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 COURTHOUSE NEWS SERVICE

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

Courthouse News Service,

Plaintiff,

v.

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

Defendant.

CASE NO. CV11-08083 R (MANx)

**OPPOSITION TO DEFENDANT'S
 EX PARTE APPLICATION FOR
 ORDER CONTINUING HEARING
 ON MOTION FOR PRELIMINARY
 INJUNCTION**

Courtroom: G-8 (2nd Floor)
 The Hon. Manuel L. Real

Plaintiff Courthouse News Service ("Courthouse News") hereby opposes
 Defendant's Ex Parte Application for an Order Continuing Courthouse News
 Service's Motion for Preliminary Injunction currently set for hearing on November 7,
 2011. Courthouse News is certainly willing to grant Defendant a reasonable extension

1 of time in which to prepare its opposition papers and is willing to coordinate a briefing
2 schedule so that Defendant's planned Motion to Dismiss can be heard at the same time
3 as the Motion for Preliminary Injunction, thus providing an efficiency to both the
4 parties and the Court. And Courthouse News is further willing to extend the time for
5 Defendant to answer or otherwise respond to the Complaint so that Defendant will not
6 be required to file a Motion to Dismiss while the Motion for Preliminary Injunction is
7 pending. But given the serious and ongoing deprivation of First Amendment rights
8 that is the basis of the lawsuit, Courthouse News opposes Plaintiff's request that the
9 Motion for Preliminary Injunction be delayed for more than two months.

10 **I.**

11 **NATURE OF THE ACTION**

12 By this action, Courthouse News contests the practice of the Court Executive
13 Officer/Clerk of the Ventura County Superior Court, Defendant Michael D. Planet, of
14 denying Courthouse News Service access to new civil complaints on the same day
15 those records have been filed with the court. Defendant's characterization of
16 Courthouse News as seeking "virtually instant access" is inaccurate. As set forth in
17 detail in Courthouse News' Motion for Preliminary Injunction and supporting papers,
18 Courthouse News Service is seeking only that access which has routinely and
19 traditionally been granted to the press in other state and federal courts.

20 Under current conditions at Ventura Superior, delays in access range from one
21 day to several weeks. As set forth in the Complaint and the papers supporting
22 Courthouse News Service's Motion for Preliminary Injunction, Defendant has taken
23 the position that he will not provide access to these new complaints until they are
24 subjected to "the requisite processing." Courthouse News' Motion for Preliminary
25 Injunction seeks an order preventing Defendant from enforcing this policy that has
26 resulted in these delays in access.

1 II.

2 **COURTHOUSE NEWS' PROPOSED ACCOMMODATION TO DEFENDANT**

3 On September 29, 2011, Courthouse News Service filed and served its
4 Complaint in this matter. At the same time, Courthouse News filed and served a
5 Motion for Preliminary Injunction and noticed the hearing on that motion for
6 November 7, 2011. On the afternoon of Friday, October 7, 2001, counsel for
7 Defendant notified Courthouse News' counsel that it was representing Defendant and
8 indicated that it wished to discuss certain scheduling matters relating to Defendant's
9 response to the Complaint and Motion for Preliminary Injunction.

10 On the morning of Monday, October 10, 2011, counsel for the parties spoke by
11 telephone. During that call, Defendant's counsel requested that Courthouse News
12 agree to continue the hearing and all briefing on its Motion for Preliminary Injunction
13 until after the Court could hear and decide a Motion to Dismiss that Defendant
14 intended to bring. Defendant's counsel proposed that the Motion for Preliminary
15 Injunction not be heard until January 17, 2011, a delay of almost two-and-a-half
16 months.

17 Courthouse News' counsel stated its objection to Defendant's proposal,
18 explaining that the ongoing violation of Courthouse News Service's and the public's
19 First Amendment rights was substantial and the proposed delay was thus
20 unacceptable. Counsel, however, indicated that it was willing to work with Defendant
21 to devise a calendar that would give Defendant more time to file its opposition to the
22 Motion for Preliminary Injunction, as well as allowing it time to notice a hearing on
23 its planned Motion to Dismiss for the same date as the Motion for Preliminary
24 Injunction. By follow-up email, counsel proposed the following schedule:

25 October 31, 2011: Opposition papers (to both motions) due

26 November 7, 2011: Reply papers (for both motions) due

27 November 21, 2011: Hearing (for both motions).

1
2 Declaration of Erica L. Reilley in Support of Defendant's Ex Parte Application, Exh.
3 D.¹ Under this schedule, the last day for Defendant to file a motion to dismiss would
4 be October 24, 2011.

