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

23 Defendant.

CASE NO. CV11-8083 R (MANx)

**[PROPOSED] ORDER GRANTING
 COURTHOUSE NEWS SERVICE'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: Nov. 21, 2011
 Time: 10:00 am
 Courtroom 8, 2nd Floor
 Judge Manuel Real

24 Plaintiff Courthouse News Service's Motion for Preliminary Injunction was
 25 heard by this Court on November 21, 2011. This Court, having considered the
 26 memoranda of points and authorities of both parties, the evidence submitted therewith,
 27 and the arguments presented at hearing, now GRANTS the motion. Defendant
 28 Michael D. Planet, in his official capacity as Court Executive Officer/Clerk of the

1 Superior Court of California, County of Ventura, and his agents, employees and all
2 persons acting at his direction, are hereby preliminarily enjoined from enforcing his
3 policy of denying Courthouse News access to new unlimited jurisdiction civil
4 complaints submitted to the Ventura County Superior Court until after the complaints
5 have been fully processed, and from failing to provide Courthouse News with access
6 to new complaints no later than the end of the day on which they are submitted to the
7 court, except in those instances where the filing party is seeking a temporary
8 restraining order or the complaint otherwise requires immediate judicial attention or
9 where the filing party has properly filed the pleading under seal.

10 This Court further orders that because of the serious constitutional issues raised
11 in this case, and because Defendant will suffer no economic or other harm, bond is
12 hereby waived.

13 This Order is based on the following Findings of Fact and Conclusions of Law:

14 **Findings of Fact**

15 **The Parties**

16 1. Courthouse News Service is a 21-year-old nationwide legal news service
17 specializing in news reporting about civil lawsuits, from the date of filing through the
18 appellate level. Its core news publications are its new litigation reports, which are e-
19 mailed to its subscribers and contain staff-written summaries of all significant new
20 civil complaints filed in a particular court. For larger courts, reports are e-mailed to
21 subscribers each evening and provide coverage of new complaints filed earlier that
22 same day. In addition, Courthouse News offers news alerts, which are delivered via
23 email to subscribers. Courthouse News also publishes four print publications, as well
24 as a web site, www.courthousenews.com, that is updated daily with news reports and
25 commentary about civil cases and appeals. The website receives close to 1 million
26 unique visitors each month. Courthouse News has approximately 3,000 subscribers
27 nationwide, including 740 in California alone. Courthouse News's subscribers
28 include lawyers and law firms, well-known media outlets such as the *Los Angeles*

1 *Times*, the *Los Angeles Business Journal*, the *Pacific Coast Business Times*, the *San*
2 *Jose Mercury-News*, *Forbes*, and the *Boston Globe*, and several university and law
3 libraries. In addition, like other wire services, Courthouse News' reports are often
4 republished by both print and online news publications and in this way are circulated
5 to an even larger audience.

6 2. To produce this level of coverage, Courthouse News employs a
7 nationwide network of reporters who are assigned to cover one or more individual
8 courts. At most of the larger courts, Courthouse News' reporters visit their assigned
9 court near the end of each court day. The reporter reviews civil complaints submitted
10 earlier that day and prepares an original summary of each complaint or other case-
11 initiating document that is of likely interest to Courthouse News' subscribers for
12 inclusion in the report. In California state courts, Courthouse News only reviews
13 "unlimited jurisdiction" civil complaints – that is, complaints in which the amount in
14 controversy usually exceeds \$25,000.

15 3. Given the nature of Courthouse News' publications, any delay in the
16 reporter's ability to review a newly submitted complaint necessarily creates a delay in
17 Courthouse News' ability to inform interested persons of the factual and legal
18 allegations in that complaint. This is especially problematic when there is an
19 intervening weekend and/or holiday, in which case a delay of even one court day
20 results in actual delays of three or even four calendar days.

21 4. Michael D. Planet is the Court Executive Officer/Clerk of the Superior
22 Court of California, County of Ventura. In that capacity, Planet is responsible for
23 formulating and implementing the policies regarding public access to records
24 submitted to the court.

25 **Traditional Access To Court Records**

26 5. In recognition of the crucial role played by the media to inform interested
27 persons about new court cases, it has been a longstanding tradition for courts to
28 provide reporters who visit the court every day with access to new complaints at the

1 end of the day on which they are first submitted to the court. This same-day access
2 ensures that interested members of the public learn about new cases while they are
3 still newsworthy. Courts have traditionally and still do provide this same-day access,
4 in many instances before the complaints have been fully processed.

5 6. Courts around the country currently employ, and have traditionally
6 employed, a variety of methods to provide access to case initiating pleadings, such as
7 complaints, on the same day that such records are submitted to the court. For
8 example, at this Court, a room is set up directly off the docketing department with a
9 set of pass-through boxes. At the end of each day, a staffer places all of the civil
10 complaints submitted that day in the pass-through boxes so the media can review
11 them. These complaints are made available for review before they have been
12 processed. Reporters that cover the courthouse on a daily basis have a key to the
13 room where they review the complaints and then put them back in the pass-through
14 boxes. Other courts allow reporters to go behind the counter to review new
15 complaints, and/or allow reporters to remove complaints directly from the desks of
16 intake and processing clerks. And there are many ways to provide same-day access
17 that do not involve behind the counter access or having reporters directly access
18 complaints on the desks of processing or intake clerks. Some courts require the
19 reporter to show or leave collateral (such as a driver's license or press pass); direct
20 that review be performed in a designated area; comply with a check-out procedure; or
21 even require the reviewing reporter to obtain a security clearance (*e.g.*, a Live-Scan
22 clearance) before accessing the new complaints. Still others allow credentialed media
23 access to the public areas of the clerk's office after the office has closed to the public
24 so that the media may review the new complaints while the court staff is performing
25 its end of the day tasks. See Declaration of William Girdner, Exhibit 3.

