on the decision. Additional coverage comes from Michael Doyle of McClintock Newspapers (via the *Miami Herald*), Daniel Wood of the *Christian Science Monitor*, Debra Cassens Weiss of the *ABA Journal*, *JURIST*, and *Courthouse News Service*. In the *New York Times*, Jennifer Medina reports that the *Plata* decision is "sure to set off a fresh round of budget battling in the financially distressed state [of California]," while the editorial board of the *New York Times* urges the state to use its "limited prison space . . . for people who truly pose a threat to society," rather than those convicted of "technical parole violations" or "minor, nonviolent crimes."

Discussion of the case continued in the blogosphere as well. Writing for *ACSBlog*, Giovanna Shay argues that although the *Plata* remedy was necessary, "the type of over-crowding described . . . requires, not just conditionous litigation, but a criminal punishment overhaul. Simply put, California needs to lock up fewer people, as does our nation." In another *ACSBlog* post, Imtai Chettler takes issue with the dissenters' "alarmist language" and argues that "[i]mproving prison conditions makes us all safer." At *Cato @ Liberty*, Tim Lynch describes California prison conditions in some detail and concludes that the opinion "make[s] a persuasive case that California's elected officials have had ample opportunity to address the systemic problems, but have let them fester year after year"; Ben Kerschberg of *Hurbs* similarly contends that the state "has failed at a systemic level."

The majority's use of three photographs to illustrate prison conditions was the focus of additional commentary. At *Balkinization*, Jason Mazzone suggests that although the Court included the photographs so that "readers will see for themselves what the conditions within the prisons are like -- and thereby understand better the reason for the Court's endorsement of the extraordinary remedy of a mass release," the use of the photos might not always have the intended effect: "Some people who look at the two photographs will see not crowded prisons demanding a judicial remedy but scary criminals who are going to be released into the community before they have served their sentences." At his *Sentencing Law and Policy* blog, Doug Bernan considers whether the Court should use visual aids; in another post, he comments on the abundance of rhetoric in all of the *Plata* opinions.

Yesterday's decision in *General Dynamics* garnered comparatively less coverage. Writing for the *New York Times*, Adam Liptak both summarizes the decision and links it to last week's denial of certiorari in *Mohamed v. Jeppesen Dataplan, Inc.*; he also interviews an expert on "state secrets" who suggests that the two cases collectively "amount[] to an unmistakable and loud signal that all nine of the justices are not about to change the rules of the game in cases in which the government claims that military, intelligence or diplomatic secrets may be revealed." At the *Constitutional Law Prof Blog*, Steven D. Schwinn echoes this sentiment: he notes that although the Court's holding is narrow, the decision may nonetheless "shed some light on the Court's view of the [state-secrets] privilege outside the narrow facts of this case." Additional coverage of the *General Dynamics* decision is also available at the *Wall Street Journal*, *Pox News*, *ABA Journal*, and *JURIST*.

Finally, yesterday's order list also prompted several stories. In the *ABA Journal*, Debra Cassens Weiss covers the grant in *Kawashima v. Holder*, in which the Court will decide whether a false statement on

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a corporate tax return is an aggravated felony involving fraud or deceit, which would justify the deportation of a Japanese couple. [Courthouse News Service](#) and [JURIS](#) also provide coverage. And several sources reported on the Court's denial of cert. in [Khadr v. Obama](#), a detainee case, including Lyle Denniston of this blog, [Postmedia News](#) (via the Vancouver Sun), [Parliamentary Bureau](#) (via the Toronto Sun), and [Courthouse News Service](#).

**Briefly:**

- The editorial board of the [Los Angeles Times](#) criticizes the Court's recent decision in [Kentucky v. King](#).
- At [The Conglomerate](#), Gordon Smith responds to the Chief Justice's recent criticism of legal scholarship.

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FINANCIAL TIMES

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## JP Morgan, I put a spell on you

Posted by Tracy Alloway on Apr 07 08:20.

There's nothing like hard times to bring out the bank-bashing craziness.

And JP Morgan is no stranger to recession-induced weirdness. For instance, in 1933, in the midst of the Great Depression, John Pierpont Morgan Jr. had a midget sit on his lap during the Pecora Commission — a series of hearings delving into the causes of the Wall Street Crash. Pecora eventually ended in some new regulation including Glass-Steagall, the act which separated commercial and investment banking.

Anyway, the absurdity is back. And as the very funny LOLFed notes, we are no longer talking about using regulation to curb the banks. No — we are talking using good ol' fashioned pseudo-religion.

From the Courthouse News Service:

**MANHATTAN (CN) — The self-ordained Rev. Billy Talen was arrested on Easter Sunday after putting a "holy hex" on JPMorgan Chase bank, which he calls the nation's largest financier of coal-mining mountaintop removal. The former New York City mayoral candidate and his green-robed chorus put the hex on two bank branches, saying Morgan Chase has helped destroy more than 450 Appalachian mountains, deforested 800 square miles and polluted more than 1,200 miles of streams.**

At this point you may be asking; since when is cursing a company an arrestable offense?

To which we (via the Court News Service) answer:

**Rev. Billy led his Life After Shopping Gospel Choir to two East Village Chase branches, where the singers "deposited" mounds of "sacred dirt from Coal River Mountain, West Virginia" on the floors of ATM lobbies . . . As Talen concluded his sermon, NYPD Officer William Svenstrup ordered him to withdraw his deposit of dirt from the bank floor. The Rev. Billy refused. "Then you are coming with me," Svenstrup said, while another officer took out the cuffs, and used them, and the choir chanted, "Free speech! Free press! Free people! Repressed!" Then the choir sang the text of the First Amendment.**

Deposit of dirt. You can't make this stuff up (though arguably Rev. Billy did).

Anyway, FT Alphaville sees a business opportunity here.

Jamie Dimon voodoo dolls will now be sold in the first-floor gift shop:

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<http://ftalphaville.ft.com/blog/2010/04/07/196626/jp-morgan-i-put-a-spell-on-you/>

9/16/2011



#### Related links:

Dimon takes a stand on finance overhaul - WSJ  
Reverend Billy and the Church of Stop Shopping - Wikipedia

This entry was posted by Tracy Alloway on Wednesday, April 7th, 2010 at 8:20 and is filed under Capital markets, People. Tagged with God, JP morgan.

#### Comments

I am inclined to agree with the "coffin dodger" posting, particularly the following  
"The mainstream media - newspapers, TV and journalists (I don't believe there are too many 'investigative' journalist left) have failed cataclysmically to address the blame for this crisis and calling those responsible to account."  
Especially when there was "dirt" to deposit regarding JP Morgan Chase's affairs in the metals markets in the otherwise unreported (in the mainstream media only) story and intrigue of the CFTC meeting dated March 25th, 2010.  
A pity, we get a midget instead.

Greek sprayers at work in Athens.  
"Thieves" is sprayed on the left side of the entrance, "Liars" on the right".

<http://www.faz.net...~Ecommon~SMed.html>

wally - indeed. Thank you, fixed.

John Pierpont Morgan was in his grave well before the Pecora hearings. I think you mean John Pierpont Morgan, Jr.

I fully endorse the Rev. Billy, he's been pulling mildly amusing art pranks in NY for years.

These sort of 'crazies' get exposure at times when all other legitimate means of questioning the behaviour of criminal and fraudulent acts (vis-a-vis banking cartels) have been ignored by those who ought to be discussing them.

<http://ftalphaville.ft.com/blog/2010/04/07/196626/jp-morgan-i-put-a-spell-on-you/>

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The mainstream media - newspapers, TV and journalists (I don't believe there are too many 'investigative' journalist left) have failed cataclysmically to address the blame for this crisis and calling those responsible to account.

It's left to those brave enough to face the wrath of the State to voice their protests whilst the oligarch-controlled media ridicules these protestors as 'crazy'. And guess what? - it works - this poor deluded man was arrested for dropping some dirt on the floor (and this in the Land of the Free) - coming to a police state near you soon!

Ah.... the natives are restless here Tracy... it's just early spring...

From the New York Times a story about Carl P. Paladino. He is a man in NY worth \$150 million running for governor (and he plans to spend \$10 million on his campaign)...

"...He has always had a knack for being provocative, and shows no signs of toning down his language during the governor's race.

He calls his campaign — his first run for public office — a "crusade." He has excoriated state political leaders as "a parasitical ruling class" and pledged to send corrupt legislators to the state prison at Attica."

Expect much more...

Another excellent Alphaville graphic. Becoming quite sophisticated.

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Stimulus Wreckage

Despite having been accused of deceptive business practices by the attorney general, former students, and ex-employees, Corinthian Colleges are getting millions in federal stimulus dollars.

By Matt Smith *Wednesday, Sep 30 2009*

Comments (4) A A A

Martine Leveque moved to the U.S. from Haiti in 1983 and eventually established a Hollywood career writing subtitles in Italian and French for English-language movies. When that business recently moved overseas, she decided to pursue a nursing career, but found that it would take her at least two years to complete all the necessary courses.

"You can't be waiting to start living," the 47-year-old said. So she signed up for nursing classes at a vocational school where she could finish everything in only one year. The school was run by the private, for-profit educational chain Corinthian Colleges, Inc., which operates 106 vocational schools with 86,000 students in the U.S. and Canada.

Rather than improving her life, Leveque says she entered a personal hell of incompetent teachers and insurmountable debt. She's now earning \$300 per week as a home care provider, and has no idea how she'll pay off the \$40,000 in student loans she took out to cover tuition and other expenses at a one-year licensed vocational nurse program at Corinthian's school in Alhambra.

"Every day, the phone's been ringing at five in the morning, and ringing at 10 at night," she says of the constant calls she gets from bill collectors. "It was a horrible, horrible experience. Every time I think about it, I get bad dreams. I was saying to these people, 'What is going on? What is going on?' How can you take \$30,000 from a student for a year of that crappy education?"

Sabynne Francis, one of Leveque's classmates, said she's resigned herself to struggling to pay off



Paul Hester



Ed Board

Martine Leveque says she paid \$30,000 for a "crappy education" at a Corinthian school in Southern California.

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her loans. They have consulted with an attorney about filing a class action lawsuit claiming Corinthian misled them into taking on debt to pay for substandard education. "As a student, you've already signed your name on the dotted line," Francis said. "You really have no choice but to just deal with it."

A Corinthian spokesman said that faculty at Leveque's licensed vocational nurse program "met at least the minimum qualifications set by the California Board of Vocational Nursing," which meant they had either a bachelor's degree or a valid teaching credential, and two years of recent experience as a vocational nurse.

For years, Corinthian has been accused of employing aggressive recruiting techniques promising more than its schools can deliver, and then leaving students impossibly deep in debt.

In 2007, Attorney General Jerry Brown filed an unfair business practices lawsuit against Corinthian, alleging that the Orange County-based company placed "intense pressure" on recruiters to meet quotas for incoming students, and that it inflated the number of its graduates who were able to find work in their fields. (The company later paid a \$6.5 million settlement without admitting wrongdoing.)

Meanwhile, two employees of Everest College, Corinthian's San Francisco campus, have claimed in a pending whistleblower lawsuit that the company broke federal financial aid rules by giving incentive pay to recruiters based on how many recruits they brought in. Corinthian says the suit has no merit and has asked that it be dismissed.

In August, 13 Corinthian students in Texas filed a lawsuit alleging their teachers "were either unqualified to teach in their ... fields, or simply uninterested in teaching." These were just the latest in a nationwide flood: According to Courthouse News Service, more than 80 such lawsuits have been filed against Corinthian since 2005.

Given all these complaints, I was surprised to discover that Corinthian Colleges, Inc. is a prime beneficiary of the Obama administration's stimulus package.

The \$787 billion package — supposedly a paragon of accountability and transparency — included \$17 billion to increase by \$500 the amount of money each student may receive to pay for college classes under the Pell Grant program, which provides money to low-income undergraduates. Nearly 70 percent of Corinthian students receive such grants, the company reports.

According to data from the Federal Assistance Award Data System compiled on USASpending.gov, \$23 million from that stimulus boost has gone to Corinthian schools in California from some \$49 million given to the chain nationwide. This is in keeping with a bonanza received by the whole for-profit school industry. The biggest player, the University of Phoenix, has received \$400 million in stimulus-linked money so far this year. In San Francisco, Academy of Art College — famous for using an art school to fund a real-estate investment operation — has received \$684,264. And the California Culinary Academy, the subject of a 2007 SF Weekly expose alleging the school misled students into assuming massive debt, has gotten \$65,357.

But the Pell Grant boost has made San Francisco's Everest College — a fifth-floor suite of converted offices where students take classes to become pharmacy technicians, massage therapists, and medical and dental assistants — a local stimulus champion. In fact, Everest has so

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far received more stimulus-linked Pell Grant money than any other educational institution in San Francisco: more than \$1 million. That's more than the University of California San Francisco medical school, San Francisco State University, or City College of San Francisco.

More than merely pouring cash into the economy, the American Recovery and Reinvestment Act was supposed to help people recover financially. As President Obama said during a March speech, "We're already taking steps to make college or technical training affordable. All in all, we are making college affordable for seven million more students, with a sweeping investment in our children's futures and America's success."

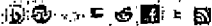
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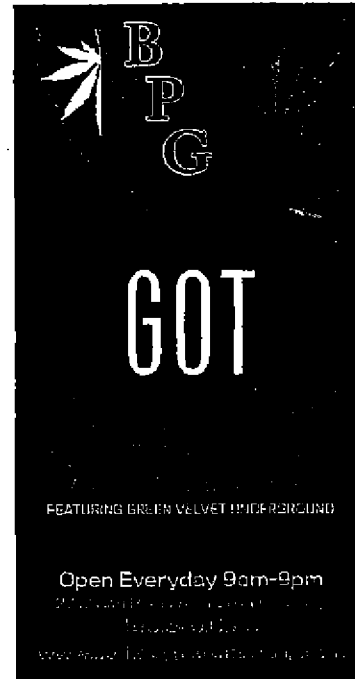
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# NEWS

## White Teachers Sue Philadelphia School, Charge Race Bias

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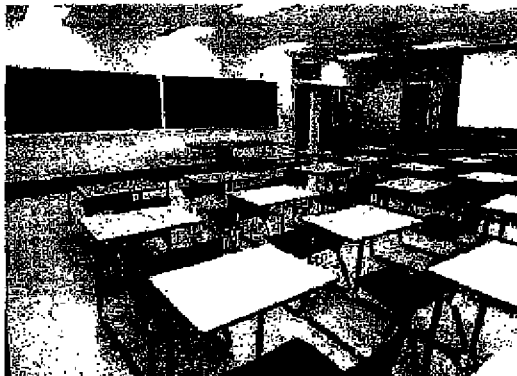
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**PHILADELPHIA (AP)** — Four white Philadelphia teachers filed federal race-bias lawsuits that accuse a black principal of creating a hostile work environment and suggesting they were unfit to teach black children.

The teachers work at a predominantly black elementary school that has a recent history of racial tension. Their lawsuits say that a former principal had them read an article that said "white teachers do not have the ability to teach

### Filed Under

Local, News, Philadelphia

African-American students."

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East Falls, Lawsuit, Philadelphia, Students, teachers, Thomas Mifflin Elementary

The teachers also allege that the principal, Charles Ray III, and others undermined their work by reprimanding them, randomly changing their room assignments and letting black teachers ignore rules that their white counterparts had to follow. Ray also retaliated when they filed union grievances, they said.

### Check Out

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Charles Ray III consistently stated that he had a relationship with top school officials indicating that his conduct was part of an approved policy or was part of a pattern of practices sanctioned and supported by "higher authority," the suits allege.

The teachers—Nicole Boyd, Debra McKibben Marenbach, Colleen Yarnell and Marta Ciccimaro—filed the lawsuits last week, demanding more than \$150,000 each. Courthouse News Service first reported on the complaints Tuesday.

The school district had no immediate comment, spokeswoman Shana Kemp told The Associated Press.

Kemp said she was not immediately authorized to say if Ray still works for the district. A message left at a possible home number for him was not immediately returned.

Racial tensions among staff at Thomas Mifflin Elementary School have simmered before.

A white principal left about four years ago amid a chorus of complaints from black parents. One mother testified at a City Council meeting in December 2007 that she had heard the administrator say Muslim students looked like "flying nuns," according to news reports.

In April 2008, vandals defaced a mural on the side of the school with anti-Semitic graffiti.



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Ray arrived that fall, and lasted only for the 2008-09 school year, the lawsuit said.

Ti  
H

The surrounding East Falls neighborhood is largely white and, in some sections, wealthy. Residents include former Gov. Ed Rendell and former U.S. Sen. Arlen Specter. But many white families in the area send their children to private schools.

Lf

Mifflin currently has about 270 students, 86 percent of them black and 85 percent of them poor, according to school district data.

The defendants include the local teachers union and a supervising teacher whom Ray allegedly ordered to go through personnel files and investigate their home and personal lives.

Lawyers for the teachers did not immediately return calls for comment.

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## The LWOT: Patriot Act renewed just before deadline

Foreign Policy and the New America Foundation bring you a twice weekly brief on the legal war on terror. You can read it on [foreignpolicy.com](http://foreignpolicy.com) or get it delivered directly to your inbox - just sign up here.

BY ANDREW LEBOWICH | MAY 27, 2011



### Patriot Act provisions renewed just before deadline

President Obama signed a four-year extension of three controversial Patriot Act provisions into law just before the midnight deadline last night, after Senate leaders made a deal with Republican Sen. Rand Paul to allow several proposed amendments to be put up for a vote, including one to make it more difficult for authorities to obtain firearms purchase records (LAT, Washington Post, AFP, Bloomberg, WSJ, CBS/AP). The provisions, which passed the Senate 72-23 and then the House 250-153, allow for "roving" wiretaps of multiple phone lines, the investigation of non-American "lone wolf" suspects not linked to any extremist organization, and the collection of all "tangible" items linked to a terrorist investigation, including business and other records (AP). The extension drew criticism from some Democrats, though amendments tightening restrictions on the provision that cleared the Senate Judiciary Committee were blocked from coming up for a vote (Politico).

Two Senate Democrats on the Intelligence Committee, Mark Udall and Ron Wyden, said yesterday that the Obama administration has a "secret" and far-reaching interpretation of the Patriot Act that goes well beyond standard readings of its limits, especially the ability to seize business and other records (NYT).

Also yesterday, the House of Representatives passed a \$690 defense spending bill despite a veto threat from the White House due to several bill provisions, including one that would limit President Obama's ability to try Guantánamo Bay detainees in the U.S. or transfer them abroad, and another that updates the post-9/11 Authorization for Use of Military Force (AUMF), and would allow the president to target "associated groups" of al-Qaeda and the Taliban not involved in the 9/11 attacks (AFP, AP, Politico, LAT, National Journal). A statement from the White House called the limits on detainee transfers, "a dangerous and unprecedented challenge to critical Executive branch authority" (Lawfare Blog).

### Rana trial continues in Chicago

David Coleman Headley testified for a third day yesterday in the trial of Tahawwur Hussain Rana, accused of supporting Headley's reconnaissance of targets for the 2008 Mumbai attacks, and faced tough cross-examination from Rana's lawyer about what details Headley actually told Rana about the plot (WSJ). Headley also acknowledged that he had no proof that "Major Iqbal," the man Headley calls his handler from the Pakistani Inter Services Intelligence (ISI), actually was a member of the agency.

Headley told the court, however, that he was trained by Pakistan's Inter Services Intelligence Directorate (ISI) in safe houses in the Pakistani city of Lahore (Express Tribune). He also provided new detail about a follow-on plot to attack the Jyllands-Posten newspaper in Denmark, which published cartoons depicting the Prophet Muhammad in 2005, and told the jury that he was no longer proud of his role in the Mumbai attacks (Globe and Mail, AP, AFP). In testimony the previous two days Headley discussed the role the ISI played in choosing targets for the Mumbai attacks, especially the Chabad House, described scouting trips to Copenhagen as part of the plot against the Jyllands-Posten, and said Rana praised the Mumbai attacks (WSJ, PBS, AFP, Reuters, Chicago Tribune, ProPublica, NYT, AP). For more on the Rana trial and the Mumbai attacks, sign up for the *AfPak Daily Brief* (FP).

### CIA to get access to bin Laden compound

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Under an agreement reached earlier this week between CIA deputy director Michael Morell and Pakistani intelligence chief Lt. Gen. Ahmad Shuja Pasha, a team of forensic specialists from the CIA will be allowed starting today to examine Osama bin Laden's compound in Abbottabad, Pakistan (Washington Post, CNN, WSJ, Guardian, Telegraph, AP). The team will reportedly be looking for hidden documents with special equipment that can peer into walls and under floors.

Kirsten Grieshaber and Kimberly Dozier report that documents captured during the May raid that killed bin Laden reveal that he knew of plans to attack Europe last year, and was in contact with al-Qaeda operative Younis al-Mauretani, who has reportedly been linked to a Moroccan arrested in Germany last month for allegedly planning a terrorist attack in that country (AP). And the New York Times reports that other documents recovered in the raid show that bin Laden and al-Qaeda operations chief Ayman Abdul Rahman discussed making a truce with Pakistan in exchange for protection for bin Laden, though officials say there is no evidence the deal was ever actually proposed (NYT).

NATO this week announced the capture in southern Afghanistan of a German-Moroccan man they say is an al-Qaeda facilitator, as part of a raid in early May in which 10 militants were killed, including a Frenchman, a Saudi and a Pakistani (NYT). The man has reportedly told his interrogators that foreign fighters are "converging" on Pakistan in order to fight in Afghanistan (ABC).

The leader of Al Qaeda in the Islamic Maghreb (AQIM), Abdelmalek Droukdel, released a tape in commemoration of bin Laden's death on May 26, saying the killing will fuel anger in the Muslim world and adding, "We are all Osama" (AP). And the FBI has reportedly been able to pull a fingerprint and forensic evidence off of the bomb used by Omar Ferouk Abdulmutallab in his failed attempt in December 2009 to blow up Northwest Flight 253 over Detroit, evidence they say links the bomb to Al Qaeda in the Arabian Peninsula's principal bomb maker Ibrahim al-Asiri (AP, NPR).

#### JFK attack plotter convicted

A New York court on May 26 convicted Kareem Ibrahim for his involvement in a plot to blow up fuel arteries at JFK International Airport, the last of four plotters to be found guilty (FBI, BBC, Telegraph, Bloomberg, AP). The jury found Ibrahim, a former leader of Trinidad's Shi'a Muslim community, guilty on five charges, including providing religious and operational support to the plot, which was infiltrated at an early stage by an informant working for the government, eventually leading to a sting operation (CNN).

Five New Jersey men convicted in 2008 of plotting to attack the Fort Dix army base appealed their convictions this week, alleging that the government used illegal wiretaps to gather evidence, and that prosecutors showed prejudicial images -- including jihadist videos of beheadings -- to sway the jury unfairly against them (Courthouse News). And James Cromitie, the purported ringleader of a plot to attack synagogues in the Bronx and a New York Air National Guard base (later revealed to be a sting operation), asked a judge to grant him the minimum sentence possible in his case, 25 years in prison (Bloomberg). Cromitie and his three co-defendants were refused a new trial earlier this month.

