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

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 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 COURTHOUSE NEWS SERVICE,

14 Plaintiff,

15 v.

16 MICHAEL PLANET, IN HIS
 OFFICIAL CAPACITY AS COURT
 17 EXECUTIVE OFFICER/CLERK OF
 THE VENTURA COUNTY
 18 SUPERIOR COURT,

19 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
 Hon. Manuel L. Real

EX PARTE APPLICATION TO:

**CONTINUE HEARING ON
 PLAINTIFF'S MOTION FOR
 PRELIMINARY INJUNCTION**

**MEMORANDUM OF POINTS
 AND AUTHORITIES AND
 DECLARATION OF ERICA L.
 REILLEY IN SUPPORT
 THEREOF**

**([Proposed] Order Continuing
 Time In Which To Respond To
 Complaint And Hearing On
 Motion For Preliminary
 Injunction Submitted
 Concurrently)**

1 **EX PARTE APPLICATION**

2 **I. Nature Of This Action.**

3 By this action, Plaintiff Courthouse News Service (“Plaintiff”) seeks broad
4 declaratory and injunctive relief against the Ventura County Superior Court, and
5 specifically, its Executive Officer and Clerk of the Court, Michael Planet
6 (“Defendant”), claiming that the Court’s alleged failure to provide Plaintiff with
7 virtually instant access to newly filed unlimited civil complaints as they arrive at
8 the courthouse amounts to a violation of Plaintiff’s First and Fourth Amendment
9 rights. Specifically, Plaintiff complains that increasing delays and an alleged
10 “policy” that Plaintiff (and every other member of the public) cannot have access to
11 new filings until the requisite document processing is completed has resulted in
12 new filings being “as good as sealed.” (Compl., at 3.)

13 Despite Plaintiff’s on-going communications with Defendant—in which
14 Defendant explained that same-day access to all newly filed unlimited civil
15 complaints was not possible in all situations due to serious State resource shortages,
16 ongoing court budget reductions, and the priorities of other matters, including the
17 sometimes-urgent needs of litigants—Plaintiff filed this action on September 29,
18 2011, and simultaneously filed a Motion for Preliminary Injunction noticed for
19 hearing on November 7, 2011. Plaintiff’s complaint includes two claims arising
20 under 42 U.S.C. § 1983, and a third claim for alleged violation of California Rule
21 of Court 2.550 (regarding sealing of records).

22 **II. Requested Relief.**

23 Defendant’s responsive pleading to Plaintiff’s Complaint is due on October
24 25, 2011 (or no earlier than October 20, as there is a dispute regarding when service
25 on Defendant was effective). Yet Defendant’s opposition to Plaintiff’s Motion for
26 Preliminary Injunction currently is due before that, on October 17, 2011.
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1 Defendant intends to respond to Plaintiff's Complaint by way of a motion to
2 dismiss raising jurisdictional, justiciability and immunity issues, along with
3 arguments that certain causes of action fail to state claims upon which relief may be
4 granted. Those arguments are likely to render the entire Complaint unsettled, if not
5 untenable. To give the parties and the Court time to consider the viability of
6 Plaintiff's Complaint and then refocus on whatever claims might validly remain
7 prior to hearing on Plaintiff's Motion for Preliminary Injunction, Defendant hereby
8 applies *ex parte*, pursuant to Local Rule 7-19, for an order granting the following
9 relief:

10 (1) That Defendant's motion to dismiss or other responsive pleading be
11 filed on or before October 25, 2011.

12 (2) That this Court take off calendar Plaintiff's Motion for Preliminary
13 Injunction, with an option that it be re-filed two weeks after the date that Plaintiff's
14 operative complaint becomes settled.

15 (2) Or, in the alternative, that this Court order that Plaintiff's Motion for
16 Preliminary Injunction not be heard until January 17, 2012, with briefing on the
17 Motion continued in accordance with Local Rule 7-11.