26 7. The fact that so many courts are able to provide same day access to civil
27 complaints demonstrates that providing such access is a matter of will, not of ability.
28 As shown by the variety and effectiveness of the procedures for providing same-day

1 access that have been implemented in so many courts, any individual clerk's office
2 can provide prompt access to newly submitted complaints if it has the will to do so.

3 8. Importantly, these examples demonstrate that same-day access can be
4 provided without any significant re-allocation of court staff resources, or anything
5 more than a minimal expenditure of funds.

6 **Ventura Superior's Policy Of Not Allowing Access Until After "Requisite**
7 **Processing," And The Resulting Delays In Access**

8 9. Ventura Superior Court is among the courts covered in Courthouse
9 News' *Central Coast Report*. Courthouse News began covering Ventura Superior on
10 a daily basis in November 2010, having been prior to that sending a reporter to the
11 court once or twice a week. The same reporter, Julianna Krolak, has been covering
12 Ventura Superior since 2001. The express purpose of her daily visits is to review new
13 unlimited civil complaints. As is its typical practice, shortly after it began daily
14 coverage, Courthouse News attempted to work cooperatively with the clerk's office to
15 come up with mutually-workable procedures so that Ms. Krolak could have same-day
16 access to new unlimited jurisdiction civil complaints just as news reporters do in other
17 courts Courthouse News visits on a daily basis. Such efforts including sending to
18 Planet a report Courthouse News had prepared entitled "Media Access to Courts
19 Around the Nation," the most current version of which is included in the record as
20 Exhibit 3 to the Girdner Declaration, wherein Courthouse News detailed the various
21 methods courts around the country used to achieve same day access to civil
22 complaints.

23 10. Ultimately, these efforts were unsuccessful. In a July 11, 2011 letter,
24 Defendant cited budget difficulties and stated, "While I appreciate the Courthouse
25 News Service's interest in same-day access, the Court cannot prioritize that access
26 above other priorities and mandates. Further, the Court must ensure the integrity of all
27 filings, including new filings, and cannot make any filings available *until the requisite*
28 *processing is completed.*" (Emphasis added.) In opposing Courthouse News' motion

1 for preliminary injunction, Defendant further acknowledges that not only does his
2 court not “grant access to ‘partially processed’ complaints,” but indeed, that he does
3 not provide access until after a complaint has been both “processed” and “approved
4 for public viewing.” Defendant further contended that its has never been the court’s
5 practice to grant access to “partially processed “ complaints.

6 11. Defendant explains that when new complaints are received at Ventura
7 Superior they are date-stamped “Received” and routed to “back-counter” Court
8 Processing Assistants (CPAs), who are responsible for opening the new file, issuing
9 case numbers and providing conformed copies to counsel. New complaints are
10 deemed “filed” by the court on the date they are stamped “Received.” Because
11 Ventura Superior is using the California Court Case Management System (CCMS),
12 Defendant alleges that the CPAs must enter a considerable amount of information
13 regarding a new complaint before a file number is generated. It is not clear at what
14 point Defendant considers a new complaint to be “fully processed.” Defendant
15 acknowledges, however, that when new complaints are processed by newly appointed
16 CPAs, they are subject to a further quality control review, a process that takes from
17 one to several days. The public does not have access to these records until after this
18 quality control review has been completed.

19 12. This Court finds that but for the requirement that the newly submitted
20 records undergo “the requisite processing” before being made accessible to the public,
21 the Ventura Superior Court would provide same day access to such records. Although
22 Defendant presented copious evidence regarding its budget and staff shortfalls, this
23 evidence only demonstrates why Ventura Superior cannot fully process newly filed
24 complaints on the same day. Obviously, this information is only relevant if
25 Defendant’s policy of denying access until processing is completed is valid.

26 13. Defendant’s enforcement of this policy has resulted in substantial delays.
27 For example, during the four-week period from August 8 through September 2, 2011,
28 Courthouse News reviewed 152 new unlimited jurisdiction complaints at Ventura

1 Superior, on average fewer than eight complaints per court day. Of the 152
2 complaints reviewed during that four-week period, only nine complaints (about 6%)
3 were made available for review on the same calendar day they were submitted to
4 Ventura Superior. Courthouse News was not permitted to review the remaining 143
5 complaints (94%) on the day they were submitted, and the delays in access stretched
6 up to thirty-four calendar days. Only 14% of the complaints were available the day
7 after they were filed, and 15 % of the complaints were not available until after 7
8 calendar days. Defendant contests these findings because it computer records reflect
9 that most complaints are placed in the “media bin” no later than one day after the
10 complaints are submitted to the court. However, these computerized records
11 demonstrate only where the records should have been. They do not prove that the
12 complaints were actually available for Ms. Krolak and others to view. Courthouse
13 News’ first-hand observations are the best evidence of the actual delays in access.
14 Moreover, Defendant acknowledges that the quality control review it performs can
15 take several days, thus corroborating Courthouse News’ experience.

16 14. Given the importance of news being reported in a timely manner, such
17 delays diminish the value of Courthouse News’ reports to its subscribers, leading to a
18 loss of goodwill. Courthouse News’ subscribers are quick to notice when newsworthy
19 complaints are not reported in one of Courthouse News’ litigation reports, and they do
20 not hesitate to contact Courthouse News directly by phone regarding the lack of
21 reporting on a particular complaint. Courthouse News loses the confidence and
22 goodwill of its subscribers when they hear through various other channels about a
23 civil unlimited jurisdiction complaint that Courthouse News cannot report because it
24 does not have access to it. Likewise, subscribers also complain about reports that, like
25 the Ventura Superior portion of the *Central Coast Report*, rely on docket coverage
26 because the complaints themselves are not made available until several days after the
27 complaint is filed. Because of the meager content of reports that rely on docket
28

1 information, law firms then question the value of their subscriptions with Courthouse
2 News.