#### Prosecutor removed in Polish torture investigation

Poland removed one of two prosecutors investigating the alleged torture of detainees at a secret CIA prison in the country from the case May 24, citing an "administrative shuffle" (AP). The investigation focuses on two detainees currently held at Guantanamo, Abd al-Rahim al-Nashiri and Abu Zubaydah, who say they were abused at the prison.

The U.S. military tribunal at Guantanamo denied the clemency appeal of Canadian detainee Omar Khadr, who pled guilty last year to killing a U.S. soldier in Afghanistan in 2002 and received eight years in prison in a deal with prosecutors (National Post, AP). Six years after being released from Guantanamo, the Australian government has finally returned Mamdouh Habib's passport, after he was given a "non-adverse security assessment" (AP). And a former U.S. government employee charged in Italy with taking part in the 2003 kidnapping and extraordinary rendition of Muslim cleric Abu Omar, Sabrina de Sousa, has filed a lawsuit to force the U.S. government to grant her diplomatic immunity, shielding her from prosecution if she travels to Europe (LAT).

#### Trials and Tribulations

The U.S. State Department on May 26 added the Caucasus Emirate -- a militant group based in the North Caucasus region -- to its list of banned terrorist groups, and the U.S. government put a \$5 million bounty on the head of its leader, Dokka Umarov (State, CNN, AFP, AP, WSJ).

Radical Indonesian cleric Abu Bakr Bashir on May 25 denied charges that he helped raise funds for the group Al Qaeda in Aceh, accusing the United States and Australia of being behind his arrest and trial (Sydney Morning Herald).

An Irishman currently on trial in Lithuania for buying weapons for the Irish Republican Army (IRA) denied the charges this week, accusing British intelligence agencies of setting him up (AFP).

Australia's government is reportedly considering trying suspected Indonesian terrorist Umar Patek, captured in Abbottabad in January, for his alleged involvement in the 2002 Bali bombings that killed 202 people, 88 of them Australian (The Age).

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Andrew Lebovich is a program associate in the National Security Studies Program at the New America Foundation.

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**DEMOFACTOR**  
11:48 AM ET  
May 29, 2011

**Firearms as main factor of a stable democracy?...**

Population equipped with firearms can be strong guarantee of stable democracy and low level of crime if it used properly. But how to avoid abuse of it? Firearms purchase records can be used to track down those who used weapons illegally to commit a crime or an act of terror.

American local newspapers and other American media should better inform people about their rights and obligations regarding firearms purchase and legal usage. But government also has to be on the American people's side and do not abuse such records.

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Privacy Law

## Dwarf Couple Who Posed for AP Photo Sues over Its Altered Use in Reality TV Spoof

Posted Mar 31, 2011 8:07 AM CDT  
By [Debra Cassens Weiss](#)

A dwarf couple is suing E! Entertainment Television for using an altered version of their photograph to spoof reality TV shows.

The suit by Cara and Gibson Reynolds of Collingswood, N.J., seeks more than \$50,000 in damages for defamation, invasion of privacy, infliction of emotional distress and unjust enrichment. The [Associated Press](#) and [Courthouse News Service](#) have stories.

Cara and Gibson Reynolds had posed for the Associated Press photo in connection with an article on genetic testing of embryos for couples with known genetic conditions. The couple's first child had died soon after childbirth because of a genetic defect. The photo was doctored and used on *The Soup* to illustrate a fake reality show called "Fertile Little Tattooed Pageant Parents Who Enjoy Baking."

The show added tattoos to the couple and a crown and beauty pageant sash to Cara Reynolds, the stories say. AP license terms say its photos are for editorial uses only, and they may not be altered, the suit says.

Besides E! Entertainment, the defendants include parent company Comcast and the comedian who hosted the program, Joel McHale. Courthouse News Service posted the [complaint](#) (PDF).

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**EXHIBIT 3**

EXHIBIT 3

## **Media Access to Courts Around the Nation**

**Prepared By Courthouse News Service  
September 2011**

Courts around the country have developed a variety of procedures to provide the media with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed, regardless of whether processing has been completed (or in federal courts that have adopted e-filing, the so-called "quality assurance" process is completed), and regardless of whether the complaint or petition has been made available for electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in courts throughout the nation.

### **Albuquerque**

At the Second District Court of New Mexico (Bernalillo County), both paper and electronically filed civil complaints are made available to the media in a "review pile" on the day of filing, before they have been fully processed or made available to the public. Courthouse News' reporter has been granted behind-the-counter access to the "review pile" and provided with a small work space, where he can review virtually all new cases on a same-day basis and scan any newsworthy complaint using a portable scanner. Any complaint that does not make it to the review pile enters a -three- to four-day docketing process, during which Courthouse News Service's reporter can typically track down any case that needs to be seen.

### **Atlanta**

At the Fulton County Superior Court in Atlanta, Georgia, new complaints are scanned immediately upon filing and made available at computer terminals at the courthouse, most within minutes of filing. In addition, complete docket information for civil cases is available from a publicly accessible website on the day the complaint is filed.

At the United States District Court for the Northern District of Georgia, where e-filing is voluntary, reporters review new civil actions on the same day they are filed. New complaints that are filed in paper form are scanned into a computerized press box before they go to docketing and are accessible on a computer terminal in the clerk's office. E-filed complaints are made available to

CNS's reporter, prior to any processing, via PACER by using a shell case number code to access an online press queue of new same-day filings.

### Austin

At the Travis County District Courthouse in Austin, where e-filing is mandatory for civil cases, Courthouse News' reporter gets a list of all of the new civil petitions filed earlier that same day upon arriving at the courthouse. She then views newly filed petitions using a public access terminal at the courthouse. Before leaving the court, Courthouse News' reporter gets an updated copy of the list of newly filed petitions to see whether there are any that have been filed since her first review, which she also views using the court's public access terminal.

### Beaumont

At the Jefferson County District Court in Beaumont, Texas, reporters are allowed behind the counter to access paper copies of petitions filed that day, before the cases are put through the docketing process. Reporters can make copies of newsworthy cases.

At the Beaumont Division of the United States District Court for the Eastern District of Texas, reporters have same-day access to the vast majority of newly filed actions regardless of whether docketing has been completed. Reporters review scanned copies of new complaints via PACER, and if a new case is not yet scanned and available on the court's computer system, reporters can request and are given a paper copy of the new action based on a listing of new filings in a red log book made available to the press.

### Brooklyn

At the Kings County Supreme Court, newly filed cases are typically scanned into electronic form immediately after they are filed, and the paper copies are then placed in a designated media box for same day review. However, in the event that a new complaint is not scanned immediately, the court will provide Courthouse News' reporter with access to the unscanned document. Courthouse News' reporter has been provided with a media pass that allows her to remove the new filings from the media box and review them in a different area behind the counter in the clerk's office on the same day the complaints are filed. Courthouse News' reporter is free to make her own copies for a small fee.

At the United States District Court for the Eastern District of New York, parties file "press copies" of new complaints, which are placed into a press box that is made available to reporters throughout the day, thereby allowing them same-day access to the vast majority of new filings, even if the new filings have not been fully processed or posted to PACER.

### Chicago

At the Cook County Circuit Court in Chicago, Courthouse News' reporter, or any other member of the media who is first to arrive at the courthouse, begins each visit by going behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. The reporter sees the vast majority of new complaints on the same day they are filed, regardless of whether the complaints have been fully processed. Reporters can stay as late as they like to review the new complaints.

At the United States District Court for the Northern District of Illinois, where electronic filing of initiating documents is mandatory, newly filed complaints are made available immediately upon filing through PACER, as well as the court's own independent website.

### Cincinnati

At the Hamilton County Court of Common Pleas in Cincinnati, Ohio, new complaints are placed in the intake area for review by the media on the same day the complaints are filed. Complaints are made available after they have been date-stamped, but before any other processing occurs. Courthouse News' reporter sees between 30-60 complaints each day. If Courthouse News' reporter misses a complaint, he may request the file from the paper room staff the next day. Court employees will make copies of newsworthy complaints available upon request for 10 cents per page.

At the United States District Court for the Southern District of Ohio, many of the newly filed complaints are made available on the day of filing via PACER. However, for cases not available electronically, the court places a copy of new cases into a press box at the intake counter, where Courthouse News Service's reporter may review them until 4:00 p.m. when the court closes to the public. The reporter may request copies of new complaints for 50 cents per page.

### Cleveland

At the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, Courthouse News' reporter has behind-the-counter access to new filings on the same day they are filed, regardless of whether they have been fully processed. Complaints are available as soon as they have been date-stamped. Court officials provide Courthouse News' reporter with desk space to set up a laptop and scanner, and allow him to disassemble the case file and scan the original filings. Use of the office copy machines is also permitted when necessary.

At the United States District Court for the Northern District of Ohio, new civil cases can be filed either in person or electronically. Both cases filed electronically and in person are made available on PACER on the same day they are filed. However, to view cases that are restricted from access via PACER or cases that have not yet been posted to PACER, Courthouse News' reporter visits the courthouse, where the court staff will print out a copy of any case he requests, even if docketing has not been completed and regardless of how those complaints were filed.

### Columbus

At the United States District Court for the Southern District of Ohio in Columbus, the vast majority of new complaints are made available on PACER promptly upon filing. The court will also provide hard copies of any civil filings not available on PACER on a same-day basis, but the speed with which cases are posted to PACER generally makes this unnecessary.

### Dallas

At the Dallas County District Court in Dallas, Texas, Courthouse News' reporter is provided with behind-the-counter access to new petitions as soon as they are filed and before any docketing has taken place. The court provides the reporter with a place to work, where staffers in the clerk's office provide him with access to the new petitions filed in paper form. As for e-filed petitions, Courthouse News Service's reporter views some on a computer terminal in the clerk's office. In many instances, however, petitions are not available on the terminal on a same-day basis, and the clerk's office provides him with paper printouts of those petitions so that he can see them same-day.



The United States District Court for the Northern District of Texas has developed a process that ensures reporters have same-day access to all new complaints, regardless of how far those complaints have progressed through the intake process. On his daily afternoon visits to the court, Courthouse News' reporter goes through a three-step process, described below. Leigh Lyon, Assistant Chief Deputy of Operations, Dallas Division of the Northern District of Texas, has informed us that she would be happy to speak with court officials in other jurisdictions about this system.

- First, Courthouse News' reporter checks a computer terminal in the clerk's office to view summaries of the day's new complaints that have already been made available on PACER. Courthouse News' reporter then uses his own internet connection to immediately download documents he needs to his laptop computer at the courthouse.
- Second, Courthouse News' reporter checks for complaints that have been scanned by the clerk's office, but are not yet available on PACER. These complaints have been assigned a bar code and case number, and are made available for electronic viewing at a public computer kiosk located in the clerk's office, where the media can then review the new complaints on the same day they are filed.
- Finally, for complaints that are so new they have not yet been scanned, Courthouse News' reporter views the paper versions of those new cases in their case folder and makes copies of newsworthy complaints.

#### Detroit

At the Wayne County Circuit Court, complaints are placed in a drawer in the intake area of the clerk's office immediately after they are filed. Upon arriving at the clerk's office at approximately 3:00 p.m., Courthouse News' reporter goes behind the counter and first double-checks the previous day's complaints, which are located in bundled folders behind the intake drawer, for any missed or last-minute filings from the day before. Then he turns to the intake drawer, where he is permitted to review the newly filed complaints while standing behind the counter. Most new complaints are in the drawer, but some are with the intake clerks, who will share the complaints with the reporter for review. The reporter is permitted to make his own copies of complaints using a copier located also behind the counter, as well as an alternate copier on the other side of the cashier station near the death certificates/marriage license area.

At the United States District Court for the Eastern District of Michigan, the court provides access to newly filed complaints electronically via PACER, both online and at computer terminals set up in the clerk's office.

#### Fort Worth

At the Tarrant County District Court in Fort Worth, most petitions appear on the court's online system the day they are filed, except those cases that are mailed in or filed by fax after the court closes at 5:00 p.m., which are then made available the following day. If any petition that was filed during court business hours is not available online the day it is filed, Courthouse News' reporter arranges for the petition to be immediately scanned and posted to the online access system. The end result is that Courthouse News' reporter is able to access almost all petitions filed during court hours on the same day they are filed.

#### Houston

The Harris County Civil District Courts in Houston provided same-day access for many years by permitting reporters to go behind the intake counters and review newly filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's website before they could be reviewed, which delayed their availability by a day or more – sometimes several days. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office failed to lead to a resolution, Courthouse News reluctantly filed suit under 42 U.S.C. § 1983. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, and finding that “the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional.” *Courthouse News Service v. Jackson, et al.*, 2009 WL 2163609, at \*4 (S.D. Tex. July 20, 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's website the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in March 2010, the clerk's office became obligated not only to continue to provide same-day access to new civil filings, but to pay more than \$250,000 to Courthouse News to compensate it for the attorneys fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's website. Those petitions can be viewed, and

printouts can be made, free of charge by the media and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. Details about this program can be found on the Harris County District Clerk's website, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx> (see button: "Search Today's Filings").

At the United States District Court for the Southern District of Texas, where electronic filing is required for new cases, Courthouse News' reporter can view electronic versions of complaints that are already docketed and posted to PACER on the same day they are filed. For any new complaint that has not yet been fully docketed, the court will usually provide a hard copy regardless of how far along the complaint is in the docketing process, also on the same day they are filed.

### Indianapolis

At the Marion County Circuit and Superior courts in Indianapolis, Indiana, reporters view the vast majority of new filings on a same-day basis in the clerk's office. Reporters are given stacks of the new filings, after they have been filed and date stamped but before they are fully processed or sent to the proper court division, and are allowed to go through them at tables in the public viewing area from 4:00 p.m. to 4:30 p.m. Reporters can then make copies themselves on court copy machines, which are then billed to Courthouse News Service monthly.

At the United States District Court for the Southern District of Indiana, reporters are provided with access to virtually all complaints filed on a same-day basis, even if docketing has not been completed. When Courthouse News' reporter arrives at the end of the day, the court staff gathers all of the civil cases filed throughout the day and allows the reporter to review the complaints. The court staff will then make copies at a rate of 50 cents per page.

### Las Vegas

At the Eighth Judicial District Court in Las Vegas, Nevada, reporters saw the majority of new civil complaints on a same-day basis until the court switched to mandatory e-filing in February 2010. Following that switch, the court began requiring news reporters to review new complaints at a computer terminal in the clerk's office, but this system resulted in complaints not being available for

viewing until the day after they were filed. The reason for these delays was that new complaints did not appear on the computer terminals until after they had been "accepted" by the clerk's office, and only after the terminals had been updated to reflect the new filings. After Courthouse News brought these delays to the attention of the court, the court adopted a new system: an electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been fully processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), Courthouse News is now seeing new e-filed complaints on a same-day basis.

At the United States District Court for the District of Nevada, Courthouse News' reporter can view electronic versions of the majority of new complaints on a same-day basis on PACER. Complaints that are not made available on the day they are filed are usually made available on the following day.

#### Los Angeles

At the Downtown (Stanley Mosk Courthouse) branch of the Superior Court of California in Los Angeles, court staff upload the full text of newly filed complaints to the court's computer system after initial intake tasks, which include scanning and assigning a case number, have been completed. Reporters can then review the vast majority of new actions that are filed on a particular day at terminals located at the courthouse that are available to the general public, or on additional terminals located in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public view cases close at 4:30 p.m., but the press room remains open later and even the latest filings of the day are available and can be reviewed by 7:00 p.m. About 110 new civil, general jurisdiction cases are filed each day.

At the Santa Monica Courthouse of the same court, face pages of each day's newly filed complaints are made available for review at 3:30 p.m. on the same day the complaints are filed. Courthouse News' reporter then requests copies of those complaints for which she wants to see the full-text versions. The full text of late-filed complaints is made available at 4:30 p.m., when the filing room court closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Courthouse News' reporter can then request copies of any of those late-filed complaints, and they are generally provided right away.

At the United States District Court for the Central District of California, a room is set up directly off the docketing department with a set of pass-through boxes. Sometime between 4:30 and 5:00 p.m., a court staffer places a large majority of the civil complaints filed that day in the pass-through boxes so that the media can review them. Reporters that cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they want to look over the complaints and rulings, copy those of interest, and put the documents back in the pass-through boxes.

### Louisville

At the Jefferson County Circuit Court in Louisville, Kentucky, the clerk's staff makes a copy of the front page of all complaints filed throughout the day and places the coversheets on a table in the public area of the office. Courthouse News' reporter then reviews the stack of coversheets and requests any complaints he determines to be newsworthy on the same day they are filed. The clerk's office will make copies for him at a rate of 25 cents per page.

The United States District Court for the Western District of Kentucky in Louisville has adopted an e-filing system requiring initiating documents to be filed electronically. Courthouse News' reporter is able to review newly filed complaints in exactly the same format as they are received in the clerk's office, prior to being docketed and before they are available to the public on PACER, by using a shell case number code to access an electronic press queue of new filings on PACER, both online and at public computer terminals at the courthouse.

### Manhattan

At the New York County Supreme Court, where certain case types are required to be e-filed, new complaints are made available to reporters on the same day they are filed, whether they are filed in paper or electronic form. E-filed cases are posted online to a court website by the end of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically via an internal computer system on terminals set up throughout the courthouse. At 3:30 p.m., and then at regular intervals until 4:45 p.m., the paper versions of the new complaints are then placed by court officials in a secure area behind the counter where reporters are free to review them on a same-day basis.

At the United States District Court for the Southern District of New York, reporters are permitted to view new civil complaints three times a day – between 9:00 a.m. and 9:45 a.m., between 11:30 a.m. and 12:15 p.m., and between 3:45 p.m. and 4:30 p.m. – on the same day the complaints are filed.

#### Martinez

At the Contra Costa County Superior Court in Martinez, California, the court closes its doors to the public at 3:00 p.m. each day. However, those still in line at that time are allowed to remain in the clerk's office to complete their filings, and the clerk's staff continue their work at the court until at least 5:00 p.m. Although Courthouse News had previously experienced delays in access at this court, court staff recently implemented new access procedures after Courthouse News brought the issue of delays to the attention of both the court's head clerk and its presiding judge. Under those procedures, filed civil unlimited jurisdiction complaints are placed in a media bin at approximately 4:00 p.m. each day, and Courthouse News' reporter is permitted to remain at the court until 4:45 p.m. to review those complaints, the result of which is same-day access to the vast majority of newly filed unlimited jurisdiction complaints.

#### Miami

At the United States District Court for the Southern District of Florida, electronic filing of new civil complaints is mandatory, and new complaints that are filed before 5:00 p.m. appear on PACER on the same day they are filed. Cases filed after 5:00 p.m. appear on PACER the following day.

#### Milwaukee

At the Milwaukee County Court in Wisconsin, reporters have access to new complaints on the day they are filed, even if they have not yet been fully processed, and are permitted to go behind the counter. Reporters can request copies of complaints from court personnel for a small fee.

At the United States District Court for the Eastern District of Wisconsin, most new complaints are e-filed and available electronically through PACER on the same day they are filed. However, for those cases that are not immediately posted to PACER, court staff provides reporters with the original paper versions of the new complaints, also on the same day they are filed. Reporters are then able to make copies at a copy machine for a nominal fee.

### Minneapolis/St. Paul

At both the Hennepin County District Court in Minneapolis and the Ramsey County District Court in St. Paul, where many of the new complaints are filed by mail, Courthouse News' reporter is permitted to go behind the counter to review the stack of original complaints on the same day they are filed and before they are docketed. Because the reporter visits Ramsey County only three times per week, she is unable to review all cases on the same day they are filed, but is able to search for and view the cases she has missed on a computer terminal at the courthouse the next time she visits the court. The reporter is able to make her own copies in Hennepin County, where Courthouse News has established a copy account. In Ramsey County, for cases the reporter reviews on the day of filing, the court staff will make copies of any complaint the reporter requests. For cases she reviews after the day of filing, the reporter is able to print a copy directly from the computer terminal.

At the United States District Court for District of Minnesota, reporters begin their visit by using a computer terminal at the courthouse to view an intake log of new cases. From there, reporters review complaints available on PACER using a public computer terminal in the clerk's office. If a complaint shown on the intake log of new cases is not yet available on PACER, the court will print out a copy for the reporter. The clerk charges 10 cents per page for any copies that reporters request.

### Nashville

At the Davidson County Chancery Court in Nashville, Courthouse News' reporter reviews an intake log of the day's new filings on a public computer terminal at the courthouse. She then compiles a list of the relevant cases and presents the list to the court staff, who retrieve the requested cases and allow her to review the complaints regardless of whether the docketing process has been completed.

At the Davidson County Circuit Court, most new complaints are scanned throughout the day and are made available through a government website on the same day they are filed.

At the United States District Court for the Middle District of Tennessee, the clerk's staff are required to stay one hour after closing in order to scan all new filings and post them onto PACER on the day they are filed.

### Oakland

Although the Alameda County Superior Court in Oakland, California, endeavors to make newly filed complaints available for viewing on its website on a same-day basis, it has implemented procedures to ensure that news reporters who visit the René C. Davidson courthouse can obtain same-day access to those complaints that would otherwise not be posted for electronic viewing on a same-day basis. Under those procedures, reporters are provided with access to a workstation behind the intake counter. The station is equipped with a computer connected to the Internet. Courthouse News' reporter first reviews the cases that are made available online. For those cases that are not available online by the end of the work day but are of media interest, court staffers scan and make those cases available on their website.

### Oklahoma City

At the Oklahoma County Court, intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped, but have not been fully docketed – only indexed. A member of the clerk's staff then provides the petitions to Courthouse News' reporter, and the reporter is instructed to sign the back of each petition to ensure that she has seen them all. After she has completed her review of the petitions in the basket, Courthouse News' reporter is permitted to review any further petitions that have been filed, indexed and placed in the basket after 3:15 p.m. The reporter may request copies of petitions at a rate of \$1.00 for the first page and 50 cents for all subsequent pages.

### Omaha

At the Douglas County District Court, where new complaints can be filed electronically or in paper form, new cases are immediately indexed and added to a statewide computer database that is updated on an hourly basis. Courthouse News' reporter reviews the index information for relevant cases on a courthouse computer terminal and downloads images as they become available. Downloads are free at the courthouse, but are also available online via the statewide Justice website for a fee.



### **Orlando**

At the Ninth Judicial Circuit Court, Courthouse News' reporter reviews hard copies of newly filed complaints at a designated desk behind the counter. The staff places new complaints that have not undergone any processing (*i.e.*, docketed, jacketed or assigned a case number) near the reporter's desk each day for same-day viewing. Since some complaints have been docketed by the time Courthouse News' reporter arrives, these complaints are placed in a separate pile for the reporter's review before they are moved to a separate desk for scanning by 4:00 p.m. In addition, Courthouse News' reporter is permitted to review e-filed complaints and complaints that have been docketed and scanned by the time the reporter arrives on a same-day basis using one of the clerk's terminals located behind the counter.