5 Courthouse News believes that this proposal allows Defendant more time to
6 prepare its opposition papers, without unduly delaying the Court's evaluation of the
7 necessity and appropriateness of preliminary relief. Moreover, this proposal creates
8 the efficiency of having the motions heard on the same day.

9 Defendant rejected Courthouse News' proposal and thus moved this Court ex
10 parte to continue the Motion for Preliminary Injunction.²

11 **III.**

12 **DEFENDANT'S REQUEST FOR A CONTINUANCE SHOULD BE DENIED**
13 **BECAUSE IT IS UNNECESSARY AND WASTEFUL OF THE COURT'S AND**
14 **THE PARTIES' RESOURCES**

15 This Court should reject Defendant's ex parte application for a continuance
16 because it is both unnecessary and wasteful. Defendant's argument to the contrary, in
17 which it contends that the consideration of its motion to dismiss first will be more
18 efficient, requires this Court to assume that Defendant's motion will be successful. As
19 is evident from Defendant's papers, however, Defendant itself has not even fully
20 considered the specific grounds it will raise for dismissal.

21 Any defenses that Defendant will eventually formulate can be properly raised in
22 its opposition to the Motion for Preliminary Injunction as part of proving an absence

23 _____
24 ¹ Defendant's statement that Courthouse News insisted that its Motion for Preliminary
25 Injunction be heard *before* Defendant's motion to dismiss is incorrect, as Defendant's
own declaration makes clear. Reilley Decl., Exhs. B, D.

26 ² Because Defendant rejected this proposal, Courthouse News has not yet cleared its
27 suggested November 21 hearing date with the court clerk. However, according to the
28 court's web site, this date is not closed.

1 of a likelihood of success on the merits. There is no reason to have a separate motion
2 and a separate proceeding.

3 Even if Defendant does want to bring a separate motion to dismiss, there is no
4 reason to delay the Court's consideration of the Motion for Preliminary Injunction in
5 the way Defendant proposes. Defendant will not waive any defense by opposing the
6 Motion for Preliminary Injunction. Indeed, from Defendant's brief description of the
7 grounds of its anticipated motion to dismiss, it is likely that the motion to dismiss will
8 touch on issues pertinent to the Motion for Preliminary Injunction, including the
9 contours and origins of Defendant's "requisite processing" policy that results in the
10 denial of access to court records. And as indicated above, under the proposal made by
11 Courthouse News that Defendant has rejected, Defendant could bring a separate
12 motion to dismiss to be heard on the same day as the Motion for Preliminary
13 Injunction.

14 IV.

15 **COURTHOUSE NEWS SERVICE AND ITS SUBSCRIBERS SUFFER AN** 16 **ONGOING VIOLATION OF FIRST AMENDMENT RIGHTS AS LONG AS** 17 **DEFENDANT'S ACCESS POLICY IS NOT ENJOINED**

18 Defendant's request for a continuance should also be denied because it would
19 delay the Court's consideration of injunctive relief to address a continuing deprivation
20 of First Amendment rights. As set forth in detail in the papers supporting Courthouse
21 News' Motion for Preliminary Injunction, Defendant's policy of not permitting the
22 media to review those records until "the requisite processing has been completed" has
23 resulted in a situation in which new complaints are effectively sealed for days or even
24 weeks after they are filed. Should this Court grant Defendant's ex parte application
25 and ultimately find Courthouse News' Motion for Preliminary Injunction warranted,
26 the resultant delay will have caused an unnecessary constitutional injury.

V.

CONCLUSION

For the foregoing reasons, Courthouse News Service respectfully requests that Defendant Michael Planet's ex parte application for an order continuing the hearing on Plaintiff Courthouse News Service's Motion for Preliminary Injunction be denied.

Date: October 11, 2011

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