3 15. Any conclusion of law deemed to be a conclusion of fact is hereby
4 incorporated into these findings of fact.

5 Conclusions of Law

6 Preliminary Injunction Standard

7 1. To obtain a preliminary injunction, the moving party must demonstrate
8 that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in
9 the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4)
10 an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555
11 U.S. 7, 24-25, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). If the moving party can only
12 demonstrate “serious questions going to the merits,” rather than a “likelihood of
13 success,” the preliminary injunction may issue nonetheless if the balance of hardships
14 tips sharply toward the movant, so long as there is a likelihood of irreparable injury
15 and the injunction is in the public interest. *Alliance For The Wild Rockies v. Cottrell*,
16 632 F.3d 1127, 1135 (9th Cir. 2011). The same standard applies regardless of whether
17 the movant seeks to maintain the status quo or to halt an ongoing deprivation of rights.
18 *See Klein v. City of Laguna Beach*, 381 Fed. App’x 723, 725 (9th Cir. 2010).

19 2. The parties dispute whether the requested preliminary injunction is
20 “prohibitory” or “mandatory.” The same four-part test applies regardless of whether
21 the requested preliminary injunction is deemed “prohibitory” or “mandatory.” The
22 only difference in the analysis is that a truly mandatory preliminary injunction should
23 not be granted “unless the facts and the law clearly favor the moving party.” *Dahl v.*
24 *HEM Pharmaceuticals Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993) (affirming the grant
25 of a mandatory preliminary injunction). But mandatory injunctions remain
26 appropriate where “extreme or very serious damage will result.” *See Marlyn*
27 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir.
28 2009). Because this Court finds that Courthouse News is entitled to the preliminary

1 injunction even under a heightened standard, it need not categorize the preliminary
2 injunction as either “prohibitory” or “mandatory.” But it bears noting that a
3 prohibitory injunction is seen as preserving the *last uncontested* status quo. The key
4 words are “last uncontested.” Defendant’s processing-before-access policy, and the
5 denial by the court of same-day access, has always been contested by Courthouse
6 News. If it is true that Ventura Superior has “never” granted access “to partially
7 processed complaints,” there is no uncontested position – no status quo – to which to
8 return. However, the preliminary injunction would “return” the parties to the
9 historical position in which the press was routinely granted the access that Courthouse
10 News seeks by this action, and by which the public enjoys its undisputed First
11 Amendment right of access.¹

12 **Courthouse News Is Likely To Succeed On The Merits**

13 **The Public Has A First Amendment Right Of Access To Newly**
14 **Submitted Civil Complaints**

15 3. Courts have recognized that the press plays a special role in vindicating
16 the public’s right of access. As the Ninth Circuit has observed, the press aids the
17 public’s vigilance over the workings of the court system by publishing information
18 about court proceedings. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,
19 1178 (9th Cir. 2006). *See also Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th
20 Cir. 2002) (characterizing the press as “deputized” by the public “as guardians of their
21 liberty”); *Salzano v. N. Jersey Media Group, Inc.*, 201 N.J. 500, 520, 993 A.2d 778
22 (N.J. 2010) (“Because it is impossible for the citizenry to monitor all of the operations
23 of our system of justice, we rely upon the press for vital information about such
24 matters.”). Similarly, the U.S. Supreme Court described the media as “surrogates for
25

26 ¹ Moreover, when First Amendment rights are involved, the presumed “status quo” is
27 the condition in which a person is free to exercise his or her First Amendment rights.
28 *See Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 562, 95 S. Ct. 1239, 43
L. Ed. 2d 448 (1975).

1 the public,” and noted in the context of courtroom proceedings that although “media
2 representatives enjoy the same right of access as the public, they often are provided
3 special seating and priority of entry so that they may report what people in attendance
4 have seen and heard.” *Richmond Newspapers*, 448 U.S. 555, 573, 100 S.Ct. 2814, 65
5 L. Ed. 2d 973 (1980); accord, e.g., *California First Amendment Coalition v.*
6 *Woodford*, 299 F.3d 868, 876 (9th Cir. 2002) (holding that press must have access to
7 executions as a representative of the public).

8 4. The public’s right of access to court proceedings and records is a
9 keystone of our democratic system. “As with other branches of government, the
10 bright light cast upon the judicial process by public observation diminishes
11 possibilities for injustice, incompetence, perjury, and fraud. Furthermore, the very
12 openness of the process should provide the public with a more complete
13 understanding of the judicial system and a better perception of its fairness.” *Littlejohn*
14 *v. BIC Corp.*, 851 F.2d 673, 677-78, 682 (3rd Cir. 1988). Public access thus enhances
15 both the basic fairness and the appearance of fairness of the judicial system. *Press-*
16 *Enterprise Co. v. Superior Court*, 464 U.S. 501, 508, 104 S. Ct. 819, 78 L. Ed. 2d 629
17 (1984) (“*Press-Enterprise I*”). Indeed, open and public judicial proceedings are
18 “[o]ne of the most enduring and exceptional aspects of Anglo-American justice.”
19 *Phoenix Newspapers, Inc. v. United States District Court*, 156 F.3d 940, 946 (9th Cir.
20 1998).