At the United States District Court for the Middle District of Florida in Orlando, where electronic filing is mandatory, the court posts the majority of new civil filings to PACER on the same day they are filed.

### **Phoenix**

At the Maricopa County Superior Court in Phoenix, Arizona, court staff recently implemented new procedures to ensure same-day access to civil complaints filed at its downtown location. Under the new procedures, court staff scan and upload for electronic viewing all complaints filed before 3:00 p.m., which are then made available on a designated press computer located in the Customer Service Center for Courthouse News' reporter to review and, if necessary, print. Complaints filed between 3:00 and 5:00 p.m. are immediately placed in a bin at a designated intake window in the Central Court Building, where Courthouse News' reporter may review those complaints between 4:00 and 5:00 p.m.

### **Pittsburgh**

At the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, where the court has implemented an internally operated electronic filing system, nearly all of the day's new filings are available on-line on a same-day basis. Complaints not posted to the court's website on the day of filing are made available the following day.

In the United States District Court for the Western District of Pennsylvania, where electronic filing is mandatory, Courthouse News' reporter has been provided with an "MC" case number code for PACER that allows her to view the new filings before they are docketed.

#### **Portland**

At the Multnomah County Court in Portland, Courthouse News' reporter is given a stack of the current day's newly filed complaints, which she reviews at a cubicle behind the counter. The reporter can make any needed copies herself using her own portable scanner.

At the United States District Court for the District of Oregon, Courthouse News' reporter first searches for newly filed complaints through the court's "electronic in-box," which is available on a public access terminal at the courthouse and contains those complaints that the clerks have scanned but not yet processed and posted to PACER. She then searches for processed complaints on PACER, which are also available at a public access terminal at the courthouse. Finally, the clerks give Courthouse News' reporter paper copies of those complaints that have not yet been scanned and posted either to the electronic in-box or to PACER. The clerks will also review the court's record book with Courthouse News' reporter at the end of the day to make sure that no filings have been missed.

#### **Riverside**

At the Superior Court for the State of California, County of Riverside, new complaints are scanned and made available for electronic viewing via the court's website and at computer terminals in the courthouse. The press had been experiencing delays in access for years until a new clerk, formerly from the United States District Court for the Central District of California, came on board. The clerk found that same-day access could be achieved simply by shifting the schedules of the personnel who scan complaints so that they begin and end work later in the day, thus ensuring that the vast majority of new complaints would be made available for electronic viewing on a same-day basis.

#### **St. Louis**

At the St. Louis City Circuit Court in Missouri, Courthouse News' reporter goes to the intake window where cases are filed and clerk's office staff members hand the reporter a stack of new cases filed that same day. Courthouse News' reporter

works at the counter next to the intake window; however, members of the media can also work at a table near the window. Staff members in the clerk's office will provide members of the media with copies of newsworthy new cases free of charge.

At the United States District Court for the Eastern District of Missouri, where new complaints must be electronically filed, each case is assigned a case number upon filing by the attorney and is immediately made available on PACER, even if it has not been fully reviewed and processed. Courthouse News' reporter is able to view the new complaints on a computer terminal in the clerk's office and print out copies for a small fee.

### San Francisco

At the Superior Court of California for the County of San Francisco, news reporters are allowed behind the counter into the stacks to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. The number of new filings per day varies, but often exceeds 50. Courthouse News views new complaints regardless of whether they have been fully processed. San Francisco Superior has established a written protocol for members of the press. The key provisions are quoted below:

If media personnel want to review files already on the shelves, they can pull these files themselves and return them to the shelves.

All new filings will be held in a Media Box during the day. Between 3:00 and 4:30 each day, this box will be available to the media for viewing in the Records department, whether or not the cases have been entered in the computer. At 4:00 PM, when the office closes to the public, media personnel may ask to view any additional filings that may have come in since 3:00 PM. The Records supervisor or an assigned clerk will retrieve those files for the media to view. Any member of the media viewing new filings must return them to the box for eventual return to the Records supervisor or assigned clerk.

Media personnel may come in anytime before 3:00 PM to view new filings. However, they will only be viewing cases newly filed up until that time.

Copy machine from the second floor Media Room will be moved to Room 103 and located behind the Records department. This machine belongs to Courthouse News Service, but has been made available to all media personnel for their use.

At the San Francisco Division of the United States District Court for the Northern District of California, reporters go behind the counter and review actions filed that same day, regardless of whether the complaints have been fully docketed or posted on PACER. They are also permitted access to "transfer boxes" of new actions being sent to different divisions of the court, and are provided with a copy of the intake log. Reporters are permitted to make copies of cases they determine to be newsworthy using a portable scanner.

#### San Jose

At the Santa Clara County Superior Court in San Jose, California, the court recently implemented new procedures to ensure that reporters receive same-day access to the vast majority of each day's new civil unlimited jurisdiction complaints. Under those procedures, civil unlimited complaints are made available to Courthouse News' reporter upon receipt of the filing fee, the assignment of a case number, and the assignment of a first status conference date, even though processing of the new complaint is far from over at this juncture. Complaints that are filed over the counter by 3:30 p.m. are made available to Courthouse News' reporter on the same day they are filed. All unlimited jurisdiction complaints that are in the drop box by 4:00 p.m. are also made available to Courthouse News on the same day they are filed. Unlimited jurisdiction complaints that are filed over the counter between 3:30 p.m. and the clerk's office closing at 4:00 p.m. have been designated as a staff priority, and the court endeavors to make them available for review on the same day they are filed. Courthouse News' reporter is permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases. The court makes copies of complaints as requested by the reporter.

At the San Jose Division of the United States District Court for the Northern District of California, clerks print out a list of all new complaints filed earlier that day. Reporters go behind the counter, obtain complaints from individual clerks' desks, report on and scan any newsworthy complaints, and then return the complaints to the clerks' desks.

### Seattle

At the King County Superior Court, Courthouse News' reporter is provided with a docket report of new cases two times per day – once at 11:00 a.m. and again at 3:00 p.m. The 11:00 a.m. list includes all cases that have been filed from 3:00 p.m. on the previous day through 11:00 a.m. on the current day, while the 3:00 p.m. list includes new cases that have been filed from 11:00 a.m. to 3:00 p.m. that day. The reporter reviews each list to find relevant cases, then searches for and views new complaints on a computer terminal at the courthouse. She is able to print out relevant complaints for 15 cents per page.

### Tampa

At the Hillsborough County Circuit Court, new complaints that are hand-filed in the main courthouse are made available for review by reporters at the end of the day they are filed. Most complaints are scanned by court staff and made available on the court's public access terminals for review. Those complaints that are not scanned and available on the public access terminals by 4:00 p.m. are provided in paper form for news reporters, who have until the court closes at 5:00 p.m. to review those late-filed complaints.

### Wilmington

At the United States District Court for the District of Delaware, new complaints can be filed either in paper form or electronically. Courthouse News' reporter can view e-filed complaints on PACER almost immediately after they are filed by using a shell case number code to access an online press queue of new electronic filings. The reporter also visits the court on a daily basis and is able to review the vast majority of new complaints filed in paper form on the same day those complaints are filed. Court staff will make copies of paper-filed cases for 10 cents per page.

**EXHIBIT 4**

EXHIBIT 4

**Bill Girdner**

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**From:** CNS LA Fed [lafed@courthousenews.com]  
**Sent:** Tuesday, September 06, 2011 8:05 PM  
**To:** CNS Circulation  
**Subject:** CNS Los Angeles Federal Report Sep 06, 2011  
**Attachments:** BlackBerry Version - CNS Los Angeles Federal Report Sep 06, 2011 (702862).txt; CNS Los Angeles Federal Report Sep 06, 2011 (702862).rtf

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Los Angeles Federal Report  
September 06, 2011

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USDC Central District of California  
Western Division - Los Angeles, Eastern Division - Riverside

Allana Boroni; Dean Copper;  
Brenda Copper; Traci Gehm;  
Christopher Grossman; Gerard  
Cannella; Melanie Cannella;  
Rebecca Abad; Gina Adams;  
Rick Adams; Debbie Abeel;  
Bibian Afable; Michael Akin;  
Nicole Akin; Suren Alaverdyan;  
Edevin Aldana; Karl Amrine;  
James Anthony Alauria; Elmer  
Anderson; Eric Anderson;  
Sabrina Anderson; Pamela  
Anderson; Donald Andrews;  
David Appel; Scott Armstrong;  
Alex Bacaron; John Bahura;  
Cheryl Bailer; William Barber;  
Bruce Barnakian; Rodrick  
Barnett; David Beaubian; Tom  
Belner; Joseph Bell; Andres  
Benavidez; George Bennett;  
Amana Bennett; Robert Berry;  
John Booth; Edward Bostock;  
Patrick Boyd; Suzanne Brittan-  
Bergman; Vicki Brock; Joan  
Brown; Diane Brown; Dexter  
Brown; Toby Butterworth;  
Bonnie Butterworth; Eduardo  
Cabasa; Jessica Cabasa; Harry  
Campbell; Nelida Campos; Jose  
Campos; Maria Carino; Richard  
Carrol; Shawn Cassidy; Jose  
Castro; Steve Cater; Carla

Complaint for violation of civil rights, injunction under the Federal Injunction Act. Plaintiffs in this case represent US citizens who have hired Mitchell Stein to represent them in lawsuits that have been filed, or will be filed, against Bank of America and 13 other financial institutions. On 8/17/2011, defendant Harris grossly violated plaintiffs' civil rights by seizing plaintiffs' legal files and denying plaintiffs the right to the legal counsel of their choice.  
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Mitchell Stein

Cayler; Norm Cayler; Francis  
Celo; Eloy Certeza; Tina Certeza;  
John Charlson; Catherine  
Charlson; Mark Chasteen; Vipin  
Chaturvedi; Joseph Chavoan;  
Ana Vilma Guandique Cisneros;  
Grant Clark; Sonia Clark;  
Geoffrey Cockrell; Danielle  
Cockrell; Hugh Collins; Arturo  
Concha; Kat Conway; Randall  
Cook; Denise Cook; Cary Cruz;  
William Cubias; Barbara Curtis;  
Houston Curtis; Eric Cutler;  
Ricardo Davalos; Darkis  
Davoddaniel; Don Decker; David  
De Leon; Nicholas Deitel; Paz  
Diaz; Jose Duarte; Ana Duenas;  
Olic Dunning III; Hotosa  
Ebrahimzadeh; Steven Ehlers;  
Mehrdad Emesha; Martin  
Escobedo; Ty Etterlein; Michelle  
Favazzo; Roger Fenstermacher;  
Sally Figueiredo; Fumiko Fisher;  
Robert Fitzgerald; Corey Flinn;  
Roger Fosdick; Susan Francho;  
James Fraser; D'Ann Friend;  
Matthew Friend; Matthew  
Friend; Barbara Gibbs; Robert  
Graham; Walter Grubic; Diane  
Grubic; Magdalena Guizar;  
Maria Guzman; Richard Hale;  
Jack Halley; Allison Hanson;  
Steven Hardie; Cindy Harrison;  
Tom Herbst; Mario Herrera;  
Darlene Holloway; Ralph  
Holloway; Pat Hunt; Harley  
Hunter; Jean Hunter; Rebecca  
Ignacio; Joseph Ignacio;  
Clarence Irving; Evelyn Irving;  
Art Iturbe; Athena Jackson; Glen  
Jackson; Tyrone Javellana; Kevin  
Jopes; Diane Kepley; Kevin  
Keehl; Jay Kim; Lynn Kimberly;  
Steve Kong; Brent Komourous;  
Nancy Krantz; Gladys Krantz;  
Dean Kraemer; Joshua Kreitzer;  
Peter Kreuzer; Jackie Kreuzer;  
Manuel Landovazo; Stephanie  
Landen; Jennifer Langlo; Ashley  
Larsen; Christian Larsen; Bruce  
Lawson; Lisa Lawson; Travis  
Leage; Alyssa Leigh; Bobbie  
Leonard; Ken Leon; Mark Lilly;  
Carmen Linares; James Locker;  
Adelfo Macasa; Bruce MacBride;  
Carrie MacBride; Marco Macias;



Louis Mages; Stefan Mahaley;  
Denise Manriquez; Jose Mario;  
Eduardo Marquez; Elnora  
Marshall; Janet Marshall; Julio  
Martin; Frank Martinez; Frank A.  
Martinez; Patrick Martinez;  
Elizabeth Matsik; Mary Medina;  
Gloria Melo; Sean McDonald;  
Bruce Milligan; Attila Molnar;  
Veronica Monterrubio; Toby  
Moore; Leonidis Morales; Juan  
Carlos Morillo; Erica Morgera;  
Basheer Murad; Yolana  
Natividad; Joe Navarro; Micah  
Neely; Richard Neely; Scott  
Newton; Karen Nierhake; Editha  
Nepomuceno; Ernesto  
Nepomuceno; Alan Ness;  
Catherine Nutt; John Ocampo;  
Roman Olivos; Juan Padilla;  
Macia Padilla; Socorro Pareda;  
Alan Parsons; Angela Parada;  
Kasimir Patelski; Cindy Patelski;  
Don Peden; Diane Perrera; Raul  
Pernett; James Peterson; Paul  
Pirtle; Lee Poindexter; Leslie  
Pollack; Douglas Powers; Carol  
Powers; Ana Maria Prezio;  
Steven Quick; Rebecca Quick;  
William Rabello; Luz Miriam  
Ramirez; Silvia Rendon; Editha  
Restauero; Nancy Heller Riley;  
Noorollah Rahdar; Seyed Razavi;  
Debra Rein; Arthur Rodriguez;  
Ofelia Romero; Florence  
Sabagquit; Jesse Sabagquit;  
Sherry Safko; Derrick Sanders;  
Carl Sanko; Reginald Santiago;  
Simon Sarkisian; Jose Saucedo;  
Randy Scarberry; Jeannie  
Scarberry; Cranford Scott; Sheila  
Scott; Courtney Scott; Juanita  
Scott; Brian Sexson; Terry  
Shaeffer; Peter Sheldon; Scott  
Shubb; Martin Silva; Kenneth  
Simonsen; Sheryl Simonsen;  
Baldev Singh; Baljit Singh; Nida  
Singh; Michael Smith; William  
Smith; Mark Smith; Charles  
Crayton Smith; Robert Smith;  
Milton Smith II; Robert Snyder;  
Valerie Snyder; Joanne Snyder  
Davidson; Hemaltha Sourí-  
Parsons; Iliana Sorensen; Rosario  
María Soto; Barbara Sponster;  
Rayetta Stanley; Del Staudinger;

Tracey Hampton-Stein; Paul Strohecker; Lidia Tapia; Bob Tidd; Betty Timbers; Greg Townsend; Charlotte Tucker; Jodi Tuft; Timothy Tuma; Mary Tuma; Malcom Turner; Marina Vanderwall; Ronnie Van Green; Mitch Van Mechlen; Lisa Vasquez; Enrique Villanueva; Rebecca Villanueva; Nadia Villareal; Christopher Villaruz; Linda Vo; Hui Vo; Patrick Vuong; Laura Waldheim; Victoria Wallace; Zane Walker; Melissa Warner; Gurmeet Waraich; Harjinder Waraich; Walter Weiss; Gunter Weissmann; Sherry Smith-Weissmann; Edna Wenning; Veronica Widener; Todd Widener; Timothy Widlund; Melissa Widlund; Craig Williams; Richard Wilson; Jon Withrow; Natasha Yusta; Luis Zavala; George Zink; Mitchell Stein; Mitchell Stein & Associates LLP; Roes

v.

State of California; County of Los Angeles; City of Los Angeles; Kamala Harris; Benjamin Diehl; James Toma; The State Bar of California; Does  
9/6/2011 2:11 cv 7303 CBM  
(Western Division - Los Angeles)

Colette Von Kaenel  
v.  
Skinny Girl Cocktails LLC; SGC Global LLC; Beam Global Spirits & Wine Inc.; Jim Beam Brands Co.  
9/6/2011 2:11 cv 7305 JAK  
(Western Division - Los Angeles)

Class action complaint for common law fraud, breach of express warranty. This is a class action on behalf of consumers who purchased defendants' Skinnygirl Margarita beverage which purports to be "All Natural" and containing "no preservatives," even though the beverage product contains synthetic sodium benzoate.  
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Daniel Tamez  
Gnau & Tamez Law  
Group- San Diego

Tuan Dang  
v.  
AT & T Mobility LLC, a Delaware LLC; AT & T Inc, a Delaware corp.; AT & T Corp., a New York corp.; AT & T Mobility Wireless Operations Holdings Inc., a Delaware corp.; Does  
9/6/2011 2:11 cv 7307 GW  
(Western Division - Los Angeles)

Complaint for damages, violation of the Fair Labor Standards Act. Plaintiff was often required to work while he was "punched out."  
[Free download](#)

Joel Bryant  
Green Bryant & French-  
San Diego

Novart Kasbarian, as administrator of the Estate of Kasbar Kasbarian v. Chase Bank USA 9/6/2011 2:11 cv 7309 CAS (Western Division - Los Angeles)	Violation of the Fair Credit Reporting Act and the Fair Debt Collection Practices Act. <a href="#">Free download</a>	Tammy Hussin Lemberg & Associates- Carlsbad
Matthew Jones v. Dirt Blossom Inc.; David Jacobson; Larry Rattner; Does 9/6/2011 2:11 cv 7317 JHN (Western Division - Los Angeles)	Copyright infringement action over plaintiff's screenplay entitled "Boot Tracks." <a href="#">Free download</a>	Arthur Aaronson Aaronson & Aaronson
Rosa Hernandez v. Takeda Pharmaceuticals North America Inc.; Takeda Pharmaceuticals International Inc.; Takeda Pharmaceutical Company Limited; Takeda Pharmaceuticals LLC; Takeda Global Research & Development Center Inc.; Takeda San Diego Inc.; Does 9/6/2011 2:11 cv 7320 JAK (Western Division - Los Angeles)	Complaint for breach of express warranty, strict liability, defective design. Defendants' prescription drug Actos and pioglitazone hydrochloride caused plaintiff's bladder cancer. <a href="#">Free download</a>	Joseph Maher Weitz & Luxenberg
Howard Geiser; Rona Geiser v. Takeda Pharmaceuticals North America Inc.; Takeda Pharmaceuticals International Inc.; Takeda Pharmaceutical Company Limited; Takeda Pharmaceuticals LLC; Takeda Global Research & Development Center Inc.; Takeda San Diego Inc.; Does 9/6/2011 2:11 cv 7321 PSG (Western Division - Los Angeles)	Complaint for breach of express warranty, strict liability, defective design. Defendants' prescription drug Actos and pioglitazone hydrochloride caused plaintiff Howard Geiser's bladder cancer. <a href="#">Free download</a>	Joseph Maher Weitz & Luxenberg
Mophie Inc., f.k.a. mStation Corp. v. Wan Ma, a.k.a. Raymond Ma; Does 9/6/2011 2:11 cv 7323 CBM (Western Division - Los Angeles)	Trademark and copyright infringement action over counterfeit "Mophie" branded products. Plaintiff is a designer and manufacturer of mobile intelligent devices and accessories. <a href="#">Free download</a>	Christopher Johnson Johnson & Pham LLP
The Independent Order of Foresters v. John Mungo; Beacon Crest	Complaint for violations of the Racketeer Influenced and Corrupt Organizations Act, constructive trust and accounting. <a href="#">Free download</a>	Michael Bell Burke Williams & Sorensen

Financial and Insurance Services;  
Steven Kwizera; Julius Katega;  
Solomon Kisekka; Cheche  
Momodu; Damiano Kigoye;  
Andrew Muhumuza; Sharon  
Komwaro; George Agaba; Rose  
Severino; Maria Malek; Marie  
Kalungi; Ronnie Kamara;  
Michael Lyadda; Patricia Torres  
9/6/2011 2:11 cv 7326 ODW  
(Western Division - Los Angeles)

Mophie Inc., f.k.a. mStation  
Corp.  
v.  
Amber Ade; Does  
9/6/2011 2:11 cv 7327 VBF  
(Western Division - Los Angeles)

Trademark and copyright infringement action over  
counterfeit "Mophie" branded products. Plaintiff is a  
designer and manufacturer of mobile intelligent devices and  
accessories.  
[Free download](#)

Christopher Johnson  
Johnson & Pham LLP

Mophie Inc., f.k.a. mStation  
Corp.  
v.  
Ronald Reeves; Does  
9/6/2011 2:11 cv 7328 SVW  
(Western Division - Los Angeles)

Trademark and copyright infringement action over  
counterfeit "Mophie" branded products. Plaintiff is a  
designer and manufacturer of mobile intelligent devices and  
accessories.  
[Free download](#)

Christopher Johnson  
Johnson & Pham LLP

Mophie Inc., f.k.a. mStation  
Corp.  
v.  
Sidrah Qadeer, a.k.a. Sidrah  
Ahmed; Does  
9/6/2011 2:11 cv 7329 JFW  
(Western Division - Los Angeles)

Trademark and copyright infringement action over  
counterfeit "Mophie" branded products. Plaintiff is a  
designer and manufacturer of mobile intelligent devices and  
accessories.  
[Free download](#)

Christopher Johnson  
Johnson & Pham LLP

Mophie Inc., f.k.a. mStation  
Corp.  
v.  
Chad Nordby; Wibu Ventures  
Inc., a Minnesota corp.; Does  
9/6/2011 2:11 cv 7331 DSF  
(Western Division - Los Angeles)

Trademark and copyright infringement action over  
counterfeit "Mophie" branded products. Plaintiff is a  
designer and manufacturer of mobile intelligent devices and  
accessories.  
[Free download](#)

Christopher Johnson  
Johnson & Pham LLP

Ot Bonsynat; Tom Casault  
v.  
Independent National Mortgage  
Corp., a.k.a. Indymac Bank;  
Onwest Bank; IMB Holdco  
LLC; IMB Management  
Holdings LP; Dune Capital LLC;  
JC Flowers & Co.; MSD Capital  
LP; Stone Point Capital; Soros  
Fund Management LLC; SSP  
Offshore LLC; Paulson & Co.;  
Silar Advisors LP; Silar MCF-1  
LLC; Aurora Mortgage Services  
LLC; US Bank National Trust, as

Class action complaint on behalf of all California  
homeowners whose loans have been originated by  
defendant Indymac Bank using significantly reduced  
underwriting standards designed to allow borrowers to  
obtain mortgage without proper verification of income,  
no-doc and no money down programs, offering extremely  
risky credit terms to borrowers such as negative  
amortization, interest only payment options and,  
adjustable rate mortgage terms that defendant knew would  
be unsustainable for borrowers.  
[Free download](#)