18 Defendant takes the allegations in Plaintiff's Complaint seriously, and wants
19 to give them the appropriate consideration and analysis. Defendant will not ask for
20 any further extensions of time in connection with these motions.

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22 **III. Reason For Requested Relief.**

23 Due to the simultaneous filing of Plaintiff's Complaint and Motion for
24 Preliminary Injunction, under the current schedule, Defendant's responsive motion
25 to dismiss will not be heard until *after* the Court has reached the merits of
26 Plaintiff's Motion for Preliminary Injunction. This order puts the cart before the
27 horse, forcing the Court to reach substantive issues of the litigation before deciding
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1 threshold jurisdictional and justiciability issues. Accordingly, Defendant seeks to
2 continue the hearing on Plaintiff's Motion for Preliminary Injunction for the
3 prudent and appropriate purpose of providing the Court with an opportunity to
4 consider those threshold issues before the Court and parties invest additional time
5 and resources briefing the merits of Plaintiff's Motion for Preliminary Injunction.
6 January 17, 2012, is the first date this Court is available to hear the Motion that
7 would permit the parties not to work-up and brief the Motion until *after* hearing and
8 resolution of Defendant's motion to dismiss.

9 **IV. Defendant Has Complied With Local Rules 7-19, 7-19.1 And The**
10 **Court's Standing Rules For Ex Parte Relief.**

11 **A. Defense Counsel Has Provided Notice To Plaintiff's Counsel.**

12 On Friday, October 7, 2011, Defendant's counsel contacted Plaintiff's
13 counsel via telephonic voicemail and e-mail to propose that the parties stipulate to
14 schedule that would permit Defendant's motion to dismiss to be heard and resolved
15 prior to Plaintiff's Motion for Preliminary Injunction. (Reilly Decl., ¶ 2.) In both
16 October 7 communications, Defendant's counsel notified Plaintiff's counsel that, if
17 Plaintiff would not stipulate, Defendant intended to apply *ex parte* for such relief.
18 (*Id.*, ¶ 3.) Plaintiff's counsel stated they would not agree to such a stipulation, but
19 offered to talk further on Monday, October 10, 2011. (*Id.*, ¶ 4.)

20 On Monday, October 10, 2011, counsel for both parties talked by phone and
21 could not reach agreement on the scheduling of Defendant's motion to dismiss and
22 Plaintiff's Motion for Preliminary Injunction. During the call, Defendant's counsel
23 gave notice that Defendant would file this Ex Parte Application later that day.
24 Plaintiff's counsel stated they would oppose the Application, at which time
25 Defendant's counsel informed them that Plaintiff would have twenty-four (24)
26 hours from receipt of the papers to oppose the Application. (*Id.*, ¶ 5.)
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B. Contact Information for Plaintiff's Counsel

Defendant is informed and believes that the contact information for Plaintiff's counsel is as follows:

Rachel Matteo-Boehm (SBN 195492)
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David Greene (SBN 160107)
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Dated: October 10, 2011

Respectfully submitted,
JONES DAY

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

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

1 than January 17, 2012) will allow the Court to resolve the motion to dismiss before
2 the parties and this Court expend resources briefing and considering what may
3 otherwise be a mooted motion. If this lawsuit remains viable after the Court has
4 ruled on Defendant’s motion to dismiss and the pleadings have settled, the parties
5 can then focus on the remaining briefing for the Preliminary Injunction Motion.

6 **III. Defendant’s Requested Relief Is Consistent With Established Law**
7 **Requiring That Certain Issues Be Determined At The Threshold.**

8 Beyond waste, there are substantive legal reasons to decide Defendant’s
9 motion to dismiss first.

10 To start, Plaintiff’s requested injunctive and declaratory relief, including its
11 Motion for Preliminary Injunction itself, necessarily implicates a myriad of
12 federalism concerns, including interference in administration of state judicial
13 system, dictating state and local budget priorities, and daily monitoring of the
14 Ventura County Superior Court to ensure the court remains compliant with
15 providing same-day access. Accordingly, at a minimum, this Court should hear and
16 consider whether equitable abstention is appropriate before reaching the merits of
17 Plaintiff’s requested preliminary injunction.