21 5. In a series of cases decided in the 1980s, the U.S. Supreme Court
22 repeatedly affirmed the public and press’ First Amendment right of access to criminal
23 proceedings. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 7-10, 106
24 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (“*Press-Enterprise II*”) (preliminary hearings);
25 *Press Enterprise I*, 464 U.S. at 509-13 (voir dire); *Globe Newspaper Co. v. Superior*
26 *Court*, 457 U.S. 596, 606, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982) (testimony during
27 trial); *Richmond Newspapers*, 448 U.S. at 572-74, 589 (trial). In the intervening
28 years, the First Amendment right of access has been extended not only to civil cases,

1 but also to records filed in both criminal and civil proceedings. As the Supreme Court
2 has noted, “there is no principled basis upon which a public right of access to judicial
3 proceedings can be limited to criminal cases. ... [¶] Indeed, many of the advantages of
4 public criminal trials are equally applicable in the civil trial context. ... in some civil
5 cases the public interest in access, and the salutary effect of publicity, may be as
6 strong as, or stronger than, in most criminal cases.” *Gannett Co. v. DePasquale*, 443
7 U.S. 368, 386-87 n.15, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979); *accord Richmond*
8 *Newspapers*, 448 U.S. at 580 n.17. This First Amendment right of court access is an
9 outgrowth and essential component of the freedom of speech, and as such is entitled to
10 the same respect as that hallowed liberty. *Richmond Newspapers, Inc. v. Virginia*,
11 448 U.S. 555, 576, 577, 580, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980); *Globe*
12 *Newspaper Co. v. Superior Court*, 457 U.S. 596, 604-05, 102 S. Ct. 2613, 73 L. Ed.
13 2d 248 (1982); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1067 (3d Cir. 1984)
14 (civil proceedings and records); *New York Civil Liberties Union v. New York City*
15 *Transit Authority*, 652 F.3d 247, 257 (2d Cir. 2011) (administrative adjudicatory
16 proceedings).

17 6. Subsequently, the Courts of Appeals for the Second, Third, Fourth, Fifth,
18 Sixth, Seventh and Eighth Circuits have all recognized a First Amendment right of
19 access to civil proceedings and/or documents.² Similarly, the California Supreme
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21 ² See, e.g., *New York Civil Liberties Union v. New York City Transit Auth.*, 2011 U.S.
22 App. LEXIS 14768, at *27-28 (2d Cir., July 20, 2011) (“the First Amendment
23 guarantees a qualified right of access not only to criminal but also to civil trials and to
24 their related proceedings and records”); *Rushford v. New Yorker Mag., Inc.* 846 F.2d
25 249, 253 (4th Cir. 1988) (“We believe that the more rigorous First Amendment
26 standard should also apply to documents filed in connection with a summary
27 judgment motion in a civil case.”); *In re Continental Ill. Secs. Litig.*, 732 F.2d 1302,
28 1308 (7th Cir. 1984) (recognizing First Amendment right to documentary evidence in
civil cases); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th
Cir. 1983) (documents filed in civil litigation; “[i]n either the civil or the criminal
courtroom, secrecy insulates the participants, masking impropriety, obscuring

1 Court has recognized a First Amendment right of access to civil proceedings and
2 documents in California state courts. *NBC Subsidiary (KNBC-TV), Inc. v. Superior*
3 *Court*, 20 Cal. 4th 1178, 1212 & n.25, 86 Cal. Rptr. 2d 778 (1999) (“We conclude, in
4 light of the high court case law and its progeny, that, in general, the First Amendment
5 provides a right of access to ordinary civil trials and proceedings.”);³ *accord, e.g., In*
6 *re Marriage of Burkle*, 135 Cal. App. 4th 1045, 1062, 37 Cal. Rptr. 3d 805 (2006)
7 (“[N]o basis exists for concluding that court records should be differentiated from
8 courtroom proceedings for purposes of First Amendment access rights.”). And
9 although the Ninth Circuit has not yet recognized a First Amendment right to civil
10 records, as it has explained in the criminal context, “[t]here is no reason to distinguish
11 between pretrial proceedings and the documents filed in regard to them. ... We thus
12 find that the public and press have a first amendment right of access to pretrial
13 documents in general.” *Associated Press v. District Court*, 705 F.2d 1143, 1145 (9th
14 Cir. 1983).

15 7. The First Amendment right of access to civil records in general, and
16 complaints in particular, is further confirmed by the two-prong inquiry used by the
17 Supreme Court in *Richmond Newspapers* and its progeny, which examines the
18 considerations of “tradition” and “logic” to determine whether a constitutional right of
19 access exists. First, the court looks to whether the process has traditionally been open
20 to the public. The “tradition” analysis does not require that the practice of openness

21
22 incompetence, and concealing corruption”); *Publicker Indus. v. Cohen*, 733 F.2d
23 1059, 1070 (3d Cir. 1984) (recognizing First Amendment right of access to civil
24 cases); *In re Iowa Freedom of Info. Council*, 724 F.2d 658, 661 (8th Cir. 1983)
25 (concluding that high court’s reasoning for finding a First Amendment right to
26 criminal proceedings also applies to civil proceedings); *Doe v. Stegall*, 653 F.2d 180,
185 (5th Cir. 1981) (“First Amendment guarantees are implicated” by parties’ request
to withhold their names from a case-initiating document in a civil case).

27 ³ The California Supreme Court did recognize a single exception to this otherwise
28 broadly inclusive constitutional right: it does not include the right to access discovery
materials “that are neither used at trial nor submitted as a basis for adjudication.” *Id.*

1 have ancient origins. For example, the Ninth Circuit has relied on a near uniformity
2 among *current* statutory schemes to establish a history of access to voter lists. *Cal-*
3 *Almond, Inc. v. United States Dep’t of Agric.*, 960 F.2d 105, 109 (9th Cir. 1992);
4 *accord Whiteland Woods, L.P. v. Township of W. Whiteland*, 193 F.3d 177, 181 (3d
5 Cir. 1999) (relying on a 30-year old statute to establish “experience” of access to
6 municipal planning meetings). Rather, the tradition need only be long enough so that
7 the “tradition of accessibility implies the favorable judgment of experience.” *Press-*
8 *Enterprise II*, 478 U.S. at 8. Indeed, “a brief historical tradition might be sufficient to
9 establish a First Amendment right of access where the beneficial effects of access to
10 that process are overwhelming and uncontradicted.” *Detroit Free Press*, 303 F.3d at
11 701.