Khihn Yam

trustee for Lehman XS Trust  
Mortgage Pass-Through  
Certificates Series 2007-12N;  
Federal National Mortgage  
Association, a.k.a. FNMA or  
Fannie Mae  
9/6/2011 8:11 cv 1345 CJC  
(Western Division - Los Angeles)

Danny Joe Hirschfield  
v.  
U.S. Department of Homeland  
Security; Officer Edward Lott  
9/6/2011 2:11 cv 7237  
(unassigned)  
(Western Division - Los Angeles)

IFP: Violatin of civil rights.

pro per

Nancy Dardarian  
v.  
Sur La Table, Inc., a Washington  
corp.  
9/6/2011 2:11 cv 7301 ODW  
(Western Division - Los Angeles)

Class action complaint for violations of the Song-Beverly  
Credit Card Act. (Case in other court: California Northern,  
3:11-cv-00948.)

p: Tim Hoffman  
Hoffman & Lazear-  
Oakland  
d: Scott Jacobs  
Reed Smith

Carmille Johnson  
v.  
Pepsico Inc.; New Bern  
Transport Corp. Inc.; Does  
9/6/2011 2:11 cv 7308 JFW  
(Western Division - Los Angeles)

Removal of complaint for violations of the Americans  
With Disabilities Act, negligence.

p: Eugene Feldman  
d: James Berry  
Berry & Lussier

Cecilia Medina  
v.  
Hilton Anaheim; Victor Ramirez;  
Does  
9/6/2011 2:11 cv 7311 DSF  
(Western Division - Los Angeles)

Removal of complaint for sexual harassment in  
employment, battery, failure to prevent harassment.

p: Robert Tafoya  
Tafoya & Garcia LLP  
d: Cynthia Filla  
Jackson Lewis LLP

Miralba Castro Rosas; Mimi  
Santa Cruz; Adel Dogon;  
Christopher Odman; Robert  
Bouohard  
v.  
Macy's Inc.; Macy's West Stores  
Inc.; Does  
9/6/2011 2:11 cv 7318 PSG  
(Western Division - Los Angeles)

Removal of class action complaint for labor code  
violations. Macy's routinely requires all of their employees  
to perform unpaid work "off the clock."

p: Nicolette Glazer  
d: Julia Azrael

Oganes Mesropian  
v.  
Bank of America NA; Chase  
Bank USA NA; Citibank NA; US  
Bank NA; Does  
9/6/2011 2:11 cv 7315 JAK  
(Western Division - Los Angeles)

Removal of complaint for violation of the Fair Debt  
Collection Practices Act.

p: Jeffrey Coleman  
d: Julia Strickland  
Stroock Stroock &  
Lavan LLP

Sandra Scher  
v.  
JP Morgan Chase NA; Matilla  
Realty Inc.; NDEX West LLC;  
Does  
9/6/2011 2:11 cv 7314 SJO  
(Western Division - Los Angeles)

Removal of complaint for violation of the Truth in  
Lending Act, unfair debt collection practices.

p: pro per  
d: Mark Block  
Wargo & French LLP

Hicks Park LLP  
v.  
ING Bank FSB, d.b.a. ING  
Direct; Does  
9/6/2011 2:11 cv 7330 ODW  
(Western Division - Los Angeles)

Removal of complaint for failure to pay for legal services.

p: James Hicks  
Hicks Park LLP  
d: Terrance Evans  
Duane Morris LLP- San  
Francisco

Janet Dominguez-Provencio  
v.  
Federal Home Loan Mortgage  
Corp.; Citimortgage Inc, a New  
York corp.; Cal-Western  
Reconveyance Corp.; Does  
9/6/2011 2:11 cv 7335 PA  
(Western Division - Los Angeles)

Removal of complaint for wrongful foreclosure,  
promissory estoppel.

p: Jeremy Alberts  
d: Peter Salmon  
Pite Duncan- San Diego

Ashley Vincenti; Anthony  
Vincenti  
v.  
Exxon Mobil Corp.; Does  
9/6/2011 2:11 cv 7336 VBF  
(Western Division - Los Angeles)

Removal of complaint for personal injuries and damages  
to property due to defendant's failure to properly control  
and maintain the underground fuel storage tanks.

p: Jeffrey Young- Santa  
Barbara  
d: Lawrence Riff  
Steptoe & Johnson LLP

Richard Lee; Mary Lee  
v.  
Alfa Laval Inc.; Calportland Co.,  
f.k.a. California Portland Cement  
Co.; CBS Corp., f.k.a. Viacom  
Inc.; Certainteed Corp.; Clark-  
Reliance Corp.; Crane Co.; CSR  
Ltd., f.k.a. Colonial Sugar  
Refining Co. Inc. of Syney  
Australia; Foster Wheeler LLC;  
Foster Wheeler Energy Corp.;  
General Electric Co.; Georgia-  
Pacific LLC, f.k.a. Georgia-  
Pacific Corp.; Hill Brothers  
Chemical Co.; Ingersoll-Rand  
Co.; Kaiser Gypsum Co. Inc.;  
Kelly-Moore Paint Co. Inc.;  
Owens-Illinois Inc.; O-I Inc.;  
Rapid American Corp.; Soco-  
West Inc., f.k.a. Brenntag West  
Inc., f.k.a. Soco-Lynch Corp.;  
Syd Carpenter, Marine  
Contractor Inc.; Union Carbide  
Corp.; Yarway Corp.; Does  
9/6/2011 2:11 cv 7333 GHK

Removal of complaint for damages, asbestos litigation.

p: Joseph Maher II  
Weitz & Luxenberg PC  
d: Geoffrey Davis  
K & L Gates LLP

(Western Division - Los Angeles)

Linda Petersen  
v:  
Sur La Table, Inc, a Washington  
corp.  
9/6/2011 2:11 cv 7324 R  
(Western Division - Los Angeles)

Removal of complaint for violation of civil rights. (Case  
in other court: California Northern, 3:11-cv-01254.)

p: James Richard  
Patterson  
Harrison Patterson &  
O'Connor LLP- San  
Diego  
d: Scott Jacobs  
Reed Smith

Deutsche Bank National Trust  
Co.  
v.  
Robert Pickar; Does  
8/31/2011 2:11 cv 7219 R  
(Western Division - Los Angeles)

Removal of complaint relating to real property.

p: James Lee  
Barrett Daffin et al  
d: pro per

Sandra Queen Noble  
v.  
Stolen U.S.A.; US Department of  
Health and Human Services;  
Kathleen Sebelius; Tika Smith  
8/31/2011 2:11 cv 7228  
(unassigned)  
(Western Division - Los Angeles)

IFP: Other statutory actions.

pro per

William Helm; Deborah Prise;  
Heather Rady; Robert  
Chernetsky; Rober Jones; Henry  
Klein; Stacey Weinstein; Jeffrey  
Sachs; Johnny Coleman; John  
Keath; Chad Wickham; James  
Crouch; Rickie Hamilton; Sandy  
Thomas; Roger Hugo; Robert  
Shaw; Betty Knight; Larry  
Hammock; Steven Tiller;  
Strother Fulcher; Mary Holden;  
Marisia Farmer; Robert Acevez;  
Frederick Aldrich; Merlin  
Alexander; Elias Alvidrez;  
Steven Arnold; James Baasch;  
Robert Bowen; Michele  
Breindel; Lawrence Camp;  
Debbie Chatman; Corey Clary;  
Diane Craig; Jeffrey Diggs;  
Kathryn Dildy; Marc Dumont;  
James Durden; Stephen Escobar;  
John Ferguson; Darin Foran;  
Robert Idemoto; Kenneth  
Giacone; Elizabeth Grant; Linda  
Hagerty; Douglas Hazen;  
Bernard Hirrel; William Hudson,  
III; Julius Johnson; Wilton King;  
Eddie Kirkpatrick; Ronald  
Langley; Frank Lewis; Charles  
Lowther; Sarah Malmi; Steven

Removal of complaint relating to labor litigation. (Case in  
other court: California Northern, 3:08-cv-01184.)

p: Annette Gifford  
Thomas & Solomon  
LLP- New York  
d: Steven Hazard  
Gurnee  
Gurnee & Daniels LLP-  
Roseville

Martz; Eugenia Matthews; Paul Meizler; Harold Metcalf; Michael Naperalsky; Sean Oberski; Richard Petersen; Melissa Ray; Jack Reddick; Dennis Robertson; Richard Salhus; John Schabloski; David Schnell; Warren Seiz; William Shuff; Myra Sloan; Monecia Smith; Jody Spiess; Mikal Stampke; Francis Steinhoff; Joseph Tafoya; Stephen Takesian; Jerry Tawney; Tori Taylor; Philip Tillman; Florinda Trejo; Gayle Walker; James Whaley; George White; David Wyatt; Johnny Johnson

v.  
Stephanie Riggs (petitioner); Alderwoods Group Inc.; Paul Houston; Service Corporation International; SCI Funeral & Cemetery Purchasing Cooperative, Inc; SCI Eastern Market Support Center, L.P.; SCI Western Market Support Center, L.P.; SCI Houston Market Support Center, L.P.; Alderwoods Group, LLC  
8/31/2011 2:11 cv 7200 SVW  
(Western Division - Los Angeles)

Brian Fulkerson  
v.  
Stater Bros Markets Inc.; Service Employees International Union (SEIU) Local 1877; Does  
9/6/2011 5:11 cv 1407 VAP  
(Western Division - Los Angeles)

Removal of complaint for wrongful termination of employment, disability discrimination.

p: Johnwilly Osujid; Antonio Ruiz Weinberg Roger & Rosenfeld- Alameda

US Bank NA  
v.  
Clarice Wright (movant); Hele Carlin; Divya Singh; Vena Rodriguez; Terry Mayberry; Does  
8/31/2011 5:11 cv 1380 VAP  
(Eastern Division - Riverside)

Removal of complaint for rent lease and ejection.

p: Katherine Walker Alvarado and Associates LLP  
d: pro per

Upland Animal Hospital Inc; Claus Helsted  
v.  
Diversified Veterinary Management Corp.; Senex Insurance Services Inc.; Hartford Life and Annuity Insurance Co.,

Removal of complaint for intentional misrepresentation, conspiracy to commit fraud, unsuitable investments. This case arises out of a scheme among defendants whereby they conspired to induce plaintiffs to establish and implement a 412(i) defined benefit pension plan by falsely representing the benefits of the plan and the returns of the plan's investments so that they would earn extraordinary

David McDowell Morrison & Foerster LLP



a Connecticut corp.; Sims  
Insurance Services Inc.; Eric  
Sims; Does  
9/6/2011 8:11 cv 1343 DOC  
(Western Division - Los Angeles)

large commissions and administrative fees, while  
providing a losing investment proposition to plaintiffs and  
the plan participants.

Heather McKinstry  
v.  
Accenture Inc, a Delaware corp.;  
Does  
9/2/2011 8:11 cv 1335 DOC  
(Southern Division - Santa Ana)

Removal of complaint relating to labor litigation.

p: Briana Klm  
Jose Garay APLC  
d: Dennis Hyun  
Seyfarth Shaw

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Exhibit 4  
Page 96

**Bill Girdner**

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**Sent:** Monday, September 12, 2011 7:47 PM  
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**Subject:** CNS Los Angeles Federal Report Sep 12, 2011  
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Los Angeles Federal Report  
September 12, 2011

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USDC Central District of California

Western Division - Los Angeles, Eastern Division - Riverside, Southern Division - Santa Ana

Foremost Groups Inc., f.k.a. Foremost International Trading Co. Inc. v. Ayers Bath (USA) Corp. 9/12/2011 2:11 cv 7473 GAF (Western Division - Los Angeles)	Complaint for infringement on exclusive right of distribution, unfair competition, infringement of unregistered trademark. Defendant has infringed on plaintiff's exclusive right to distribute Huida's bathroom and sanitary porcelain products in the US and Canada by importing Huida sanitary ware products and making those products available for sale to retail stores, wholesale channels and regional dealers in the US. <a href="#">Free download</a>	William Hanssen Drinker Biddle & Reath
Philip Nisbet; Cory Nisbet v. US Bank Home Mortgage, a subsidiary of US Bank and US Bank National Association; Downey Savings and Loan; MERS; Does 9/12/2011 2:11 cv 7486 JHN (Western Division - Los Angeles)	Complaint for damages; breach of fiduciary duty, violation of the Truth in Lending Act. <a href="#">Free download</a>	Lennie Ann Alzate Westside Law Group- Carlsbad
Edson Santiago v. Matthew Henggeler; County of Los Angeles; Does 9/12/2011 2:11 cv 7494 RZ (Western Division - Los Angeles)	Complaint for damages, unreasonable search and seizure, retaliation. <a href="#">Free download</a>	Adrienne Quarry
Gabriel Sandoval Jr. v. AT & T Mobility LLC, a Delaware LLC; AT & T Inc., a Delaware corp.; AT & T Corp., a	Violation of the Fair Labor Standards Act, unpaid overtime. <a href="#">Free download</a>	Joel Bryant Green Bryant & French LLP- San Diego

New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7496 SH  
(Western Division - Los Angeles)

Keyla Bell  
v.  
Onewest Bank FSB; MTDS Inc.,  
d.b.a. Meridian Trust Deed  
Service  
9/12/2011 2:11 cv 7497 E  
(Western Division - Los Angeles)

Complaint for violation of the Real Estate Settlement  
Procedures Act, promissory estoppel, fraud.  
[Free download](#)

Sarah Golden  
Golden & Timbol PC

Vahan Guyumdzhyan  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7498 PJW  
(Western Division - Los Angeles)

Violation of the Fair Labor Standards Act, unpaid  
overtime.  
[Free download](#)

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Jennifer Thompson  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7499 JCG  
(Western Division - Los Angeles)

Violation of the Fair Labor Standards Act, unpaid  
overtime.  
[Free download](#)

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Harold Soto  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7500 MMM  
(Western Division - Los Angeles)

Violation of the Fair Labor Standards Act, unpaid  
overtime.  
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Joel Bryant  
Green Bryant & French  
LLP- San Diego

Flor Martinez  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a

Violation of the Fair Labor Standards Act, unpaid  
overtime.  
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Joel Bryant  
Green Bryant & French  
LLP- San Diego

New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7501 PSG  
(Western Division - Los Angeles)

Lindsey McFarland  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7502 CAS  
(Western Division - Los Angeles)

Ivan Yakimov  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7503 ODW  
(Western Division - Los Angeles)

Arsany Said  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7504 PJW  
(Western Division - Los Angeles)

Ezekiel Flores  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 2:11 cv 7505 MRP  
(Western Division - Los Angeles)

Daisy Payan

Violation of the Fair Labor Standards Act, unpaid  
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Violation of the Fair Labor Standards Act, unpaid

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Joel Bryant  
Green Bryant & French  
LLP- San Diego

Joel Bryant

v. AT & T Mobility LLC, a Delaware LLC; AT & T Inc., a Delaware corp.; AT & T Corp., a New York corp.; AT & T Mobility Wireless Operations Holdings Inc., a Delaware corp.; Does 9/12/2011 2:11 cv 7507 GW (Western Division - Los Angeles)	overtime. <a href="#">Free download</a>	Green Bryant & French LLP- San Diego
Boost Worldwide Inc. v. El Camino Insurance; Wireless Connections Inc. 9/12/2011 2:11 cv 7514 JAK (Western Division - Los Angeles)	Trademark infringement action over Boost's marks for wireless telecommunications products and services. <a href="#">Free download</a>	James Juo Fulwider Patton LLP
Henry Cox v. Encore Receivable Management Inc.; Does 9/12/2011 2:11 cv 7515 AJW (Western Division - Los Angeles)	Violation of the Fair Debt Collection Practices Act. <a href="#">Free download</a>	Tammy Hussin Lemberg & Associates LLC- Carlsbad
Lareishia Findley; Latanya Rivers; Markeisha Findley v. County of Los Angeles; Ronald York; Does 9/12/2011 2:11 cv 7516 DMG (Western Division - Los Angeles)	Complaint for violation of civil rights, illegal arrest. <a href="#">Free download</a>	Michael Artan
Phillip Chang; Christopher Brennan v. The Boeing Care Plan For Non- Union Employees; Does 9/12/2011 8:11 cv 1386 JST (Western Division - Los Angeles)	Complaint for breach of plan, recovery of plan benefits, injunctive relief. <a href="#">Free download</a>	Gary Tysch
Suzanne Estes, derivatively on behalf of Smith Micro Software Inc. v. William Smith Jr.; Andrew Schmidt; Thomas Campbell; Samuel Gulko; William Keiper; Chris Lippincott; Robert Elliott; Steven Yasbek; David Sperling; Jonathan Kahn; Does; Smith Micro Software Inc., a Delaware corp. 9/12/2011 8:11 cv 1394 JVS (Western Division - Los Angeles)	Verified shareholder derivative complaint for breach of fiduciary duties. Defendants issued false and misleading statements to shareholders and engaged in insider trading. <a href="#">Free download</a>	Frank Johnson Johnson & Weaver LLP- San Diego

Smart Foundry Solutions LLC  
v.  
Analog Devices Inc.; Atmel  
Corp.; Freescale Semiconductor  
Inc.; Freescale Semiconductor  
Holdings I Ltd.; Freescale  
Semiconductor Holdings II Ltd.;  
Freescale Semiconductor  
Holdings III Ltd.; Freescale  
Semiconductor Holdings IV Ltd.;  
Freescale Semiconductor  
Holdings V Ltd.; Microchip  
Technology Inc.; Nvidia Corp.;  
Silicon Storage Technology Inc.;  
Texas Instruments Inc.; Toshiba  
America Inc.; Toshiba America  
Electronic Components Inc.;  
Toshiba America Information  
Systems Inc.  
9/12/2011 8:11 cv 1396 DOC  
(Western Division - Los Angeles)

Patent infringement action over patent no. 6,258,714  
entitled "Self-Aligned Contacts For Salicided MOS  
Devices."  
[Free download](#)

Anthony Dain  
Procopio Cory et al- San  
Diego

Jason Meyer  
v.  
AT & T Mobility LLC, a  
Delaware LLC; AT & T Inc., a  
Delaware corp.; AT & T Corp., a  
New York corp.; AT & T  
Mobility Wireless Operations  
Holdings Inc., a Delaware corp.;  
Does  
9/12/2011 8:11 cv 1397 AG  
(Western Division - Los Angeles)

Violation of the Fair Labor Standards Act, unpaid  
overtime.  
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Joel Bryant  
Green Bryant & French  
LLP- San Diego

Mark Palmer; Wow Designs Inc.  
v.  
Mark Hunter; Flipscript Inc, a  
Delaware corp.; Does;  
Glyphusion Inc., a Delaware  
corp. (as a nominal defendant in  
derivative claims)  
9/12/2011 2:11 cv 7512 JAK  
(Western Division - Los Angeles)

Removal of complaint for constructive fraud, breach of  
fiduciary duty, equitable lien.

p: David Lake  
d: Alan Petlak  
Ballard Spahr LLP

Vickie Bryant; Tammy Hudgins;  
Susan Oddone  
v.  
Catholic Healthcare West; Does  
9/12/2011 2:11 cv 7490 DDP  
(Western Division - Los Angeles)

Removal of class action complaint for unpaid overtime  
wages in employment, unpaid meal and break periods.

p: Garry Tetalman-  
Santa Barbara  
d: Richard Simmons  
Sheppard Mullin et al

Tom Stull  
v.  
Michael Fox; Kevin Beer; Doe  
Partnership  
9/12/2011 2:11 cv 7493 RGK

Removal of petition for judicial supervision of winding up  
of partnership.

p: Julian Pollok  
d: Glenn Trost  
Connolly Bove et al

(Western Division - Los Angeles)

Bradley Barton, d.b.a.  
Architectural Glazing  
Consultants  
v.

J.R. Four Ltd, d.b.a. Technical  
Glass Products; Does  
9/12/2011 2:11 cv 7474 SVW  
(Western Division - Los Angeles)

Removal of complaint for breach of contract, wrongful  
discharge from employment, failure to pay due and earned  
wages.

p: Yosef Peretz  
Peretz & Associates-  
San Francisco  
d: Julius Turman  
Morgan Lewis &  
Bockius- San Francisco

Melody Trait  
v.

TGI Friday's Inc.; Does  
9/12/2011 2:11 cv 7485 PA  
(Western Division - Los Angeles)

Removal of class action complaint for recovery of unpaid  
minimum wage and overtime in employment, failure to  
provide pay stubs.

p: Jonathan Ricasa  
d: Joel Siegel  
SNR Denton US LLP

In re debtor Shmuel Erde;  
Shmuel Erde (appellant)  
v.

Eastern Savings Bank; Pebble  
Creek Realty Inc; Carolyn Dye  
(appellees)  
9/12/2011 2:11 cv 7481 JAK  
(Western Division - Los Angeles)

Notice of Appeal re Bankruptcy Matter (BAP).

pro per

Gary Jones; Melanie Jones; J.J.;  
A.J.; E.J.; A.S.J.  
v.

FAMCO; Sandra Valentine;  
Does  
9/12/2011 2:11 cv 7492  
(unassigned)  
(Western Division - Los Angeles)

Violation of civil rights in accommodations.

Craig Fagan- San Diego

Dale Dubois  
v.

Hartford Life and Accident  
Insurance Co.; Group Long Term  
Disability Plan for Employees of  
Fidelity National Information  
Services Inc  
9/9/2011 2:11 cv 7421 GHK  
(Western Division - Los Angeles)

ERISA action.

Frank Darras  
Darras Law

Natalie Patirian  
v.

Julia Gelb; Bracha Italian  
9/9/2011 2:11 cv 7429 CAS  
(Western Division - Los Angeles)

Removal of complaint for rent lease and ejection.

p: Dennis Paul Block  
d: pro per

James Donell  
v.

Omid Arabian; Mojdeh Zavosh  
9/9/2011 2:11 cv 7454 RSWL  
(Western Division - Los Angeles)

Complaint relating to securities.

