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12 Attorneys for Plaintiff
 13 COURTHOUSE NEWS SERVICE

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 (2nd 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