12 8. Courts have historically recognized that the public has a general right to
13 inspect and copy judicial records, including complaints in particular. *Nixon v. Warner*
14 *Comm’ns, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978);
15 *Kamakana*, 447 F.3d at 1178; *In re NVIDIA Corp.*, 2008 WL 1859067, at *3-4;
16 *Vassiliades v. Israely*, 714 F. Supp. 604, 606 (D. Conn. 1989). Indeed, the Ninth
17 Circuit has held that only a narrow range of documents have “traditionally been kept
18 secret.” *Kamakana*, 447 F.3d at 1178; *Times Mirror Co. v. United States*, 873 F.2d
19 1210, 1219 (9th Cir. 1989).⁴ As observed in *Estate of Hearst*, 67 Cal. App. 3d 777,
20 784, 136 Cal. Rptr. 821 (1977), “traditional Anglo-American jurisprudence distrusts
21 secrecy in judicial proceedings and favors a policy of maximum public access to
22 proceedings and records of judicial tribunals.”⁵

23 _____
24 ⁴ The Ninth Circuit has identified two categories of documents that fall in this
25 “narrow range”: grand jury transcripts and warrant materials in the midst of a pre-
26 indictment investigation. *Id.*

27 ⁵ Most of these cases considered only whether the public had a *common law* right of
28 access to the requested records. However, whether a common law right of access
exists informs the “tradition” prong of the constitutional analysis. *See Associated*
Press, 705 F.2d at 1145. The public’s common law right of access is discussed below.

1 9. Second, the court must ask “‘whether public access plays a significant
2 positive role in the functioning of the particular process in question.’” As to this part
3 of the analysis, the question is whether public access would play an important role in
4 furthering the public’s interest in understanding the judicial process and in
5 maintaining the public’s trust in the judiciary. *Phoenix Newspapers*, 156 F.3d at 946-
6 48. Without a doubt, the answer as to civil complaints is “yes.” Without access to the
7 complaint, the press and the public often would not know that a lawsuit has been
8 initiated; even if they were alerted to a new suit, they would not have any substantive
9 information about the factual background or the particular allegations made by the
10 filing party. As the Northern District of California recently explained:

11 [A] complaint ... is the root, the foundation, the basis by which a suit
12 arises and must be disposed of. Further, along with a summons, it is the
13 means by which a plaintiff invokes the authority of the court, a public
14 body, to dispose of his or her dispute with a defendant. ... It provides the
15 causes of action. ... It establishes the merits of a case, or the lack thereof.
16 ... when a plaintiff invokes the Court’s authority by filing a complaint,
17 the public has a right to know who is invoking it, and toward what
18 purpose, and in what manner.

19 *In re NVIDIA*, 2008 WL 1859067, at *3; *accord, e.g., Vassiliades*, 714 F. Supp. at 606
20 (denying request to seal complaint; “[t]he filing of the complaint is likely to be the
21 first occasion that the public could become aware of the dispute”); *Standard*
22 *Chartered Bank v. Calvo*, 2010 WL 2490995, at *2 (S.D.N.Y. 2010) (denying
23 plaintiff’s application to file complaint under seal and noting that such applications, if
24 granted, “conceal the very existence of lawsuits from the public.”).

25 10. This Court thus hereby finds that the public has a First Amendment right
26 of access to the records of civil cases submitted to a state trial court. This First
27 Amendment right of access applies to complaints and other case-initiating records
28 submitted to the court.

1 11. Defendant concedes that a First Amendment right of access to complaints
2 exists, but contends that this Court must find a “First Amendment right of same-day
3 access.” However, Defendant conflates the two parts of the analysis this Court must
4 perform. As a threshold determination, this Court need only determine whether there
5 is a First Amendment right of access to complaints and other case-initiating records.
6 To the extent Defendant wishes to deny the public same-day access to such records, it
7 must demonstrate that the restriction is justified, as will be discussed below. *See*
8 *Associated*, 705 F.2d at 1146.

9 **The Public Has A Common Law Right of Access to Newly Submitted**
10 **Civil Complaints**

11 12. In addition to the First Amendment right, courts have also recognized a
12 common law right of access to copy and inspect court files. *See Nixon*, 435 U.S. at
13 597 (1978). Although this common law right has evolved to serve many of the same
14 purposes as the First Amendment right of access, it is an independent right that may
15 exist even where a court has declined to identify a constitutional dimension in the
16 right to access judicial records or proceedings. *San Jose Mercury News v. United*
17 *States District Court*, 187 F.3d 1096, 1101 (9th Cir. 1999); *Valley Broad. Co. v.*
18 *United States District Court*, 798 F.2d 1289, 1293-94 (9th Cir. 1986). The Ninth
19 Circuit has expressly recognized a common law right of access to documents filed in
20 civil proceedings in various contexts, which applies to all court files except for that
21 very range of records that, for policy reasons, have historically been kept secret. *See,*
22 *e.g., Kamakana*, 447 F.3d at 1178 (affirming access to exhibits to summary judgment
23 motion); *San Jose Mercury News*, 187 F.3d at 1102 (pre-judgment access to materials
24 submitted in support of summary judgment motions); *Hagestad v. Tragesser*, 49 F.3d
25 1430, 1434 (9th Cir. 1995) (post-settlement access to pleadings); *EEOC v. The*
26 *Erection Co.*, 900 F.2d 168, 169 (9th Cir. 1990) (consent decree). *See also Rocky Mt.*
27 *Bank v. Google*, 2011 U.S. App. LEXIS 7867 at *3, 39 Media L. Rep. 1783 (9th Cir.
28

1 2011) (common law right of access applied even though records had been lodged
2 rather than filed; such documents are judicial records).