Peter Alan Davidson  
Ervin Cohen & Jessup



James Donell v. Masoud Askari; Mehri Askari 9/9/2011 2:11 cv 7457 OAF (Western Division - Los Angeles)	Complaint relating to securities.	Peter Alan Davidson Ervin Cohen & Jessup
Federal National Mortgage Association v. Maria De Jesus Zamora; Does 9/8/2011 2:11 cv 7399 DMG (Western Division - Los Angeles)	Removal of complaint for foreclosure.	p: Aalia Sonawalla The Wolf Firm ALC d: pro per
Yessenia Meza v. AT and T Mobility LLC, a Delaware LLC; AT and T Inc, a Delaware Corp.; AT and T Mobility Wireless Operations Holdings Inc, a Delaware Corp.; Does; AT and T Corp, a New York Corp. 9/8/2011 2:11 cv 7410 CAS (Western Division - Los Angeles)	Violation of the Fair Labor Standards Act.	Joel Bryant Green Bryan & French LLP- San Diego
Josefina Castaneda; Gabriel Cisneros v. Aurora Loan Services LLC; Quality Loan Service Corp; Does 9/8/2011 5:11 cv 1429 VAP (Eastern Division - Riverside)	Removal of complaint for foreclosure.	p: pro per d: Howard Dorsey Hall Green & Hall
The Bank of New York Mellon v. Helen McMichael; Does 9/8/2011 5:11 cv 1435 (unassigned) (Eastern Division - Riverside)	Removal of complaint relating to real property.	p: Eric Fernandez TFLG ALC- Davis d: pro per
George Neuhaus v. Metropolitan Life Insurance Co.; Does 9/7/2011 5:11 cv 1413 VAP (Eastern Division - Riverside)	Removal of complaint for breach of insurance contract.	p: Evangeline Grossman Shernoff Bidart Darras Echeverria LLP d: James Castle Barger and Wolen LLP
In re debtor Roger Alan Davis; In re debtor Erin Marie Davis; Roger Alan Davis (appellant) v. Noriyuki Masaki (appellee); Thomas Casey (appellee); US Trustee (appellee) 9/8/2011 8:11 cv 1365 CAS	Notice of Appeal re Bankruptcy Matter (BAP).	Raymond Aver

(Southern Division - Santa Ana)

In re debtor South Coast Oil Corporation; Joseph Palladino (appellant); Donald White (appellant); BG Operations LLC (appellant)

Notice of Appeal re Bankruptcy Matter (BAP).

p: Douglas Mahaffey  
Mahaffey & Associates  
d: David Poitras  
Jeffer Mangels et al

v.

South Coast Oil Corporation, a Delaware corp.; Daniel Toc; James Joseph; US Trustee; Official Committee of Unsecured Creditors of the Energy Development Corporation Bankruptcy Estate (appellees)  
9/8/2011 8:11 cv 1369 JVS  
(Southern Division - Santa Ana)

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Los Angeles State Report  
September 06, 2011

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Los Angeles Superior Court Central District

Katherine L. West aka Kaki West v. Pretty Dangerous Films, LLC; Ryan R. Johnson; Daemon Hillin 9/6/2011 BC469056 Rico	Fraud, rescission - mistake, declaratory relief <u>Paid download</u>	Stacy La Scala La Scala & Associates
John R. Elliot, Jr.; Linda Elliot v. Akzo Nobel Paints LLC; Amcod; CBS; Certainteed; Crown Cork & Seal; CSR, Ltd.; Dunn-Edwards; Formosa Plastics Corp. USA; General Electric; Georgia- Pacific; Hill Brothers Chemical; John K. Bice Co.; J-M Manufacturing; Kaiser Gypsum; Kelly-Moore Paint; McKesson; O-I; Owens-Illinois; Parex USA; Parker-Hannifin; Rapid- American; Soco West; The Sherwin-Williams Co.; Union Carbide; Univar USA 9/6/2011 BC468954 Hill	Asbestos <u>Paid download</u>	Michael Armitage Waters, Kraus & Paul
Alphus Flowers; Transita Flowers v. Ace Hardware Corporation; Calaveras Asbestos, Ltd.; Calaveras Natural Resources; Certainteed; Georgia Pacific; Goodrich; Special Electric;	Asbestos <u>Paid download</u>	Marc Willick Napoli Bern Ripka Shkolnik

Union Carbide  
9/6/2011 BC469011 Kwan

Kendra J. Petty  
v.  
L & R Group of Companies;  
L&R Group of Companies, Inc.;  
LRG Management Company  
LLC; David P. Damus;  
Guarantee Pest Control, Inc.;  
Thomas Properties Group, Inc.;  
E.I. Du Pont de Nemours and  
Company  
9/6/2011 BC469065 Lavin

Wrongful termination of an executive vice-president and refusal to pay part of her promised compensation. Plaintiff's phone conversations were intercepted, toxic chemicals were introduced into the work area, and she was required to make political contributions to conceal contributions by L & R.  
Paid download

Richard Love

Fernando Gonzalez  
v.  
Los Angeles Times  
Communications, LLC; Tribune  
Company; Leticia Bugarin  
9/6/2011 BC469919 Rico

Disability discrimination; wrongful termination. Plaintiff was fired after requesting accommodation for his injury.  
Paid download

Donald Potter

John Doe  
v.  
Does 1 through 25  
9/6/2011 BC468926 Green

Libel, invasion of privacy in website postings.  
Paid download

Bryan Freedman  
Freedman & Taitelman

Terran Lamp  
v.  
Sanofi-Aventis; Sanofi-Aventis  
US; William Malcolm Parker  
9/6/2011 BC468927 Strobel

Plaintiff was fired after expressing concern about instructions to promote a product for a use that hadn't yet been approved by the FDA.  
Paid download

Dale Fiola

Gerald Rothberg  
v.  
Barry's Ticket Service  
9/2/2011 Bc468572 Hess

Breach of oral contract

John Girardi  
Girardi & Keese

Dawn Latiolais  
v.  
KC Building Maintenance; State  
of California; City of Los  
Angeles  
9/2/2011 BC468573 White

Dangerous condition on public property

Kevin Callahan  
Thon, Beck, Vanni,  
Callahan & Powell

George Sanchez  
v.  
Tacos Mexico, Inc  
9/2/2011 BC468574 Kleifield

Handicapped access

Miguel Custodio, Jr

Meister Management, Inc  
v.  
Sandy Lang; Insynergy Products,  
Inc  
9/2/2011 BC468575 Khan

Declaratory relief, fraud

Daniel Krishel

Meco Burton; Mary Stroud v. Deandre McLaine; Chrysler Group LLC; Fox Rent A Car, Inc 9/2/2011 BC468576 Murphy	Personal injuries	Ted Wacker Robinson, Calcagnie & Robinson
Antonio Jiminez v. City of Los Angeles 9/1/2011 BC468958	Premises liability	Timothy Mitchell Themis Law Group
Kourosh Parsapour, MD v. Specialists On Call, Inc 9/2/2011 BC469002 Kwan	Non payment of wages earned	Harry Nelson Fenton & Nelson
Craig Jellison v. Burbank Unified School District; Steven Bradley; Danielle Baez; Charles Colgan; Gabriel Soumakian 9/2/2011 BC469003 Sohigian	Non payment of wages earned, defamation per se	Richard Grey
Oded Miodovsky; Malka Miodovsky v. The Argus Group; Post Family Trust; Sandra Post; Argus Realty Management Co. 9/6/2011 BC468577 Brazle	Declaratory relief	David Beitchman Beitchman & Zekian
First Bank v. Robeworks International, Inc; Nathaneal Harkham 9/6/2011 BC468913 Hogue	Breach of contract	Robert Kennard Nelson & Kennard
Evaristo Quinones v. Naomi Campbell; Los Angeles Metropolitan Transit Authority 9/6/2011 BC468914 Scheper	Personal injury	Robert McMillan Rezai & Associates
Carlos Ozzimo v. JP Morgan Chase Bank; California Reconveyance Company 9/6/2011 BC468951 Hess	Unfair and deceptive business practices	Swazi Taylor
First Entertainment Credit Union v. Stacy L. Beverly; California Department of Motor Vehicles 9/6/2011 BC468952 Weintraub	Possession of personal property, common counts	Brian Winn

Amnon Kawa v. Shlomo Epolbim; 14623 Delano Properties, LCC; 14733 Delano Properties, LLC 9/6/2011 BC469005 Solner	Fraudulent transfers	Zacky Rozio Fadlon & Rozio
Aadrm Properties LLC v. Bank of America NA; Bank of America Corporation; Bac Home Loan Servicing, LP 9/6/2011 BC468915 Bruguera	Declaratory relief	Douglas Richardson
Dora Luz Cabada; Margarita Fernandez; Jose Antonio Jimenez. Bahena; Julie Anne Cabada; Sofia Elena Cabada v. Geoffrey S. Carr; State of California, Department of General Services 9/6/2011 BC469918 Kendig	Motor vehicle, negligence	Eric Seuthe Seuthe & Associates
Joel Pagalpatan v. Donna Claire Allen; Los Angeles County Metropolitan Transportation Authority; Apolonio De Castro Gelena 9/2/2011 BC467993 Khan	Personal injury	Thomas Samaha
Annie Akers v. Glen Arakawa dba Countryclub Apartments 9/2/2011 BC46794 Scheper	Premises liability	Omid Khorshidi Khorshidi & Sadighim
Rick Siegel v. JP Morgan Chase Bank; California Reconveyance Company 9/6/2011 BC469058 Bruguera	Declaratory relief	Thomas Bayard Alessi & Bayard
The People of the State of California v. California Valley Green Farmers; Wrightcrest, LLC 9/6/2011 BC469010 Fruin	Abatement of public nuisance	Carmen Trutanich L. A. City Attorney
The People of the State of California v.	Abatement of public nuisance	Carmen Trutanich L. A. City Attorney

Global Meds; Kathleen  
McGowan; Carmine Camille  
McGowan  
9/6/2011 BC469009 Lavin

Dora Luz Cabada; Margarita  
Fernandez; Jose Antonio Jimenez  
Bahena; Julie Anne Cabada;  
Sofia Elena Cabada  
v.

Geoffrey S. Carr; State of  
California, Department of  
General Services  
9/6/2011 BC468918 Kendig

Motor vehicle

Eric Seuthe

Caine & Weiner Company, Inc.  
v.  
Next Day Specialty, LLC  
9/6/2011 BC469083 Sinanian

Collection

Steven Friedland

Caine & Weiner Company, Inc.  
v.  
Ranjit Singh dba Singh Grocery  
and Spice  
9/6/2011 BC469082 Sohigian

Collection

Steven Friedland

Elizabeth Gavalda  
v.  
Lucky Strike Entertainment,  
LLC; Fabio Vallocchia; Cesar  
Linero  
9/6/2011 BC468578 Hess

Wrongful termination

Jacob Emrani

Hasan Habib; Nancy Habib  
v.  
Pirouz Adeli; Hamid Adeli;  
Babak Adeli; Ali Reaz  
Delzende; Glass Design  
Concepts; Matrix Global  
Resources; Financial Pacific  
Insurance Company  
9/6/2011 BC469071 Treu

Breach of contract

Bruce Rudman  
Abdulaziz, Grossbart &  
Rudman

Yoon Kang  
v.  
Tom Kim; T.K. Trading Co.  
9/6/2011 BC469069 Rosenblatt

Labor Code violations

Peter Beck

Susie Aguirre  
v.  
Bryan Kuniyoshi; Mutual  
Trading Co.  
9/6/2011 BC469068 Palmer

Motor vehicle

Larry Rabineau

Sean Wofford  
v.

False arrest

Pro per



Nicole Hollick; Edward Bolanos;  
Alfredo Flores; Charlic Beck;  
Los Angeles Police Department;  
City of Los Angeles  
9/6/2011 BC469067 Rosenfield

Da Young Textile Co., Ltd.                      Collection  
v.  
Modern Fabrics, Inc.; Universal  
Fabrics, Inc.; Silvertex, INC.;  
Moderntex, Inc.; Yong B. Lee;  
Hyun S. Cha  
9/6/2011 BC469066 White

S. Calvin Myung

VN Steel Fabrication, Inc.                      Collection  
v.  
Western Alta Construction, Inc.;  
International Fidelity Insurance  
Co.; Zurich American Insurance  
Co.  
9/6/2011 BC469064 Mackey

Rebecca Lessley

Doris Blanco                                      Premises liability  
v.  
City of Los Angeles  
9/6/2011 BC469063 Treu

Z. Dean Hakkak

Michelle Anda; Demetrius A.  
Gutierrez                                      Personal Injury  
v.  
Garvey Unified School District  
9/6/2011 BC469061 Sohigian

Pro per

Valencia Sheet Metal, Inc.                      Collection  
v.  
PW Construction, Inc.; Liberty  
Mutual Insurance Company;  
Citrus Community College  
District; Orange County Fire  
Authority  
9/6/2011 BC469014 Rosenfield

Bernard Kamine  
Kamine Phelps

Pam Phelan                                      Premises liability  
v.  
Hoover Partners, LP  
9/6/2011 BC469012 Recana

William Leonard

Placo San Bernardino, LLC                      Inverse condemnation; wrongful foreclosure  
v.  
City of San Bernardino; City of  
San Bernardino Economic  
Development Agency; Panattoni  
Development Company, Inc.  
9/6/2011 BC468955 Freeman

Bryan King Sheldon  
Lim, Ruger & Kim

Tonia Knightner                                      Race discrimination; wrongful termination

Larry Lee

v. Local Initiatives Support Corporation 9/6/2011 BC468924 Solner		Diversity Law Group
Gregory M. Yulish v. Joachim Franke; Stoneground Baking Company, Inc. 9/6/2011 BC468923 Murphy	Breach of contract; removal of director; involuntary dissolution	Geoffrey Gold Rutter Hobbs & Davidoff
Ghamar Fazlelahi v. Amtrust REO, I LLC; Residential Credit Solutions; Quality Loan Service Corp. 9/6/2011 BC468922 Kendig	Violation of Federal Truth in Lending Act	Pro per
Oscar Argueta v. City of Los Angeles 9/6/2011 BC468920 Palazuelos	Premises liability	Frank McNally
Christopher Bennett v. NDEX West, LLC; Wells Fargo Bank, NA 9/6/2011 BC469015 Minning	Stay of foreclosure	Pro per
Gabriel L. Roman; Luminita Roman v. BRE Properties, Inc.; BRE Villa Azure, LLC; L1 Holdings, Inc.; Level One, LLC 9/6/2011 BC469016 Bruguera	Housing discrimination	Pro per
Lorena E. Cuevas; Cedar D. Cuevas; Cynthia A. Cuevas v. County of Los Angeles 9/6/2011 BC469073 Mooney	Wrongful death -- medical malpractice	Levik Yarian Yarian & Patatanyan
Paul Bjazevich; Joan Bjazevich v. CSR, Ltd.; Hapag-Lloyd (America) Inc.; Pacific Maritime Association 9/6/2011 BC469085 Lavin	Asbestos	Michael Armitage Waters, Kraus & Paul
Dorothy McClendon Mathews v. American Airlines, Inc.; Ann Martin Melodye 9/6/2011 BC469086 Stern	Personal injury	Stephen King

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Los Angeles State Report  
September 12, 2011

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Los Angeles Superior Court Central District

Thanh D. Nguyen v. Hawaiian Gardens Casino 9/12/2011 BC469416 Dunn	Wrongful termination, retaliation. Plaintiff was retaliated against and fired after he complained about harassment and discrimination at defendant's casino. <u>Paid download</u>	Ann Hull
Gina Castleberry Prewitt; Adrian Prewitt v. Weight Loss Centers; 1-800-Get-Thin; Marvin Anton Perer, MD; Modern Institute for Plastic Surgery; Valencia Ambulatory Surgery Center, LLC; Top Surgeons, LLC; New Life Surgery Center; Nuri Sabbaghi 9/12/2011 BC469464 Bruguera	Medical negligent referral. Plaintiff sustained a large tear in her esophagus after undergoing a pre-lap-band procedure at one of defendants' ambulatory surgery centers <u>Paid download</u>	Ian Herzog
Oleg Vidov; Joan Borsten Vidov; Corral Canyon Holdings LLC v. California Fair Plan 9/12/2011 BC469468 Strobel	Breach of insurance contract; bad faith. Failure to pay for fire damage. <u>Paid download</u>	Steve White
West Builders v. Zurich Insurance Company; Steadfast Insurance Company 9/12/2011 BC469469 Scheper	Failure to cover \$24 million loss caused by a subcontractor. <u>Paid download</u>	John Haushalter Haushalter Kurkhil & Gaspar
Arus Malkhasyan; Albert Sarkisyan; Arthur Sarkisyan; Grigor Yeretsyan	Breach of insurance contract; bad faith. Failure to cover personal injuries resulting from an auto accident. <u>Paid download</u>	Robert Silverberg

v.  
Interinsurance Exchange of the  
Automobile Club  
9/12/2011 BC469470 Alarcon

Sam Davis

Asbestos

George K Im

v.

Paid download

Akzo Nobel Paints; Borg  
Warner; Certaineed; Dana  
Companies; Eaton Electrical;  
Federal-Mogul Asbestos Personal  
Injury Trust; FMC; Gates;  
General Electric; Genuine Parts;  
Georgia Pacific; Henry;  
Honeywell International; Kaiser  
Gypsum; Kelly Moore Paint;  
Kelsey Hayes; Kentile Floors;  
Pneumo Abex; Rexnord  
Industries; Rich-Tex; Schneider  
Electric USA; Tamko Building  
Products; Maremont; The Pep  
Boys Manry Moe & Jack of  
California; Trane US; Union  
Carbide; Welco Manufacturing  
9/12/2011 BC469472 Hess

Anna Rios

Disability discrimination; wrongful termination. Plaintiff  
was fired after taking medical leave.

Brian Kestuk  
Keshuk & Silverstein

v.

Paid download

Farmers Insurance Exchange  
9/12/2011 BC469430 Hogue

Robert B. Silverman

Class action for recording telephone conversations without  
permission. Defendant is a writer for the Los Angeles  
Times.

Jeffrey Krinsk  
Finkelstein & Krinsk

v.

Paid download

Michael Hiltzik  
9/12/2011 BC469434 Elias

Villa D'Este, LP

Construction defects that caused mold at a construction  
project that was supposed to be sold for \$8 million.

Rubin Turner  
Turner Aubert &  
Friedman

v.

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ADT Security Systems, Inc.;  
Alexander Demolition &  
Hauling; All Powerful Plumbing  
& Heating; American Gunite,  
Inc.; Anvil Steel; Artistic  
Wrought Iron Work; Bleu Stone  
Pavid Ltd.; C Six/Showroom;  
Cal-State Contractors; California  
Closets; Cellar Masters, Inc.;  
Deckrite Waterproofing  
Company, Inc.; Denn Engineers,  
Inc.; Extreme Fire Protection;  
Fireplace Guys, Inc.; George  
Doors, Inc.; Keith M. Phillips,  
Inc.; LaGreca Concrete  
Construction, Inc.; Nor-Cal  
Engineering, Inc.; Paetz  
Construction; Portofino; PVEC,

Inc.; RBH Insulation, Inc.;  
Residential Elevators; Spratt  
Associates; Steptoe & Sons  
Plastering/Drywall; Studiocast  
Designs, Inc.  
9/12/2011 BC469475 Solner

Carmen Ruiz

v.

Brian Machida, MD; Lifestyle  
Lift California; Scientific Image  
Center Management, Inc  
9/9/2011 BC467997 Johnson

Negligence, negligent hiring

James Balesh

Gibson Rivera & Toms, LLP

v.

Ron Davis; Casey Davis and Ron  
Davis, as successor trustees of  
the Davis Family Trust dated  
November 3, 2006  
9/9/2011 BC469215 Murphy

Breach of contract

James Gibson  
Gibson, Rivera & Toms

Lynn Bruce; Iain Bruce

v.

David Saetia; Katherine Saetia;  
Tina Chen; Brandi Hong; 10520  
Wilshire Owners Association  
9/9/2011 BC469216 Rosenblatt

Fraud, negligence

Robert Conrad

Steadfast Insurance Company

v.

Lexington Insurance Company  
9/9/2011 BC469217 Palmer

Declaratory relief

Stephen Youngerman  
Youngerman & McNutt

YI West Corp.

v.

Young Won Kong; Greenwest  
Activewear, Inc; Greenwest,  
LLC; Nara Bank; GGFB, Inc  
9/9/2011 BC469218 Kwan

Breach of contract (LLC operating agreement), fraudulent  
conveyance

Thomas Ryu  
Kim, Shapiro, Park, Lee  
& Ryu

US Bank, NA

v.

P & A Diagnostic Services Corp.;  
Pogos Pogosjans, guarantor  
9/9/2011 BC469375 Green

Breach of contract

Steven Booska

US Bank, NA

v.

AAaron World Company; Sang  
Jae Seo  
9/9/2011 BC469377 Brazile

Common counts

Steven Booska

Maria Hernandez

v.

Los Angeles County

Personal injury

Gilbert Sigala

Metropolitan Transportation  
Authority  
9/9/2011 BC469378 Buckley

Deborah Goldenburg  
v.  
CACV of Colorado, LLC; Nds,  
LLC; Fia Card Services, NA  
9/12/2011 BC469379 See

Quiet title

Henry Kramer

Hae Seung Chung  
v.  
Howard Park; The Golf  
Professional Corporation; Jane  
Park  
9/12/2011 BC469381 Solner

Common counts

Pro Per

Mi Kyung Park  
v.  
Cecilia J. Lee; Newton Academy  
Inc; James Lee  
9/12/2011 BC469415 Rosenfield

Common counts

Pro Per

Lexington Insurance Company  
v.  
Multi-Pure Drinking Water  
Systems; Mark John Cosgrove  
dba Pacific Planners & Builders;  
Daniel Rodriguez  
9/9/2011 BC469279 Rico

Strict products liability, negligence

Brian Ferber

Keith Williams  
v.  
First United Methodist Church of  
Compton; Real Property  
Management Southland; City of  
Compton  
9/12/2011 BC469417 Minning

Declaratory relief

Pro Per

Nader Asef  
v.  
Volkswagen Group of America,  
Inc  
9/12/2011 BC469419 O'Donnell

Song-Beverly Act

Steve Mikhov  
Romano, Stancroff &  
Mikhov

Linda Bottorff; Rodney Bottorff  
v.  
General Motors LLC  
9/12/2011 BC469420 Sinanian

Song-Beverly Act

Steve Mikhov  
Romano, Stancroff &  
Mikhov

Orlando Sanchez  
v.  
Nissan North America, Inc; El  
Monte Imports, Inc dba Power  
Nissan El Monte; Safeco  
Insurance Company of America

Song-Beverly Act

Steve Mikhov  
Romano, Stancroff &  
Mikhov



9/12/2011 BC469421 Hiroshige Law Offices of Nejadpour & Associates (now L.A. Law Group Inc.) v. Zahedikia, Ali Asghar; Zahedikia, Eaman; World of Javaher, Inc 9/12/2011 BC469422 Rosenfield	Breach of contract	Joseph Kerendian
Asha Abdella v. Meruelo Maddux Properties 760 S. Hill Street, LLC; Meruelo Maddux Management, LLC 9/12/2011 BC469423 Lavin	Wrongful termination, race discrimination	Michael Portner
Ferrich Apparel, Inc; Levi Estates, Inc v. Franklin Towers Homeowners Association, Inc 9/12/2011 BC469424 Rico	Quiet title	Christie Gaumer
JPMorgan Chase Bank, N.A. v. Meaningful Films, LLC; Stuart Paul 9/12/2011 BC469382 Wiley	Collection	Timothy Silverman Solomon, Grindle, Silverman & Wintringer
Kelly Hsin Chen v. Art Eslava; Shine Food; Jessie Lord Bakery, LLC 9/12/2011 BC469384 Dau	Sexual harassment	Deane Shanander Shanander Thoms
Leonardo Valenti Inc. v. Bernini Inc. 9/12/2011 BC469387 Fruin	Collection	Leo O'Biecunas Zide & O'Biecunas
John Kim v. Foreign Exchange 9/12/2011 BC469388 Bruguera	Failure to pay overtime and provide accurate wage statements	Peter Beck
Ebony Guillory v. Njaka Affiliated Holdings, LLC; Jacquelyn Njaka 9/12/2011 BC469389 Freeman	Wrongful eviction	Robert Mobasserl
Hsiuh Chin Lin; Tung Hsiang Lan Lin v.	Foreclosure; breach of promissory note	Robert Rentzer

Steve Wu; Samantha Industry Plaza, LLC; Samantha Corporate Building, LLC; Smanathan Sharpstown Court, LLC; Smanatha Beaumont Center 1, LLC; Henry Vantri Wu; Ai Hoa Phan Wu; Wu Management, Inc.; JAR Investments LLC; GDA Properties LLC; S.S.H. Capital, LLC; Barlesville OK Legacy, LLC; Ho Yee Wu  
9/12/2011 BC469390 Mooney

Lucio Garcia Santos; Catalina Santos Galoia; Ignacio Galoia; Emiliano Santos Garcia

Negligence

David Lira  
Girardi Keese

v.  
Robert Engel; Ilene Altman; Universo 3000 Tires & Mufflers; MJ Hernandez Mechanic Shop; M. Paniagua Hernandez; A Plus Ed & Eddie's Smog Check  
9/12/2011 BC469426 Johnson

See Myun Kymm

Fraud; breach of contract

Richard Song

v.  
Sue Kyung Choi; Choice 100 Realty, Inc. Hanmi Bank  
9/12/2011 BC469427 Buckley

Creditors Adjustment Bureau, Inc.