18 Moreover, Defendant’s motion to dismiss likely will raise immunity and
19 ripeness issues will determine whether the Court has subject matter jurisdiction
20 over the case. *See, e.g., Lee v. Oregon*, 107 F.3d 1382, 1387-88 (9th Cir. 1997)
21 (“In order to ensure that a federal court’s Article III power has been properly
22 invoked, the courts have developed several doctrines, including standing, mootness,
23 and ripeness, each of which imposes a different requirement on the substance of a
24 plaintiff’s claim.”). While Plaintiff no doubt will argue that the issues raised in its
25 Motion for Preliminary Injunction are important (and Defendant is not disputing
26 that), they must give way to the questions of jurisdiction, justiciability and
27 immunity that will be raised in Defendant’s motion to dismiss.
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1 **IV. Defendant’s Requested Relief Poses No Prejudice To Plaintiff.**

2 Plaintiff has insisted that their Motion for Preliminary Injunction be heard
3 first, before Defendant’s motion to dismiss. (Declaration of Erica L. Reilley, ¶ 4
4 [hereinafter “Reilley Decl.”].) As set forth above, neither judicial economy nor the
5 law favor such an approach. Moreover, Plaintiff cannot demonstrate any particular
6 prejudice that would result from granting Defendant’s requested relief.

7 **A. There Is No Urgency To Plaintiff’s Motion.**

8 While Plaintiff Motion for Preliminary Injunction makes much of the alleged
9 “irreparable harm” that will be suffered if Defendant’s policies are not preliminarily
10 enjoined, Plaintiff’s actions reveal there is no actual urgency. The alleged “delays”
11 in access to newly filed unlimited civil complaints about which Plaintiff complains
12 dates back to *early 2008*, and the specific policy Plaintiff seeks to enjoin was
13 disclosed to Plaintiff in July 2011. (Declaration of Julianna Krolak ISO Mot. for
14 Preliminary Injunction, ¶ 5 (“Beginning in early 2008, media access at Ventura
15 County Superior began to deteriorate on a number of fronts.”); Mot. for Preliminary
16 Injunction, at 18:3.) Nevertheless, Plaintiff did not file this action or bring its
17 motion until September 29, 2011. Moreover, once Plaintiff finally did move to
18 enjoin the policy, Plaintiff did not seek to expedite hearing on the motion or
19 otherwise seek interim relief (granted, no facts would warrant a temporary
20 restraining order in any event). At bottom, the history of the conduct complained of
21 and Plaintiff’s actions to date do not demonstrate any compelling need to waste
22 already-precious State resources by requiring briefing on the substantive issues
23 simultaneous with, and before decision on, various threshold legal issues that may
24 remove this Court’s jurisdiction to hear those substantive issues in the first place.
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B. Defendant’s Requested Relief Does Not Shorten The Briefing Schedule.

Defendant’s requested relief does not seek to shorten the notice requirements or briefing schedule established by Local Rules 6-1, 7-9 and 7-10. To the contrary, Defendant’s motion to dismiss would be due no later than October 25, 2011, and would comply with the full 28-day notice period. By taking off calendar the hearing on Plaintiff’s Motion for Preliminary Injunction—or scheduling it no earlier than January 17, 2012 (the first available Court date that would permit the parties not to work-up and brief the Motion until *after* Plaintiff’s motion to dismiss is resolved)—the parties would have more than sufficient notice and time to brief the issues raised. No prejudice to Plaintiff would result from granting Defendant’s requested relief.

V. CONCLUSION

For the foregoing reasons, Defendant respectfully requests his *Ex Parte* Application be granted as requested.

Dated: October 10, 2011

Respectfully submitted,
JONES DAY

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

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