3 13. This Court thus finds that the public has a common law right of access to
4 civil complaints submitted to the court.

5 **Delays In Access Are Denials Of Access**

6 14. Regardless of the origin of the right of access, access “should be
7 immediate and contemporaneous.” *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*,
8 24 F.3d 893, 897 (7th Cir. 1994). All but *de minimis* delays in access are the
9 functional equivalent of access denials, triggering the constitutional and common law
10 scrutiny. *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989)
11 (observing that “even a one to two day delay impermissibly burdens the First
12 Amendment”); *Estate of Hearst*, 67 Cal. App. 3d at 785 (even temporary limitations
13 on public access to court records require a “sufficiently strong showing of necessity”);
14 *NBC Subsidiary*, 20 Cal. 4th at 1219 & n.42 (holding that even temporary denials of
15 access warrant “exacting First Amendment scrutiny”). Permitting even “minimal
16 delays ... unduly minimizes, if it does not entirely overlook, the value of ‘openness’
17 itself, a value which is threatened whenever immediate access to ongoing proceedings
18 is denied, whatever provision is made for later public disclosure.” *In re Charlotte*
19 *Observer*, 882 F.2d 850, 856 (4th Cir. 1989). *See also United States v. Simone*, 14
20 F.3d 833, 842 (3d Cir. 1994) (rejecting a 10-day delay in favor of immediate access).
21 As the Ninth Circuit has recognized, the rule that delays in access are the equivalent to
22 denials of access holds true even where there are competing interests of the highest
23 order. In a 42 U.S.C. § 1983 case involving access to court records in the John
24 DeLorean criminal trial, the Ninth Circuit found that the district court’s withholding
25 of newly filed documents for 48 hours after filing as part of a procedure designed to
26 protect the defendant’s Sixth Amendment right to a fair trial was “a total restraint on
27 the public’s first amendment right of access even though the restraint is limited in
28 time.” *Associated Press*, 705 F.2d at 1147 (issuing writ vacating district court order).

1 15. The reasons for this rule – that even temporary access delays implicate
2 constitutional concerns – are clear. The court’s and the public’s knowledge that the
3 public can “contemporaneously review” trial proceedings promotes transparency and
4 acts as effective check on abuse of judicial power. *Richmond Newspapers*, 448 U.S.
5 at 592 (Brennan, J., concurring) (“contemporaneous review in the forum of public
6 opinion is an effective restraint on possible abuse of judicial power”) (quoting *In re*
7 *Oliver*, 333 U.S. 257, 270, 68 S. Ct. 499, 92 L. Ed. 682 (1948)); accord *In re*
8 *Charlotte Observer*, 882 F.2d at 856. Moreover, the “newsworthiness of a particular
9 story is often fleeting. To delay or postpone disclosure undermines the benefit of
10 public scrutiny and may have the same result as complete suppression.” *Grove Fresh*,
11 24 F.3d at 897. It is only while the cases are still “current news that the public’s
12 attention can be commanded.” *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242,
13 250 (7th Cir. 1975); see also *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 96 S. Ct.
14 2791, 49 L. Ed. 2d 683 (1976) (“the element of time is not unimportant if press
15 coverage is to fulfill its traditional function of bringing news to the public promptly”).
16 In the case of newly submitted civil complaints, a delay in access is not only contrary
17 to the tradition of same-day access, but effectively hides from the public the fact that a
18 new controversy is pending before an important institution of government.

19 **Defendant Has Not, And Cannot, Satisfy The Strict Requirements**
20 **For Denying The Press Timely Access To New Civil Complaints**

21 16. Where there is a First Amendment right of access, that right can only be
22 overcome on a case-by-case basis, by way of an adjudicative process performed by a
23 judge where the party seeking to restrict access satisfies a stringent three-part test
24 established by the Ninth Circuit. *United States v. Brooklier*, 685 F.2d 1162, 1168-69
25 (9th Cir. 1982). Under the three-part test, the party seeking to restrict access must
26 prove:

- 27 (1) The existence of a right of comparable importance to the First
28 Amendment that is threatened by public access to the court records;

1 (2) A substantial probability of irreparable damage to the asserted right will
2 result if access is not withheld; and

3 (3) A substantial probability that alternatives to withholding access will not
4 adequately protect the asserted right.

5 *Phoenix Newspapers*, 156 F.3d at 949; *Associated Press*, 705 F.2d at 1145-46.⁶

6 17. Importantly, the party seeking to withhold records has the burden to
7 satisfy all three prongs of this test. *Brooklier*, 685 F.2d at 1169; *accord Associated*
8 *Press*, 705 F.2d at 1145; *Oregonian Publ'g Co. v. United States District Court*, 920
9 F.2d 1462, 1466-67 (9th Cir. 1990). In addition, in those instances where a court
10 finds the party seeking to restrict access has satisfied his burden, the court must make
11 specific findings such that a reviewing court can determine that access was properly
12 denied. *Phoenix Newspapers*, 156 F.3d at 946-47. Conclusory assertions of an
13 interest, and harm to that interest, are not sufficient. *Id.* at 950; *Oregonian Publ'g*,
14 920 F.2d at 1465; *Brooklier*, 685 F.2d at 1169.