Collection

Kenneth Freed

v.  
Joshua M. Fhima; Gabriel R. Fhima; Signety Clothing LLC; Deluxe Off-Price, Inc.; Affiliated, Inc.  
9/12/2011 BC469432 Hess

Vanessa Morris

Premises liability

Eugenia Steele  
Gordon Edelstein  
Krepack Grant Felton & Goldstein

v.  
Trizec West LA Tower, LLC; ABM Janitorial Services, Inc.  
9/12/2011 BC469433 Fahey

Bang Il Son

Labor Code violations. This is a transfer from limited jurisdiction.

Peter Beck

v.  
Hwan Sung Yoo; K.S. Trading Co.  
9/9/2011 BC469156 Recana

Lada S. Marx; Guido T. Marx

Medical malpractice

Julie Palafox

v.  
Lawrence R. Menendez; USC Orthopedic Surgery Associates  
9/12/2011 BC469486 Duffy-

Lewis

Better Life Realty, LLC v. David Yashouafar; Jasmine, USA, Inc. 9/12/2011 BC469471 Freeman	Unlawful detainer	H. Steven Schiffres Rosoff, Schiffres & Barta
Carolyn Young v. Flatiron Construction, Inc.; Dale Mullins 9/12/2011 BC469473 Kleifield	Wrongful termination	Pamela McKibbin Teren
Dianne Houston; Crystal Cooper- Murrell v. Countrywide Home Loans, Inc.; Bank of America; Reconstituted Company, N.A.; George Moreno; Eileen Moreno 9/9/2011 BC468000 Green	Quiet title	Stephen Golden
Commercial Collections of America, LLC v. Silvia Cervantes; Manuel Vigil; Rocket Camera, Inc. 9/12/2011 BC469483 Bryant- Deason	Collection	Franklin Love
Sylvia Ortiz v. E.S.S. Ent. 2000, Inc.; The Playpen; Sammy Doe; Sammer Doe 9/12/2011 BC469481 Hess	Wrongful termination; pregnancy discrimination	Peter Levine
Ehsan Yaghoubi; Farhad Yaghoubi v. Quality Loan Service Corp.; Bank of America, N. A. 9/12/2011 BC469466 Rosenblatt	Breach of contract	Pro per
Dennis Porras v. L.A. Federal Armored Services, Inc.; Jesse Ash 9/9/2011 BC467999 Lavin	Wrongful termination; Labor Code violations	Melanie Savarese
Gwenarc, Inc. v. Gina Woodring; Dynasty Trade Media and Entertainment 9/12/2011 BC469474 Mooney	Collection	George Steele

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Brian Spire v. V & R Holdings, Inc. dba Ed Hardy Jewelry; Monte Christo Trade Corporation; Rafik O. Oganesian 9/12/2011 BC469489 Sohigian	Breach of contract	Ofer Grossman
East Firestone, LLC v. Pacer International, Inc. 9/12/2011 BC469506 Stern	Breach of lease	Eve Wagner Sauer & Wagner
City of Los Angeles v. The Society of Children's Book Writers and Illustrators, Inc. 9/12/2011 BC469507	Unpaid business tax	Carmen Trutanich City Attorney
City of Los Angeles v. Bradford & Marzoc, LLC 9/12/2011 BC469508	Unpaid business tax	Carmen Trutanich City Attorney
City of Los Angeles v. Power Tax Relief, LLC 9/12/2011 BC469509	Unpaid business tax	Carmen Trutanich City Attorney

If you have any questions about subscriptions or need a re-send, please contact our home office at (626) 577-6700.

**EXHIBIT 5**



Holme Roberts & Owen LLP  
*Attorneys at Law*

SAN FRANCISCO

April 29, 2009

BOULDER

Michael D. Planet  
Court Executive Officer  
Superior Court of California  
County of Ventura  
Hall of Justice  
800 South Victoria Avenue  
Ventura, California 93009

COLORADO SPRINGS

Re: Media Access to New Civil Filings

Dear Mr. Planet:

DENVER

We represent Courthouse News Service, a nationwide news service for lawyers and the news media. You may recall Courthouse News' Northern California Bureau Chief Christopher Marshall writing to you in June 2007 about certain difficulties Courthouse News' reporter was then having in accessing new civil filings at the Court. Following that letter, the problems were quickly resolved. Unfortunately, the ability of the news media to access new court filings has deteriorated since that time, and Courthouse News is once again asking for your help in resolving the situation.

LONDON

LOS ANGELES

About Courthouse News Service

To refresh your recollection, Courthouse News is similar to other news wire services, such as the Associated Press, except that Courthouse News focuses on a narrower subject area: civil lawsuits, from the date of filing through the appellate level. Courthouse News' subscribers include nearly 2,500 law firms throughout the country, including most of California's major firms. In addition, subscribers include other media organizations such as the *Los Angeles Times*, *The Dallas Morning News*, *The Boston Globe*, the Associated Press, and Fox News, all of whom rely on Courthouse News to provide them with timely information about new civil court filings. Courthouse News' web site, [www.courthousenews.com](http://www.courthousenews.com), also features news reports about civil cases and appeals. Courthouse News does not report on criminal, family law, or other non-civil actions, and in California, it reviews only unlimited jurisdiction civil complaints.

MUNICH

HOENIX

ALT LAKE CITY

Courthouse News' core news publications are its new litigation reports, which are emailed to subscribers and contain a summary of all significant new unlimited civil complaints filed in a particular jurisdiction. For example, Courthouse News' Central

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560 Mission Street, 25th Floor San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

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*Attorneys at Law*

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Coast Report provides coverage of new complaints filed in the superior courts for Santa Cruz, Monterey, San Benito, San Luis Obispo, Santa Barbara and Ventura counties.

**Access To Civil Records At Ventura County Superior Court**

Courthouse News reporter Julianna Krolak has covered the Ventura County Superior Court since 2003, and currently visits twice each week to review new unlimited jurisdiction complaints. Up until early 2008, Ms. Krolak was able to review all of the new unlimited jurisdiction complaints filed since her prior visit, typically waiting only five to ten minutes to request and receive records. As cases are numbered sequentially, court staff would simply provide Ms. Krolak with all cases falling within a specified number range. Ms. Krolak also reviewed the Court's designated "media bin," which contains cases the Court considers of likely press interest. These procedures allowed Ms. Krolak to review all of the newsworthy unlimited jurisdiction complaints filed since her previous visit without imposing any apparent burden on court staff.

Beginning last year, however, media access began to deteriorate. In early 2008, Ms. Krolak was informed that she would only be allowed to review up to 200 consecutively numbered cases on each of her visits. Ms. Krolak was not advised of the reason for the new limitation, and it is not clear to Courthouse News why such a limitation would be imposed, since it has been Courthouse News' experience that requests for consecutively-numbered cases are relatively easy to fulfill.<sup>1</sup> In addition, in many instances Ms. Krolak was not provided with many of the cases within the number range she had requested, requiring her to stand in line again to receive the missing cases. To make matters more difficult, Ms. Krolak was often told she would not be provided with both the cases she had requested and the media bin cases at the same time, requiring her to stand in line yet again to obtain the media bin cases. Because the lines can often be long, these procedures made it significantly more burdensome for Ms. Krolak to conduct her news

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<sup>1</sup> A number of other California courts, including Superior Courts in Fresno, Kings, Madera, Mariposa, Merced, Monterey, San Joaquin, Sonoma, and Tulare Counties, provide media access in this manner. The consecutive numbering means that the clerks in these courts can easily gather even a large number of files quickly and place them on a cart for the reporter, and need not spend time locating particular cases. The reporter then reviews the cases and returns them to the clerks when his or her review has been completed.

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*Attorneys at Law*

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reporting activities. Courthouse News attempted at various times to work out these issues with Linda Daniels, a supervisor in the clerk's office, as well as Records Manager Peggy Yost. Unfortunately, these efforts have proved unsuccessful.

The situation became much worse several months ago, when the court instituted a new rule limiting members of the media to only 25 files each day. Rather than reviewing a stack of sequentially-numbered files, Ms. Krolak must now request new complaints individually by filling out a separate request slip for each complaint she wishes to see. Since there are often more than 50 potentially newsworthy civil unlimited cases filed in any given week, the 25-file limit frequently prevents Ms. Krolak from reviewing and reporting on all of the week's newsworthy filings.

In addition to the overall file limit, Ms. Krolak may request only 5 cases at a time. Even if none of the 5 cases is available, Ms. Krolak must wait in line – usually for at least 30 minutes and sometimes for an hour or more – to ask for another 5 cases. Each requested case counts toward Ms. Krolak's 25-file limit, even if it is not available. In addition, court staff sometimes count every case in the media bin towards Ms. Krolak's 25-case quota, even if all of the media bin cases turn out to be older cases that she has already reviewed on previous visits.

**Right Of Access To Civil Court Records**

At most California courts, and in state and federal trial courts across the nation, news reporters who regularly visit the court are provided with the opportunity to review all of the new complaints filed since that reporter's last visit. In California, courts have adopted a variety of procedures that achieve this result. As noted above, some courts simply provide news reporters with a stack of sequentially numbered cases filed since their last visit. Others ask that reporters request individual cases based on docket information provided on a list or via a computer terminal, but either do not impose limits on the number of cases that may be viewed, or impose limits that are set high enough so as to not prevent news reporters from reviewing all of the potentially newsworthy new complaints filed since their last visit. Still others make all new filings – and not just selected filings – available for media review in a designated press box. In addition, these court have developed procedures that eliminate the need for members of the news media



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who review new filings from having to stand in line several times as part of a single visit to the court.

The media access procedures imposed in Ventura County are not only significantly more restrictive than access policies at other California courts, but are also inconsistent with California's strong presumption of public access to civil court documents. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4<sup>th</sup> 1178, 1208 n.25 (1999) (recognizing First Amendment right of access to civil court records); accord, e.g., *Savaglio v. Wal-Mart Stores, Inc.*, 149 Cal. App. 4<sup>th</sup> 588, 596 (2007); *Burkle v. Burkle*, 135 Cal. App. 4<sup>th</sup> 1045, 1062 (2006); Cal. Rule Ct. 2.550(b) & (c) (once a record has been filed or lodged with a court, it is presumed to be open to public inspection).

In addition, the United States Supreme Court has recognized that the media function "as surrogates for the public," which today acquires information about court proceedings "chiefly through the print and electronic media." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). Thus, in the context of courtroom proceedings, although "media representatives enjoy the same rights of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard." *Id.* at 573. For the same reason, it is appropriate to provide news reporters who visit the court on a regular basis with special procedures for obtaining timely access to new complaints, even if those exact same procedures are not provided to researchers and/or the general public.

**Potential Solutions To Improve Access**

There are at least two possible solutions that would resolve the current media access problems at this Court:

**Option #1** -- Courthouse News respectfully suggests that the simplest solution would be to reinstate the system of allowing members of the news media such as Ms. Krolak to review all of the consecutively numbered cases filed since their last visit. This would seem to be the easiest and least time-consuming option for the Court, as it would entail simply gathering all files within a certain case-number range and placing them on a cart rather than locating individual file numbers. Although the total number of requested

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*Attorneys at Law*

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cases might be large, staff in other courts can generally gather even a relatively large number of cases in a given case number range within a matter of minutes.

**Option #2** – In the event the Court determined for whatever reason that it did not want to reinstate its prior procedures, the Court could instead simply eliminate the limit on the number of non-sequential cases that accredited members of the news media such as Ms. Krolak could request on each of their visits, or at least increase that limit. Ms. Krolak estimates that she would seldom need to see more than 50 files each visit, but to allow some breathing room, Courthouse News respectfully suggests that members of the news media such as Ms. Krolak be permitted to review up to 60 files per visit.

Whatever procedures the Court ultimately adopts, Courthouse News also respectfully requests that the procedures be revised so that members of the media such as Ms. Krolak can obtain access to all potentially newsworthy new filings, whether from the media bin or from the shelves, at the same time, without needing to stand in line multiple times during the same visit to the Court.

It has been CNS's experience that when the media and court officials work together in a cooperative and creative manner, solutions can almost always be found that give the media prompt and efficient access to court filings without imposing any significant burden on court staff. I will call you next week follow up on this matter, in the hopes that we can discuss whether one of the solutions outlined above could be adopted to resolve the current access problems. In the event you determine that neither of the above solutions would be workable, perhaps we could meet in person to discuss the matter further. Although I am based in San Francisco, I have family in Ventura (recently-retired City Attorney Bob Boehm is my father) and always welcome another opportunity to visit the area.

Sincerely,



Rachel Matteo-Boehm

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April 29, 2009  
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cc: Hon. Kevin J. McGee, Presiding Judge, Superior Court of California, County of  
Ventura  
Cheryl Kanatzar, Deputy Executive Officer  
Bill Girdner, Editor, Courthouse News Service  
Christopher Marshall, Northern California Bureau Chief, Courthouse News Service  
Julianna Krolak, Reporter, Courthouse News Service

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**EXHIBIT 6**



Holme Roberts & Owen LLP  
Attorneys at Law

SAN FRANCISCO

June 20, 2011

BOULDER

Michael Planet  
Court Executive Officer  
Ventura County Superior Court  
800 South Victoria Ave.  
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

As you may recall, we represent Courthouse News Service, a nationwide news service for lawyers and the news media. Over the past two years, Courthouse News has written to and met with various officials at this Court regarding delays in access to newly filed civil unlimited complaints. Although your office has undertaken to decrease the amount of time between the filing of a complaint and its availability to members of the news media, news reporters are rarely permitted to see any new civil complaints on the same day they are filed. Rather, delays in access range anywhere from one day to several weeks.

DUBLIN

It appears that the Court is not currently releasing newly filed complaints for press review until after a certain amount of processing has been completed. However, as explained below, the press's right of access to court records is not dependent on a court having completed processing. Indeed, the delays at this Court are effectively denials of access, and are contrary to the fundamentally public nature of adjudicative court records and the media's legitimate interest in timely access to those records.

LONDON

LOS ANGELES

We therefore respectfully ask that you address these delays immediately by adopting simple procedures to ensure that members of the media have access to new complaints on the same day they are filed.

SALT LAKE CITY

About Courthouse News Service

Courthouse News Service is a 21-year-old, Pasadena-based legal news service for lawyers and the news media. It is similar to other news wire services, such as the Associated Press, except that it focuses on civil lawsuits, from the date of filing through the appellate level. Courthouse News does not report on criminal or family law matters, and in California it focuses only on unlimited jurisdiction civil cases.

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The majority of Courthouse News' nearly 3,000 subscribers nationwide are lawyers and law firms, including numerous prominent California firms. In addition, other news outlets are increasingly looking to Courthouse News to provide them with information about newsworthy new civil filings. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *Los Angeles Business Journal*, the *San Jose Mercury News*, and *Forbes*, all of which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' core news publications are its new litigation reports, which are e-mailed to subscribers daily and contain coverage of all significant new civil complaints. Its website, [www.courthousenews.com](http://www.courthousenews.com), also features news reports and commentary about civil cases and appeals, and receives an average of 850,000 unique visitors each month.

**Access to Court Records at Ventura County Superior Court**

Courthouse News' reporter Julianna Krolak has covered the Ventura County Superior Court since 2003. Until recently, Ms. Krolak visited the court twice each week to review new civil unlimited jurisdiction complaints. In recognition of the growing importance of this Court, starting in November 2010, Ms. Krolak began visiting the Court on a daily basis.

Up until early 2008, Ms. Krolak was able to review the vast majority of new complaints filed since her prior visit. This was achieved through a combination of a media bin procedure (which, at the time, contained complaints that the Court determined would be of interest to the press) as well as the clerk's office's practice of providing Ms. Krolak with all additional complaints falling within a specific number range, since cases are numbered sequentially. In general, these procedures allowed Ms. Krolak to review all of the newsworthy unlimited jurisdiction complaints filed since her previous visit without imposing any apparent burden on court staff.

Beginning in 2008, however, media access at the Court began to deteriorate on a number of fronts. Among other things, the clerk's office began limiting the number of files that members of the media could request to 25 each day, and only permitted reporters to request five at a time, which meant Ms. Krolak had to wait in line – usually for at least 30 minutes, and sometimes more than an hour – to ask for each batch of five cases. Each requested case counted toward her 25-file limit, even if the complaint was not made available for

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*Attorneys at Law*

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review, and Court staff sometimes counted every case in the media bin toward Ms. Krolak's 25-case quota. Since there were often more than 50 potentially newsworthy civil unlimited cases filed in any given week, the 25-file limit frequently prevented Ms. Krolak from reviewing and reporting on all of the week's newsworthy filings, thereby resulting in significant delays in access to newly filed civil complaints.

Courthouse News' Northern California Bureau Chief, Chris Marshall, attempted at various times to resolve these issues with Supervisor Linda Daniels, as well as Records Manager Peggy Yost, but these efforts proved unsuccessful. Thereafter, in April 2009, we wrote to you. We subsequently spoke on the phone, together with Deputy Court Executive Officer Cheryl Kanatzar, about potential solutions to the access problems. In June 2009, Ms. Kanatzar, as well as Ms. Yost and Ms. Daniels, met in person with Mr. Marshall to further discuss potential solutions. The solution ultimately devised by the Court involved placing newly filed civil unlimited jurisdiction complaints directly into the media bin for review only after minimal processing. Ms. Krolak would be permitted access to all of the complaints contained in the media bin, as well as up to 25 additional complaints, per visit, from the shelves. Of the additional 25 complaints that Ms. Krolak would be permitted to request, she could only access five complaints at a time.

While these procedures initially worked reasonably well to provide Ms. Krolak with timely access to newly filed complaints, access again quickly deteriorated, as it seemed that the clerks were waiting until newly filed complaints were fully processed before placing them in the media bin (contrary to the agreement that new complaints would be placed in the bin after just minimal processing). The deterioration of the media bin procedure led to a backlog of newly filed unlimited civil jurisdiction complaints that Ms. Krolak needed to review, and she therefore had to request numerous additional complaints as part of her daily reporting activities. On many of her visits, she found that she had to request up to 25 complaints (her limit for cases that were not contained in the media bin) in order to see the entire flow of newly filed unlimited civil jurisdiction complaints, standing in a new and lengthy line for each group of five complaints she wished to review. Even with respect to those 25 additional complaints she requested, many were not available, with delays in access ranging for the most part from one to three days, but sometimes significantly longer.

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*Attorneys at Law*

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As noted, late last year, Courthouse News began covering the Court on a daily basis. Given the ongoing delays and problems with the media bin procedure, Mr. Marshall contacted Ms. Kanatzar by letter in February 2011 in an attempt to come up with mutually agreeable procedures that would provide same-day access to all newly filed unlimited civil jurisdiction complaints, and Ms. Kanatzar spoke with Mr. Marshall by phone in early March 2011 to discuss options. While Ms. Kanatzar indicated a desire to improve on the delays, the message conveyed to Courthouse News was that the clerk's office would not provide same-day access to newly filed unlimited jurisdiction civil complaints. At best, the Court would attempt to provide next-day access. Mr. Marshall was disappointed to hear this, but agreed to wait and see what solution the Court came up with to resolve delays. Subsequently, Ms. Kanatzar left Mr. Marshall a voice mail message advising him that beginning on March 14, 2011, the clerks would reprioritize how cases are processed, and Courthouse News should begin seeing complaints within two days of filing.

Over the past three months, Courthouse News has monitored the availability of complaints to determine what effect, if any, the new procedures would have in terms of delays in access. Unfortunately, things have gone from bad to worse, with same-day access to new complaints a rare occurrence.<sup>1</sup> Rather, actual delays in access are anywhere between one day and several weeks after filing for virtually all civil unlimited jurisdiction complaints filed in this Court.

**There Is A Right Of Access, And Timely Access, To All New Civil Court Filings**

As we have related to you in our previous correspondence and discussions, the press has a presumptive, constitutional right of timely access to newly filed complaints, which necessarily means same-day access. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4<sup>th</sup> 1178, 1208 & n.25 (1999) (recognizing First Amendment right of access to civil litigation documents submitted to a court as a basis for adjudication); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9<sup>th</sup> Cir. 1983) (even short delays in access constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time"); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d

<sup>1</sup> During one recent four-week period, only one complaint out of 145 was available for review on the same day it was filed.



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893, 897 (7th Cir. 1994) (“[i]n light of values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous”); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”); *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, at \*10-11, 14 (S.D. Tex. 2009) (“the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional”).

Likewise, once a record has been filed or lodged with the court, Rule of Court 2.550(c) provides that the record is “presumed to be open” to public inspection. The Rule of Court thus recognizes that the public character of new complaints comes not from the court’s taking any particular action with respect to a complaint, but from a person’s invoking the power of the judiciary by submitting it to the court. *See also Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986) (the right of access springs into being the moment a person “undertake[s] to utilize the judicial process”); *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (“By *submitting* pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny.”) (quotation omitted; *emph. added*).

In light of this right of access, it is not appropriate for this Court to deny media requests to examine newly filed complaints on the ground that the Court has not yet completed its administrative tasks associated with the processing of those complaints (tasks that vary from court to court, but can include such items as inputting information about the complaint into a computer system, formal acceptance, scanning, and/or posting the complaint online for remote viewing). As you can see from the enclosed city-by-city survey, courts around the country have implemented a variety of procedures to ensure that the press has access to *all* new civil complaints at the end of the day on which those complaints are filed, regardless of whether they have been fully processed and/or other administrative procedures have been completed. Indeed, given the media’s role as “surrogates for the public,” *see, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), it is appropriate to provide news reporters who visit the Court every day with procedures for obtaining same-day access to new filings, so that those reporters may in turn disseminate information about those filings to interested persons, thereby keeping the public informed as to what transpires in the courts.

**Holme Roberts & Owen LLP**  
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With these considerations in mind, Courthouse News once again respectfully requests that the Court adopt procedures to ensure that reporters who visit the court every day (which would include but not necessarily be limited to Courthouse News) can review new unlimited civil complaints at the end of the day they are filed, even if they have not been fully processed. As the enclosed survey demonstrates, there are a variety of specific ways this can be accomplished, but fundamentally, what we are asking for is for Ms. Krolak to simply be allowed to see the day's new unlimited civil filings at the end of each court day.

We thank you for your attention to this important matter, and look forward to hearing from you.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge  
Courthouse News Service

## **Media Access to Courts Around the Nation**

**Prepared By Courthouse News Service  
June 2011**

Courts around the country have developed a variety of procedures to provide the media with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed, regardless of whether processing has been completed (or in federal courts that have adopted e-filing, the so-called "quality assurance" process is completed), and regardless of whether the complaint or petition has been made available for electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in courts throughout the nation.

### **Albuquerque**

At the Second District Court of New Mexico (Bernalillo County), both paper and electronically filed civil complaints are made available to the media in a "review pile" on the day of filing, before they have been fully processed or made available to the public. Courthouse News' reporter has been granted behind-the-counter access to the "review pile" and provided with a small work space, where he can review the new cases and scan any newsworthy complaint using a portable scanner. Any complaint that does not make it to the review pile enters a 3 - 4 day docketing process, during which Courthouse News Service's reporter can typically track down any case that needs to be seen.

### **Atlanta**

At the Fulton County Superior Court in Atlanta, Georgia, new complaints are scanned immediately upon filing and made available at computer terminals at the courthouse, most within minutes of filing. In addition, complete docket information for civil cases is available from a publicly accessible web site on the day the complaint is filed.

At the United States District Court for the Northern District of Georgia, where e-filing is voluntary, reporters review new civil actions on the same day they are filed. New complaints that are filed in paper form are scanned into a computerized press box before they go to docketing and are accessible on a computer terminal in the Clerk's office. E-filed complaints are made available to CNS's reporter, prior to any processing, via PACER by using a shell case number code to access an online press queue of new same-day filings.

### **Austin**

At the Travis County District Courthouse in Austin, where e-filing is mandatory for civil cases, Courthouse News' reporter gets a list of all of the new civil petitions filed earlier that same day upon arriving at the courthouse. She then views newly filed petitions using a public access terminal at the courthouse. Before leaving the court, Courthouse News' reporter gets an updated copy of the list of newly filed petitions to see whether there are any that have been filed since her first review, which she also views using the court's public access terminal.

### Beaumont

At the Jefferson County District Court in Beaumont, Texas, reporters are allowed behind the counter to access paper copies of petitions filed that day, before the cases are put through the docketing process. Reporters can make copies of newsworthy cases.

At the Beaumont Division of the United States District Court for the Eastern District of Texas, reporters have same-day access to newly filed actions regardless of whether docketing has been completed. Reporters review scanned copies of new complaints via PACER, and if a new case is not yet scanned and available on the court's computer system, reporters can request and are given a paper copy of the new action based on a listing of new filings in a red log book made available to the press.

### Brooklyn

At the Kings County Supreme Court, newly filed cases are typically scanned into electronic form immediately after they are filed, and the paper copies are then placed in a designated media box for same day review. However, in the event that a new complaint is not scanned until the following day, the paper copy remains in the press box until Courthouse News' reporter has reviewed it. Courthouse News' reporter has been provided with a media pass that allows her to remove the new filings from the media box and review them in a different area behind the counter in the clerk's office on the same day the complaints are filed. Courthouse News' reporter is free to make her own copies for a small fee.

At the United States District Court for the Eastern District of New York, parties file "press copies" of new complaints, which are placed into a press box that is made available to reporters throughout the day, thereby allowing them same-day access to the vast majority of new filings, even if the new filings have not been fully processed or posted to PACER.

### Chicago

At the Cook County Circuit Court in Chicago, Courthouse News' reporter, or any other member of the media who is first to arrive at the courthouse, begins each visit by going behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. The reporter sees complaints on the same day they are filed, regardless of whether the complaints have been fully processed. Reporters can stay as late as they like to review the new complaints.

At the United States District Court for the Northern District of Illinois, where newly filed complaints are available on a same-day basis, the court had previously provided the media with a special case number code for the PACER web site that granted reporters access to a press queue where the new complaints were posted before they had even been assigned a case number or appeared on the public PACER website. However, the Court is now making newly-filed civil complaints immediately available on PACER, as well as the court's own independent website, making access to the press queue unnecessary.

### Cincinnati

At the Hamilton County Court of Common Pleas in Cincinnati, Ohio, new complaints are placed in the intake area for review by the media on the same day the complaints are filed. Complaints are made available after they have been date-stamped, but before any other processing occurs. Courthouse News' reporter sees between 30-60 complaints each day. If Courthouse News' reporter misses a complaint, he may request the file from the paper room staff the next day. Court employees will make copies of newsworthy complaints available upon request for 10 cents per page.

At the United States District Court for the Southern District of Ohio, many of the newly filed complaints are made available on the day of filing via PACER. However, for cases not available electronically, the court places a copy of new cases into a press box at the intake counter, where Courthouse News Services' reporter may review them until 4:00 p.m. when the court closes to the public. The reporter may request copies of new complaints for 50 cents per page.

### Cleveland

At the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, Courthouse News' reporter has behind-the-counter access to new filings on the same day they are filed, regardless of whether they have been fully processed. Complaints are available as soon as they have been date-stamped. Court officials provide Courthouse News' reporter with desk space to set up a laptop and allow him use of the office copy machines.

At the United States District Court for the Northern District of Ohio, new civil cases can be filed either in person or electronically. Both cases filed electronically and in person are made available on PACER on the same day they are filed. However, to view cases that are restricted from access via PACER or cases that have not yet been posted to PACER, Courthouse News' reporter visits the courthouse, where the court staff will print out a copy of any case he requests, even if docketing has not been completed and regardless of how those complaints were filed.

### Columbus

At the Franklin County Court of Common Pleas in Columbus, Ohio, Courthouse News' reporter has same-day access to new civil complaints after they have been date-stamped and before processing. Courthouse News' reporter works at a desk behind the intake counter. Complaints that are filed before the reporter arrives to the courthouse are placed in an "outbox" tray where CNS's reporter is able to review them on the same day they are filed. Once the reporter has finished reviewing those cases, a member of the court staff retrieves complaints that have been filed since the reporter's arrival directly from the various tellers and makes them available for immediate review. Copies are available for a nominal fee.

At the United States District Court for the Southern District of Ohio in Columbus, all new complaints are made available on PACER promptly upon filing. The court will also provide

hard copies of any civil filings not available on PACER on a same-day basis, but the speed with which cases are posted to PACER generally makes this unnecessary.

#### Dallas

At the Dallas County District Court in Dallas, Texas, Courthouse News' reporter is provided with behind-the-counter access to new petitions as soon as they are filed and before any docketing has taken place. The court provides the reporter with a place to work, where staffers in the clerk's office provide him with access to the new petitions filed in paper form. As for e-filed petitions, Courthouse News Service's reporter views some on a computer terminal in the clerk's office. In many instances, however, petitions are not available on the terminal on a same-day basis, and the clerk's office provides him with paper printouts of those petitions so that he can see them same-day.

The United States District Court for the Northern District of Texas has developed a process that ensures reporters have same-day access to all new complaints, regardless of how far those complaints have progressed through the intake process. On his daily afternoon visits to the court, Courthouse News' reporter goes through a three-step process, described below. Leigh Lyon, Assistant Chief Deputy of Operations, Dallas Division of the Northern District of Texas, has informed us that she would be happy to speak with court officials in other jurisdictions about this system. Ms. Lyon can be reached at (214) 753-2186.

- First, Courthouse News' reporter checks a computer terminal in the clerk's office to view summaries of the day's new complaints that have already been made available on PACER. Courthouse News' reporter then uses his own internet connection to immediately download documents he needs to his laptop computer at the courthouse.
- Second, Courthouse News' reporter checks for complaints that have been scanned by the clerk's office, but are not yet available on PACER. These complaints have been assigned a bar code and case number, and are made available for electronic viewing at a public computer kiosk located in the clerk's office, where the media can then review the new complaints on the same day they are filed.
- Finally, for complaints that are so new they have not yet been scanned, Courthouse News' reporter views the paper versions of those new cases in their case folder and makes copies of newsworthy complaints.

#### Detroit

At the Wayne County Circuit Court, complaints are placed in a drawer in the intake area of the clerk's office immediately after they are filed. Upon arriving at the clerk's office at approximately 3 p.m., Courthouse News' reporter goes behind the counter and first double-checks the previous day's complaints, which are located in bundled folders behind the intake drawer, for any missed or last-minute filings from the day before. Then he turns to the intake drawer, where he is permitted to review the newly filed complaints while standing behind the counter. Most new complaints are in the drawer, but some are with the intake clerks, who will share the complaints with the reporter for review. The reporter is permitted to make his own

copies of complaints using a copier located also behind the counter, as well as an alternate copier on the other side of the cashier station near the death certificates/marriage license area.

At the United States District Court for the Eastern District of Michigan, the court provides copies, on a same-day basis, of all newly filed complaints in a media box located in a public area, but only after the complaints have been fully docketed. Courthouse News' reporter can either visit the courthouse to view complaints or he can view the new filings electronically on PACER, which is just as timely as the hard copy press box.

#### Fort Worth

At the Tarrant County District Court in Fort Worth, most petitions appear on the court's on-line system the day they are filed, except those cases that are filed electronically after 5:00 p.m., when the court is closed, which are made available the following day. If any petition that was filed during court business hours is not available online the day it is filed, court staff either make a copy for Courthouse News' reporter or arranges for the petition to be immediately scanned and posted to the on-line access system. The end result is that Courthouse News' reporter is able to access all petitions filed during court hours on the same day they are filed.

#### Houston

The Harris County Civil District Courts in Houston provided same-day access for many years by permitting reporters to go behind the intake counters and review newly-filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's web site before they could be reviewed, which delayed their availability by a day or more – sometimes several days. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office failed to lead to a resolution, Courthouse News reluctantly filed suit under 42 U.S.C. § 1983. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, and finding that “the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional.” *Courthouse News Service v. Jackson, et al.*, 2009 WL 2163609, at \*4 (S.D. Tex. July 20, 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's web site the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in March 2010, the clerk's office became obligated not only to continue to provide same-day access to new civil filings, but to pay more than \$250,000 to Courthouse News to compensate it for the attorneys fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's web site. Those petitions can be viewed, and printouts can be made, free of charge by the media and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. Details about this program can be found on the Harris County District Clerk's web site, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx> (see button: “Search Today's Filings”).

At the United States District Court for the Southern District of Texas, where electronic filing is required for new cases, Courthouse News' reporter can view electronic versions of complaints that are already docketed and posted to PACER on the same day they are filed. For any new complaint that has not yet been fully docketed, the Court will usually provide a hard copy regardless of how far along the complaint is in the docketing process, also on the same day they are filed.

#### Indianapolis

At the Marion County Circuit and Superior Courts in Indianapolis, Indiana, reporters view all new filings on a same-day basis in the clerk's office. Reporters are given stacks of the new filings, before they are processed or sent to the proper court division, and are allowed to go through them at tables in the public viewing area from 4:00 p.m. to 4:30 p.m. Reporters can then make copies themselves on court copy machines, which are then billed to Courthouse News Service monthly.

At the United States District Court for the Southern District of Indiana, reporters are provided with access to all complaints filed on a same-day basis, even if docketing has not been completed. When Courthouse News' reporter arrives at the end of the day, the court staff gathers all of the civil cases filed throughout the day and allows the reporter to review the complaints. The court staff will then make copies at a rate of 50 cents per page.

#### Las Vegas

At the Eighth Judicial District Court in Las Vegas, Nevada, reporters saw the majority of new civil complaints on a same-day basis until the court switched to mandatory e-filing in February 2010. Following that switch, the court began requiring news reporters to review new complaints at a computer terminal in the clerk's office, but this system resulted in complaints not being available for viewing until the day after they were filed. The reason for these delays was that new complaints did not appear on the computer terminals until after they had been "accepted" by the clerk's office, and only after the terminals had been updated to reflect the new filings. After Courthouse News brought these delays to the attention of the court, the court adopted a new system: an electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been fully processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), Courthouse News is now seeing new e-filed complaints on a same-day basis.

At the United States District Court for the District of Nevada, Courthouse News' reporter can view electronic versions of the majority of new complaints on a same-day basis on PACER. Complaints that are not made available on the day they are filed are usually made available on the following day.



### Los Angeles

At the Downtown (Stanley Mosk Courthouse) branch of the Superior Court of California in Los Angeles, reporters can review all new actions that are filed on a particular day through the court's computer system, which includes terminals for the general public and additional terminals in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public view cases close at 4:30 p.m., but the press room remains open later and even the latest filings of the day are available and can be reviewed by 7:00 p.m. About 90 new civil, general jurisdiction cases are filed each day.

At the Santa Monica Courthouse of the same court, face pages of each day's newly-filed complaints are made available for review at 3:30 p.m. on the same day the complaints are filed. Courthouse News' reporter then requests copies of those complaints for which she wants to see the full-text versions. The full text of late-filed complaints is made available at 4:30 p.m., when the filing room court closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Courthouse News' reporter can then request copies of any of those late-filed complaints, and they are generally provided right away.

At the United States District Court for the Central District of California, a room is set up directly off the docketing department with a set of pass-through boxes. At 4:45 p.m., a messenger places all of the civil complaints filed that day in the pass-through boxes so that the media can review them. Inside the reviewing room is a copy machine maintained by the press. Reporters that cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they want to look over the complaints and rulings, copy those of interest, and put the documents back in the pass-through boxes.

### Louisville

At the Jefferson County Circuit Court in Louisville, Kentucky, the clerk's staff makes a copy of the front page of all complaints filed throughout the day and places the coversheets on a table in the public area of the office. Courthouse News' reporter then reviews the stack of coversheets and requests any complaints he determines to be newsworthy on the same day they are filed. The clerk's office will make copies for him at a rate of 25 cents per page.

The United States District Court for the Western District of Kentucky in Louisville has adopted an e-filing system requiring initiating documents to be filed electronically. The court has provided the media with an "MC" case number code. Using this code at a designated computer terminal in the clerk's office, reporters can review newly filed complaints in exactly the same format as they are received in the clerk's office, prior to being docketed and before they are available to the public on PACER. If a reporter needs a copy of a complaint, he requests the copy from court staff at a rate of 50 cents per page.

### Manhattan

At the New York County Supreme Court, where certain case types are required to be e-filed, new complaints are made available to reporters on the same day they are filed, whether they are filed in paper or electronic form. E-filed cases are posted online to a court website by the end

of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically via an internal computer system on terminals set up throughout the courthouse. At 4:00 p.m., and then at regular intervals until 5:00 p.m., the paper versions of the new complaints are then placed by court officials in a secure area behind the counter where reporters are free to review them on a same-day basis.

At the United States District Court for the Southern District of New York, reporters are permitted to view new civil complaints three times a day – between 9:00 a.m. and 9:45 a.m., between 11:30 a.m. and 12:15 p.m., and between 3:35 p.m. and 4:30 p.m. – on the same day the complaints are filed.

#### Miami

In Miami-Dade County Circuit Court, the clerk's office closes to the general public at 4 p.m., but security personnel remain until 6:45 p.m., allowing Courthouse News Service's reporter to review new filings. The reporter is permitted to go behind the intake counter and pull same day complaints directly from each intake clerks' desk from 4:45 p.m. until the office closes at 6:45 p.m. The complaints that Courthouse News' reporter reviews have been assigned a case number and checked for all required documentation and payment, but have not been entered into the court's computer system. If the reporter needs copies she is able to make her own copies at a Court copy machine for \$1 per page.

At the United States District Court for the Southern District of Florida, electronic filing of new civil complaints is mandatory, and new complaints that are filed before 5 p.m. appear on PACER on the same day they are filed. Cases filed after 5 p.m. appear on PACER the following day.

#### Milwaukee

At the Milwaukee County Court in Wisconsin, reporters have access to new complaints on the day they are filed, even if they have not yet been fully processed, and are permitted to go behind the counter. Reporters can request copies of complaints from court personnel for a small fee.

At the United States District Court for the Eastern District of Wisconsin, most new complaints are e-filed and available electronically through PACER on the same day they are filed. However, for those cases that are not immediately posted to PACER, court staff provides reporters with the original paper versions of the new complaints, also on the same day they are filed. Reporters are then able to make copies at a copy machine for a nominal fee.

#### Minneapolis/St. Paul

At both the Hennepin County District Court in Minneapolis and the Ramsey County District Court in St. Paul, where many of the new complaints are filed by mail, Courthouse News' reporter is permitted to go behind the counter to review the stack of original complaints on the same day they are filed and before they are docketed. Because the reporter visits Ramsey County only three times per week, she is unable to review all cases on the same day they are

filed, but is able to search for and view the cases she has missed on a computer terminal at the courthouse the next time she visits the court. The reporter is able to make her own copies in Hennepin County, where Courthouse News has established a copy account. In Ramsey County, for cases the reporter reviews on the day of filing, the court staff will make copies of any complaint the reporter requests. For cases she reviews after the day of filing, the reporter is able to print a copy directly from the computer terminal.

At the United States District Court for District of Minnesota, reporters begin their visit by using a computer terminal at the courthouse to view an intake log of new cases. From there, reporters review complaints available on PACER using a public computer terminal in the clerk's office. If a complaint shown on the intake log of new cases is not yet available on PACER, the court will print out a copy for the reporter. The Clerk charges 10 cents per page for any copies that reporters request.

#### Nashville

At the Davidson County Chancery Court in Nashville, Courthouse News' reporter reviews an intake log of the day's new filings on a public computer terminal at the courthouse. She then compiles a list of the relevant cases and presents the list to the court staff, who retrieve the requested cases and allow her to review the complaints regardless of whether the docketing process has been completed.

At the Davidson County Circuit Court, most new complaints are scanned throughout the day and are made available through a government website on the same day they are filed.

At the United States District Court for the Middle District of Tennessee, the clerk's staff are required to stay one hour after closing in order to scan all new filings and post them onto PACER on the day they are filed.

#### Oakland

Although the Alameda County Superior Court in Oakland, California, endeavors to make newly-filed complaints available for viewing on its web site on a same-day basis, it has implemented procedures to ensure that news reporters who visit the René C. Davidson courthouse can obtain same-day access to those complaints that would otherwise not be posted for electronic viewing on a same-day basis. Under those procedures, reporters are provided with access to a workstation behind the intake counter. The station is equipped with a computer connected to the Internet. Courthouse News' reporter first reviews the cases that are made available online. For those cases that are not available online by the end of the work day but are of media interest, court staffers scan and make those cases available on their web site.

#### Oklahoma City

At the Oklahoma County Court, intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped, but have not been fully docketed – only indexed. A member of the clerk's staff then provides the petitions to Courthouse News' reporter, and the reporter is instructed to sign the back of each petition to

ensure that she has seen them all. After she has completed her review of the petitions in the basket, Courthouse News' reporter is permitted to review any further petitions that have been filed, indexed and placed in the basket after 3:15 p.m. The reporter may request copies of petitions at a rate of \$1.00 for the first page and 50 cents for all subsequent pages.

#### Omaha

At the Douglas County District Court, new complaints are filed in paper form and then added to an internal computer database that is updated live when a new case is received and indexed. Courthouse News' reporter reviews the index information for relevant cases on a courthouse computer terminal and a filing clerk retrieves the complaints he requests before they have been fully processed or scanned. Courthouse News' reporter can review the new complaints on the day of filing in the public area of the clerk's office and is free to make copies on public machines.

#### Orlando

At the Ninth Judicial Circuit Court, Courthouse News' reporter reviews hard copies of newly filed complaints at a designated desk behind the counter. The staff places new complaints that have not undergone any processing (*i.e.*, docketed, jacketed or assigned a case number) near the reporter's desk each day for same-day viewing. Since some complaints have been docketed by the time Courthouse News' reporter arrives, these complaints are placed in a separate pile for the reporter's review before they are moved to a separate desk for scanning by 4 p.m. In addition, Courthouse News' reporter is permitted to review e-filed complaints and complaints that have been docketed and scanned by the time the reporter arrives on a same-day basis using one of the Clerk's terminals located behind the counter.

At the United States District Court for the Middle District of Florida in Orlando, where electronic filing is mandatory, the court posts the majority of new civil filings to PACER on the same day they are filed.

#### Palm Beach

In the Palm Beach County Circuit Court, members of the press review new civil cases at the intake counter at 4 p.m. on the day they are filed. The new cases are given to the press as a stack of folders.

#### Phoenix

At the Maricopa County Superior Court in Phoenix, Arizona, court staff recently implemented new procedures to ensure same-day access to civil complaints filed at its downtown location. Under the new procedures, court staff scan and upload for electronic viewing all complaints filed before 3 p.m., which are then made available on a designated press computer located in the Customer Service Center for Courthouse News' reporter to review and, if necessary, print. Complaints filed between 3 and 5 p.m. are immediately placed in a bin at a designated intake window in the Central Court Building, where Courthouse News' reporter may review those complaints between 4 and 5 p.m.

### Pittsburgh

At the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, where the Court has implemented an internally operated electronic filing system, nearly all of the day's new filings are available on-line on a same-day basis. Complaints not posted to the court's website on the day of filing are made available the following day.

In the United States District Court for the Western District of Pennsylvania, where electronic filing is mandatory, Courthouse News' reporter has been provided with an "MC" case number code for PACER that allows her to view the new filings before they are docketed.

### Portland

At the Multnomah County Court in Portland, Courthouse News' reporter is given a stack of the current day's newly filed complaints, which she reviews at a cubicle behind the counter. The reporter can make any needed copies herself using her own portable scanner.

At the United States District Court for the District of Oregon, Courthouse News' reporter first searches for newly filed complaints through the court's "electronic in-box," which is available on a public access terminal at the courthouse and contains those complaints that the clerks have scanned but not yet processed and posted to PACER. She then searches for processed complaints on PACER, which are also available at a public access terminal at the courthouse. Finally, the clerks give Courthouse News' reporter paper copies of those complaints that have not yet been scanned and posted either to the electronic in-box or to PACER. The clerks will also review the court's record book with Courthouse News' reporter at the end of the day to make sure that no filings have been missed.

### Riverside

At the Superior Court for the State of California, County of Riverside, new complaints are scanned and made available for electronic viewing via the Court's web site and at computer terminals in the courthouse. The press had been experiencing delays in access for years until a new clerk, formerly from the United States District Court for the Central District of California, came on board. The clerk found that same-day access could be achieved simply by shifting the schedules of the personnel who scan complaints so that they begin and end work later in the day, thus ensuring that new complaints would be made available for electronic viewing on a same-day basis.