15 18. This three-part judicial analysis cannot be circumvented by a court clerk
16 who assumes unbridled discretion to determine whether, and for how long, records
17 may be withheld from the public. *In re Globe Newspaper Co.*, 920 F.2d 88, 97 (1st
18 Cir. 1990) (interpreting a local court rule granting judges the authority to seal records
19 “if the interests of justice so require” as requiring a detailed analysis of why sealing
20 was required in each particular case). However, that is exactly what Defendant is
21 attempting here. Rather than seeking a judicial determination that any particular
22 record may be withheld from the public and the press, Planet has adopted a blanket
23 rule whereby the public and the press is denied access to all records until he and only
24

25
26
27
28 ⁶ The California Judicial Council has written the First Amendment right of access test,
in the form a five-part analysis, into the California Rules of Court. Cal. Rule of Court
2.550 & Advisory Comm. Comment.

1 he, unbound by any objective or reviewable standards, determines that access should
2 be permitted.

3 **Overriding Governmental Interests**

4 19. Defendant proffers four interests that purportedly justify its policy of
5 denying the public access to complaints until after they have been fully processed: (1)
6 safety and security of court personnel, citing an act of violence against the local
7 Employment Development Division office; (2) ensuring that financial information in
8 fee application waivers is kept private; (3) concerns about filing fee checks; and (4)
9 the possibility that a complaint that is received for filing might later be rejected. Even
10 assuming *arguendo* that these interests would satisfy the first prong of the First
11 Amendment test, they do not pass the second or third prongs of the test because for
12 each interest raised, there is no substantial probability of irreparable injury and there
13 are clear alternatives to Defendant’s policy of simply denying access until after full
14 processing.

15 **Substantial Probability Of Damage To Those Interest and**
16 **Lack Of Alternatives For Avoiding That Damage**

17 20. Defendant asserts that he cannot let reporters go “behind the counter” to
18 review new civil complaints, and that the court’s “current policies prohibit members
19 of the general public from accessing processing desks where new unlimited civil
20 complaints are maintained prior to processing.” But as is demonstrated by examples
21 of access procedures used by other courts, and as set forth in the findings of fact
22 above, there are many ways to provide same-day access that do not involve behind the
23 counter access or having reporters directly access complaints on the desks of
24 processing or intake clerks. And even if permitting Courthouse News’ reporter to go
25 behind the counter and/or access processing desks where new unlimited complaints
26 are maintained prior to processing were the only way that same-day access could be
27 provided, the justification offered by Defendant is not sufficient to show why this
28 would not be “workable.”

1 21. In addition, as tragic as the 2003 Employment Development Department
2 shooting in Oxnard no doubt was, Defendant fails to offer any specific reason why
3 that isolated incident, no doubt involving an extremely deranged person, somehow
4 translates into the idea that a credentialed reporter who visits the court on a daily basis
5 and has done so for the last ten years is a security risk. Many courts allow reporters to
6 go behind the counter and directly access processing desks; if Defendant were really
7 concerned, he could require Ms. Krolak to obtain a security clearance. But the
8 reasons that Defendant has given for asserting that this means of providing same-day
9 access is not “workable” are wholly conclusory and thus clearly insufficient to pass
10 muster under the First Amendment or the common law. *Phoenix Newspapers*, 156
11 F.3d at 946-47; *Oregonian Publ’g*, 920 F.2d at 1465; *Brooklier*, 685 F.2d at 1169.

12 22. *Second*, Defendant asserts that its practice of delaying access until after
13 full processing is necessary to ensure the “privacy of litigants.” But the law is clear
14 that complaints are *public documents*, and “[w]hen a plaintiff invokes the Court’s
15 authority by filing a complaint, the public has a right to know who is invoking it, and
16 toward what purpose, and in what manner.” *In re NVIDIA*, 2008 WL 1859067, at *3
17 (N.D. Cal. 2008). Defendant cites the peculiar privacy interests involved in fee
18 waiver applications which may contain personal financial information, and which
19 Ventura Superior keeps attached to the complaints. But given that the fee waiver
20 applications are not part of the complaint itself and as evidenced by the fact that other
21 courts handle fee waivers and yet still provide same-day access prior to full
22 processing, there are clearly alternatives for maintaining the confidentiality of these
23 applications that do not require media access to the complaints to be delayed.

24 23. *Third*, Defendant claims that allowing access to new complaints until
25 after they have been fully processed would violate Ventura Superior’s “accounting
26 protocols” because filing fee checks are attached to the new complaints until after they
27 are processed. Again, Ventura Superior is hardly the only court that handles filing fee
28 checks, and yet this has not stopped other courts from providing same-day access.

1 There are alternatives for addressing this concern short of delays access that implicate
2 First Amendment rights, most commonly removing checks from the complaints right
3 away.

4 24. *Fourth*, Defendant asserts that Ventura Superior cannot allow access to
5 complaints until after they have been fully processed because it is possible a
6 complaint might be “rejected” for filing, and allowing access to such complaints
7 would not “ensure and promote public trust and confidence in the Court and its
8 filings.” As with the other justifications for delayed access, Ventura Superior is not
9 the only court that rejects complaints from time to time, and yet this concern has not
10 stopped other courts from providing the media with access to new complaints before
11 they have been fully processed. The reason for this is clear: given the importance of
12 the constitutional access rights at issue, timely access is appropriate even if it
13 occasionally results in a complaint being reviewed by the press that is later rejected.
14 Defendant offers no reason why this would erode the “public trust and confidence” in
15 the court, and in fact, no reason exists. Moreover, even complaints that are later
16 rejected are public records, the access to which enables the public to oversee the
17 court’s diligence and fairness in accepting complaints. *See Richmond Newspapers*,
18 448 U.S. at 572 (noting public interest in overseeing workings of the courts and
19 observing, that “[p]eople in an open society do not demand infallibility from their
20 institutions, but it is difficult for them to accept what they are prohibited from
21 observing.”).