### St. Louis

At the St. Louis City Circuit Court in Missouri, Courthouse News' reporter goes to the intake window where cases are filed and clerk's office staff members hand the reporter a stack of new cases filed that same day. Courthouse News' reporter works at the counter next to the intake window; however, members of the media can also work at a table near the window. Staff members in the clerk's office will provide members of the media with copies of newsworthy new cases free of charge.

At the United States District Court for the Eastern District of Missouri, where new complaints must be electronically filed, each case is assigned a case number upon filing by the attorney and is immediately made available on PACER, even if it has not been fully reviewed and processed. Courthouse News' reporter is able to view the new complaints on a computer terminal in the clerk's office and print out copies for a small fee.

#### San Francisco

At the Superior Court of California for the County of San Francisco, news reporters are allowed behind the counter into the stacks to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. The number of new filings per day varies, but often exceeds 50. Courthouse News views new complaints regardless of whether they have been fully processed. San Francisco Superior has established a written protocol for members of the press. The key provisions are quoted below:

If media personnel want to review files already on the shelves, they can pull these files themselves and return them to the shelves.

All new filings will be held in a Media Box during the day. Between 3:00 and 4:30 each day, this box will be available to the media for viewing in the Records department, whether or not the cases have been entered in the computer. At 4:00 PM, when the office closes to the public, media personnel may ask to view any additional filings that may have come in since 3:00 PM. The Records supervisor or an assigned clerk will retrieve those files for the media to view. Any member of the media viewing new filings must return them to the box for eventual return to the Records supervisor or assigned clerk.

Media personnel may come in anytime before 3:00 PM to view new filings. However, they will only be viewing cases newly filed up until that time.

Copy machine from the second floor Media Room will be moved to Room 103 and located behind the Records department. This machine belongs to Courthouse News Service, but has been made available to all media personnel for their use.

At the San Francisco Division of the United States District Court for the Northern District of California, reporters go behind the counter and review actions filed that same day, regardless of whether the complaints have been fully docketed or posted on PACER. They are also permitted access to the so-called "transfer boxes" of new actions being sent to different divisions of the court, and are provided with a copy of the intake log. Reporters are permitted to make copies of cases they determine to be newsworthy using a portable scanner.

#### San Jose

At the Santa Clara County Superior Court in San Jose, California, the Court recently implemented new procedures to ensure that reporters receive same-day access to the vast

majority of each day's new civil unlimited jurisdiction complaints. Under those procedures, civil unlimited complaints are made available to Courthouse News' reporter upon receipt of the filing fee, the assignment of a case number, and the assignment of a first status conference date, even though processing of the new complaint is far from over at this juncture. Complaints that are filed over the counter by 3:30 p.m. are made available to Courthouse News' reporter on the same day they are filed. All unlimited jurisdiction complaints that are in the drop box by 4:00 p.m. are also made available to Courthouse News on the same day they are filed. Unlimited jurisdiction complaints that are filed over the counter between 3:30 p.m. and the clerk's office closing at 4:00 p.m. have been designated as a staff priority, and the court endeavors to make them available for review on the same day they are filed. Courthouse News' reporter is permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases. The court makes copies of complaints as requested by the reporter.

At the San Jose Division of the United States District Court for the Northern District of California, clerks print out a list of all new complaints filed earlier that day. Reporters go behind the counter, obtain complaints from individual clerks' desks, report on and scan any newsworthy complaints, and then return the complaints to the clerks' desks.

#### Seattle

At the King County Superior Court, Courthouse News' reporter is provided with a docket sheet print-out of new cases two times per day -- once at 11 a.m. and again at 3 p.m. The 11 a.m. list includes all cases that have been filed from 3 p.m. on the previous day through 11 a.m. on the current day, while the 3 p.m. list includes new cases that have been filed from 11 a.m. to 3 p.m. that day. The reporter reviews each list to find relevant cases, then searches for and views new complaints on a computer terminal at the courthouse. She is able to print out relevant complaints for 15 cents per page.

#### Tampa

At the Hillsborough County Circuit Court, new complaints that are hand-filed in the main courthouse are made available for review by reporters at the end of the day they are filed. Most complaints are scanned by court staff and made available on the court's public access terminals for review. Those complaints that are not scanned and available on the public access terminals by 4 p.m. are provided in paper form for news reporters, who have until the court closes at 5 p.m. to review those late-filed complaints.

**EXHIBIT 7**





*Superior Court of California*

COUNTY OF VENTURA  
Hall of Justice  
800 South Victoria Avenue  
Ventura, CA 93009

**Michael D. Planet**  
*Executive Officer/Clerk  
and Jury Commissioner*

July 11, 2011

Rachel Matteo-Boehm  
Holme Roberts and Owen LLP  
560 Mission Street, 25th Floor  
San Francisco, CA 94105

Re: *Media Access to New Complaints*

Dear Ms. Matteo-Boehm:

I am writing in response to your June 20, 2011 letter regarding media access to new complaints at the Ventura Superior Court.

As you have noted, the Court has met and spoken with you and representatives of Courthouse News Service several times over the past couple of years to both explain the Court's serious resource shortages as a result of budget reductions, and steps that could reasonably be taken to make new complaints available to the media. The budget recently signed by the Governor imposes even more drastic reductions to the Courts, which makes it even more difficult to provide same-day access to new filings.

While I appreciate the Courthouse News Services' interest in same-day access, the Court cannot prioritize that access above other priorities and mandates. Further, the Court must ensure the integrity of all filings, including new filings, and cannot make any filings available until the requisite processing is completed. We will continue to make every effort to make new filings available as early as is practicable given the demands on limited court resources.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Planet".

Michael D. Planet  
Executive Officer

MDP/vjb

Mailing Address: P.O. Box 6489, Ventura, California 93006-6489

Exhibit 7  
Page 148

**EXHIBIT 8**



Holme Roberts & Owen LLP  
*Attorneys at Law*

SAN FRANCISCO

August 2, 2011

BOULDER

Michael Planet  
Court Executive Officer  
Ventura County Superior Court  
800 South Victoria Ave.  
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

On behalf of Courthouse News Service, we write to briefly respond to your assertion, in your July 11, 2011 letter, that budgetary difficulties prevent the Ventura County Superior Court from providing the media with timely, same-day access to newly-filed civil unlimited jurisdiction complaints.

DUBLIN

Respectfully, our experience working with other courts shows that providing prompt media access to new civil complaints – fundamentally, the simple act of letting reporters see the new complaints that, because they are newly-filed, are already centrally located in the intake area – need not involve any extra expense or staff time beyond the *de minimis* effort of handing a stack of complaints to a reporter (and even that *de minimis* effort can be eliminated if a credentialed reporter is simply allowed to go behind the counter to pick up the stack, as reporters do at the federal district court in San Francisco, for example).

LONDON

Indeed, it has been our experience that providing prompt access is largely a matter of will on the part of the court and its leaders.

LOS ANGELES

SALT LAKE CITY

For example, at the San Francisco Superior Court and Santa Clara County Superior Court, new filings are placed in a media box, available to news reporters for viewing whether or not those complaints have been fully docketed. In the past, in San Francisco, reporters gathered the complaints from the intake window and put them in the box, actually saving some work for the court. Courthouse News has also observed that the *de minimis* staff effort required to administer this type of “review box” is much less than the substantial effort involved when staff are required to track down fully processed complaints for press review, as is currently the case in Ventura County. State courts in Alameda, Los Angeles and Riverside also provide same day access to the press. All four federal courts in California provide the media with same-day access to new civil complaints without undue expenditures of staff time or expense.

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com  
560 Mission Street, 25th Floor San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

#64769 v1 sal

Exhibit 8

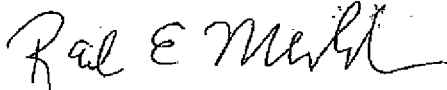
Page 149

**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Michael Planet  
August 2, 2011  
Page 2

At bottom, press access only results in increased costs where the court imposes the requirement of complete processing before providing access. But newly filed complaints become public records upon filing, and this status is not contingent on the court having first completed processing. We must therefore respectfully but firmly disagree with your assertion that providing timely access can only be accomplished at a monetary cost to the Court.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge  
Courthouse News Service

#64769 v1 snf  
Exhibit 8  
Page 150

**COPY**

1 Rachel Matteo-Boehm (SBN 195492)  
 2 rachel.matteo-boehm@hro.com  
 3 David Greene (SBN 160107)  
 4 david.greene@hro.com  
 5 Leila C. Knox (SBN 245999)  
 6 leila.knox@hro.com  
 7 HOLME ROBERTS & OWEN LLP  
 8 560 Mission Street, Suite 250  
 9 San Francisco, CA 94105-2994  
 10 Telephone: (415) 268-2000  
 11 Facsimile: (415) 268-1999

FILED  
 11 SEP 29 AM 11:55  
 CLERK OF COURT  
 CENTRAL DISTRICT OF CALIF.

12 Attorneys for Plaintiff  
 13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA

16 **CV11-08083P(MAN)**

17 Courthouse News Service,  
 18 Plaintiff,  
 19 v.

20 Michael Planet, in his official capacity as  
 21 Court Executive Officer/Clerk of the  
 22 Ventura County Superior Court.  
 23 Defendant.

24 CASE NO. \_\_\_\_\_  
 25 **DECLARATION OF JULIANNA  
 26 KROLAK IN SUPPORT OF MOTION  
 27 OF COURTHOUSE NEWS SERVICE  
 28 FOR PRELIMINARY INJUNCTION**  
 Date: Nov. 7, 2011  
 Time: 10:00 am  
 Courtroom: \_\_\_\_\_  
 Judge: \_\_\_\_\_

29 I, Julianna Krolak, declare and state as follows:

30 1. I am a reporter for Courthouse News Service ("Courthouse News"), the  
 31 plaintiff in the above-captioned action. I have personal knowledge of the following  
 32 facts and could testify to them if called as a witness.

1           2.     I hold Bachelor of Arts degrees in Spanish and Italian from the  
2 University of California at Santa Barbara, both of which I received in 1981. I  
3 received a Master of Arts degree in Hispanic Civilization from the University of  
4 California at Santa Barbara in 1984. I have worked as a writer and reporter since  
5 2001.

6           3.     I am the primary Courthouse News reporter assigned to provide daily  
7 coverage of new civil unlimited jurisdiction complaints filed at the Ventura County  
8 Superior Court. I do not cover limited jurisdiction civil complaints, nor do I cover  
9 other case types such as criminal or small claims cases. I have been covering the  
10 Ventura County Superior Court for Courthouse News since 2001. I am responsible  
11 for preparing the Central Coast Report, which is emailed to subscribers each Monday  
12 through Friday evenings and contains coverage of newsworthy new civil unlimited  
13 jurisdiction complaints filed in the Monterey County, San Benito County, Santa  
14 Barbara County, Santa Cruz County, San Luis Obispo County and Ventura County  
15 superior courts. I prepare this report by reviewing, or attempting to review, all of the  
16 potentially newsworthy new civil unlimited complaints filed since my last visit, and  
17 preparing original summaries of the complaints I believe would be of interest to our  
18 subscribers for inclusion in the report. These summaries are sometimes, but not  
19 always, accompanied by copies of the actual complaints.

20           4.     When I first began covering the Ventura County Superior Court in 2001,  
21 I visited the clerk's office once each week. At that time, both new limited and  
22 unlimited jurisdiction cases were numbered sequentially, so the clerk's office staff  
23 would provide me with all cases falling within a specified number range. In other  
24 words, I would request all complaints filed to date beginning with the first complaint  
25 that was assigned a case number following the last case that I had reviewed during the  
26 previous week's visit. It was my understanding that other case types, for example,  
27 divorce, small claims and probate, were assigned case numbers under a separate  
28 numbering system, so the range of case numbers that I requested each week only

1 included limited and unlimited civil jurisdiction cases. Since these limited and  
2 unlimited complaints were typically physically grouped together in sequential order,  
3 rather than search for each complaint individually, the clerk's office staff simply  
4 pulled all cases within a specific number range, put all of the limited and unlimited  
5 complaints filed since my previous visit in a cart, and then provided the entire cart full  
6 of cases to me for review. I would review all of the complaints, selecting and  
7 reporting only on those unlimited jurisdiction complaints that were newsworthy,  
8 before returning the cart of complaints to court staff. I also reviewed complaints that  
9 were placed in the court's designated "media bin," which I understood to contain  
10 filings that the clerk's office considered to be of likely press interest. Under these  
11 procedures, I generally was able to review the large majority of the new civil  
12 unlimited jurisdiction complaints that had been filed since the previous week's visit.

13 5. Beginning in early 2008, media access at Ventura County Superior began  
14 to deteriorate on a number of fronts. First, the clerk's office limited the number of  
15 files I could review per visit to 200, even though the cases I was requesting were  
16 sequentially numbered and grouped together and could be retrieved from a single  
17 location. In many instances, I was not provided with many of the sequentially  
18 numbered cases I had requested, which meant I had to stand in a new line to request  
19 the missing cases. I was also not permitted to review both the cases I had requested  
20 and the media bin cases at the same time, which made it necessary to stand in another  
21 line to obtain the media bin cases. Because the lines can often be long, these  
22 procedures made it significantly more difficult to conduct my news reporting  
23 activities. It is my understanding that my editor and Courthouse News' Northern  
24 California Bureau Chief, Christopher Marshall, attempted to work with various  
25 officials in the clerk's office to resolve these access difficulties on my behalf.  
26 However, those efforts did not result in any lasting improvements, and my difficulties  
27 in reporting on new civil unlimited complaints continued.

28

1           6.     Then, in March 2009, the court instituted a new rule that limited the  
2 number of files that reporters were permitted to review each day to twenty-five.  
3 Around this time, I learned that the court had begun using a new electronic docketing  
4 system, which I now understand to be part of the California Case Management  
5 System, often referred to as "CCMS." Therefore, instead of simply looking at all the  
6 complaints filed since my prior visit, I determined that I would need to request to see  
7 specific complaints in order to report on the most newsworthy new filings. Thus, I  
8 began my news reporting by viewing online docket information, from which I did my  
9 best to determine which twenty-five recently filed complaints would be most  
10 newsworthy. I would then fill out a separate request form for each complaint I wished  
11 to see, but was limited to requesting only five complaints at a time, which I submitted  
12 to the clerk's staff after waiting in line in the Records Department. No matter how  
13 many of the five requested complaints were available for review, I was required to  
14 wait in line again, usually for thirty minutes, and sometimes for an hour or more, to  
15 request the next batch of five cases. In other words, even if none of the five requested  
16 complaints were available, I was not permitted to submit another five requests while  
17 still standing at the counter, but rather, was required to return to the end of the line and  
18 request the next five complaints. Also, even if a case was not made available for  
19 review – typically because either it had not yet been processed, or it had been sent to  
20 the assigned judge's chambers – it still counted toward the twenty-five-file limit.  
21 Since there were often more than fifty potentially newsworthy civil unlimited cases  
22 filed in any given week, I could no longer monitor all of the newsworthy new  
23 complaints by simply visiting the clerk's office once a week. Additionally, many of  
24 the complaints I requested were not available for review for days or even weeks after  
25 they were filed.



1           7.     Following the implementation of these new access procedures, I  
2 informed Mr. Marshall of the difficulties and delays that resulted from these  
3 procedures. Mr. Marshall told me that he would discuss the issue with Courthouse  
4 News' Editor Bill Girdner, as well as Courthouse News' counsel. About a month  
5 later, Courthouse News, through its counsel, sent a letter to Court Executive Officer  
6 Michael Planet regarding the problems related to access.

7           8.     In June 2009, Mr. Marshall informed me that, following discussions with  
8 court officials regarding the delays, the court had implemented a new procedure that it  
9 believed would provide me and other members of the media with more timely access  
10 to newly filed civil unlimited jurisdiction complaints. My understanding of these  
11 procedures was that the court would place all newly filed civil unlimited jurisdiction  
12 complaints directly into the media bin, and I would be permitted to access all  
13 complaints located in that bin, as well as up to twenty-five additional complaints, per  
14 visit, from the shelves.

15          9.     Around this same time, I began visiting the clerk's office twice each  
16 week. The new procedures, together with my twice-a-week visits, initially worked  
17 reasonably well to provide me with access to most civil unlimited jurisdiction  
18 complaints that had been filed since my previous visit to the court. However, within  
19 months after the new procedures were put in place, this access deteriorated. It  
20 appeared to me that newly filed complaints were being fully processed before they  
21 were placed in the bin, and in many instances, were completely bypassing the bin and  
22 being placed on the shelves, also after they had been fully processed. I therefore had  
23 to request the complaints directly from the shelves, which counted against the twenty-  
24 five-file-per-day limit that I was permitted. Some of the files that I requested directly  
25 from the shelves were not available for review either, because, as I was told by court  
26 staffers, they had not yet been processed. Therefore, on each visit, I had a backlog of  
27 complaints that I was waiting to see. Additionally, even if a requested complaint was  
28 not available for review, it counted against the twenty-five-file quota. As before, I

1 was only permitted to request five complaints at a time, and had to stand in a new and  
2 lengthy line for each group of five complaints that I wished to review. The  
3 unavailability of complaints in the media bin or from the shelves again led to delays in  
4 access, ranging for the most part from one to three calendar days, but sometimes  
5 significantly longer.

6 10. In November 2010, at the instruction of Mr. Marshall, I began visiting  
7 the clerk's office on a daily basis. Since that time, the procedures I use to obtain  
8 access to new complaints have remained essentially the same, and the delays have  
9 significantly worsened. Based on what I have observed, it appears that, on average,  
10 about fifteen new unlimited complaints are filed each day. However, of those,  
11 approximately two-thirds, or around ten complaints, appear to be potentially  
12 newsworthy based on the online docket information. Many complaints are never  
13 placed in the media bin, so I continue to request individual complaints directly from  
14 the shelves, which are placed on the shelves only after they have been fully processed.  
15 I continue to use the online docketing system to identify potentially newsworthy  
16 complaints so that I can request to see them. Information about new complaints is  
17 normally delayed by at least one court day, but some complaints are not entered into  
18 the online docketing system for up to a month, so I must continually check the docket  
19 as far back as thirty calendar days to make sure that I am not missing any complaints  
20 that were not entered into the docketing system at the time they were filed. Even one  
21 court day after filing, the vast majority of complaints are not available for review.  
22 And when these delays occur around a weekend and/or a holiday, a delay of even one  
23 court day means actual delays of three or even four days.

24 11. Since November 2010, as I have done before, I have kept Mr. Marshall  
25 apprised of the delay problems at the court. He instructed that I should not attempt to  
26 resolve the delays with court staff, but rather should focus on my reporting activities,  
27 and that Courthouse News' editors and its counsel would attempt to work with  
28 officials from the clerk's office to resolve the delays. As such, I understand that from

1 February 2011 until the present time, both Mr. Marshall and Courthouse News'  
2 counsel have made several attempts to resolve the access delays. Mr. Marshall  
3 informed me that he wrote to Deputy Executive Officer Cheryl Kanatzar in February  
4 2011, and spoke with Ms. Kanatzar following this correspondence regarding potential  
5 solutions to the access delays. In March 2011, Mr. Marshall told me that Ms.  
6 Kanatzar informed him that the clerk's office would reprioritize how cases are  
7 processed, and that I should begin seeing complaints within two days of filing. Over  
8 the next few months, I monitored the availability of new unlimited jurisdiction civil  
9 complaints to determine whether the court's new procedures would have any effect in  
10 terms of delays in access. Rather than seeing any improvement in access, the delays  
11 got worse, with same-day access a rare occurrence, and typical delays between one  
12 day and several weeks after filing.

13 12. Per Mr. Marshall's instruction, I have continued tracking delays in  
14 access. I have monitored the delays in access related to complaints that are made  
15 available in the media bin, as well as delays to those complaints that I request directly  
16 from the shelves, over a four-week period from August 8 to September 2, 2011. For  
17 each complaint that I reviewed during this time period, I noted the case number  
18 assigned to the complaint, the date the complaint was filed and the date the complaint  
19 was made available for my review, and then calculated the delays in access for all  
20 cases reviewed, as well as those that I reported in the Central Coast Report. For at  
21 least two of the complaints that I reviewed, I noticed that the file-stamped date on the  
22 physical complaint was different than the "filed date" on the court's online docket; in  
23 these instances, the file-stamped date was at least one court day earlier than the online  
24 "filed date." The reason for this discrepancy is unclear. Therefore, I used the online  
25 "filed date" - *i.e.*, the later date - in calculating the delays during this four-week time  
26 period.

1           13. Of the 152 new unlimited civil complaints that I reviewed during this  
2 four-week period, only 6%, or nine complaints, were available on a same-day basis.  
3 The delays were as follows:

4  
5 **COMPLAINTS REVIEWED**  
6 **Delays Reported in Calendar Days**

Case availability	Number of cases	Percentage
Same-day	9	6%
Next-day	21	14%
2-6 days	94	62%
7-14 days	23	15%
15-34 days	5	3%

11 **COMPLAINTS REVIEWED**  
12 **Delays Reported in Court Days**

Case availability	Number of cases	Percentage
Same-day	9	6%
Next-day	28	18%
2-6 days	100	66%
7-14 days	12	8%
15-24 days	3	2%

1 **COMPLAINTS REPORTED**

2 **Delays Reported in Calendar Days**

3

Case availability	Number of cases	Percentage
Same-day	4	4%
Next-day	14	14%
2-6 days	60	60%
7-14 days	17	17%
15-34 days	5	5%

6

7 **COMPLAINTS REPORTED**


8 **Delays Reported in Court Days**

9

Case availability	Number of cases	Percentage
Same-day	4	4%
Next-day	18	18%
2-6 days	66	66%
7-14 days	9	9%
15-24 days	3	3%

13

14 I declare under penalty of perjury under the laws of the United States that the  
15 foregoing is true and correct. Executed at Ventura, California on this  
16 28<sup>th</sup> day of September 2011.

17  
18   
19 \_\_\_\_\_  
20 Julianna Krolak

**CERTIFICATE OF SERVICE**

On September 12, 2012, I caused a copy to be served of the within document:

**APPELLANT COURTHOUSE NEWS SERVICE'S  
FURTHER EXCERPTS OF RECORD**

by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States, and mailed to the address as set forth below:

Robert A. Naeve, Esq.  
rnaeve@jonesday.com  
Erica L. Reilley, Esq.  
elreilley@jonesday.com  
Nathaniel P. Garrett  
ngarrett@jonesday.com  
JONES DAY  
3161 Michelson Drive, Suite 800  
Irvine, CA 92612

Attorneys for Defendants/Respondents

I certify that I am a member of the Bar of this Court at whose direction the service was made. Executed this 12<sup>th</sup> day of September, 2012, at San Francisco, California.

  
Rachel Matteo-Boehm