22 25. *Finally*, Defendant justifies Ventura Superior’s current practice of
23 delaying access until after a complaint has been processed “complies with California
24 law,” but neither California’s statutes or rules of court can justify providing a lesser
25 degree of access than is guaranteed by the First Amendment. *See Press-Enterprise*
26 *Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 106 S.Ct. 2735, 92 L. Ed. 2d
27 1 (1986).

1 26. The same results is obtained even if the less rigorous common law right
2 of access test is applied. The presumption of access that accompanies the common law
3 right can be overcome only on the basis of “articulable facts, known to the court, not
4 on the basis of unsupported hypothesis or conjecture.” *Valley Broad.*, 798 F.2d at
5 1293 (quoting and adopting the rule of *United States v. Edwards*, 672 F.2d 1289, 1294
6 (7th Cir. 1982) and rejecting a less rigorous requirement). Moreover, the party
7 seeking to restrict access must have a *compelling* reason to do so; a ‘good cause’
8 showing alone will not suffice. *Kamakana*, 447 F.3d at 1180. In assessing the
9 strength of one’s common law right of access, among the interests that will support
10 the common law right is the public interest in understanding the judicial process,
11 *Hagestad*, 49 F.3d at 1434; *EEOC*, 900 F.2d at 170, and in “keeping a watchful eye”
12 on the workings of the government. *United States v. Schlette*, 842 F.2d 1574, 1582
13 (9th Cir. 1988) (quoting *Nixon*, 435 U.S. at 598). In addition, a publisher’s intention
14 to inform the public concerning the workings of government will also support a right
15 of access, *id.*, an interest that is especially strong where, as here, the documents at
16 issue are case-initiating complaints, without which members of the public have no
17 way of learning about a new lawsuit. Given these strong interests in prompt access,
18 Defendant’s bare assertion that the integrity of the court’s records will be endangered
19 is not even sufficient to defeat the common law right of access, let alone the stronger
20 First Amendment right.

21 27. Thus, Defendant cannot show a “substantial probability” that allowing
22 Courthouse News to access new complaints before full processing would irreparably
23 damage the interests he cites to support his policy of access-after-processing, nor can
24 he show that there are not alternative ways of addressing his concerns that do not
25 involve delaying access until after processing. Accordingly, this Court finds that
26 Courthouse News is likely to succeed on the merits of its First Amendment claim.
27 Courthouse News has demonstrated that it has a First Amendment right of access to
28 unlimited civil complaints. Defendant has failed to demonstrate that his policy

1 denying the public and the press access to complaints until after court personnel have
2 finished processing them withstands First Amendment scrutiny. As a result,
3 Courthouse News has established that as a general matter it is entitled to same-day
4 access to newly filed complaints.

5 **Absent Injunctive Relief, Courthouse News Will Be Irreparably Harmed**

6 28. It is well established that “[t]he loss of First Amendment freedoms, for
7 even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v.*
8 *Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). *See also, e.g.,*
9 *New York Times Co. v. United States*, 403 U.S. 713, 724-25, 91 S. Ct. 2140, 29 L. Ed.
10 2d 822 (1971) (Brennan, J., concurring); *Carroll v. Princess Anne*, 393 U.S. 175, 182,
11 89 S. Ct. 347, 21, L. Ed. 2d 325 (1968); *Wood v. Georgia*, 370 U.S. 375, 391-92, 82 S.
12 Ct. 1364, 8 L. Ed. 2d 569 (1962). As the Ninth Circuit has recognized, the irreparable
13 nature of a First Amendment injury is further enhanced when the practice sought to be
14 enjoined delays the timely dissemination of news to the public. “Where the precious
15 First Amendment right of freedom of the press is at issue, the prevention of access to a
16 public forum is, each day, an irreparable injury: the ephemeral opportunity to present
17 one’s paper to an interested audience is lost and the next day’s opportunity is
18 different.” *Jacobsen*, 812 F.2d at 1154; *accord, e.g., Courthouse News Service v.*
19 *Jackson*, 2009 U.S. Dist. LEXIS 62300, at *13, 38 Media L. Rep. 1890 (S.D. Tex.
20 2009) (finding that denial of same-day access to new petitions constituted a denial of
21 First Amendment freedoms that caused Courthouse News irreparable harm). This
22 irreparable injury is not only caused by the denial of traditional free speech rights, but
23 by the denial of court access, a right that is a component of, and integrally related to
24 the right of free speech. For this reason, a denial of the First Amendment right of
25 court access is an irreparable injury that will justify a preliminary injunction. *See*
26 *Huminski v. Corsones*, 386 F.3d 116, 156 (2d Cir. 2005); *Detroit Free Press v.*
27 *Ashcroft*, 303 F.3d 681, 694-95 (6th Cir. 2002); *Jackson*, 2009 U.S. Dist. LEXIS
28 62300, at *13.

1 29. Courthouse News will also suffer non-constitutional, yet similarly
2 irreparable, injury should preliminary injunctive relief not be granted. The inability of
3 Courthouse News to report on new actions in a timely manner will result in a loss of
4 customer goodwill. Although commercial injuries may otherwise be compensable
5 with retrospective monetary relief, because such relief is barred by the 11th
6 Amendment, it is an irreparable injury that will support the issuance of a preliminary
7 injunction. *See California Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 852 (9th
8 Cir. 2009). Defendant claims that Courthouse News’ loss of goodwill is not concrete,
9 and that Courthouse News must provide evidence that it has already experienced such
10 losses, to demonstrate irreparable harm. But although the Ninth Circuit requires that a
11 loss of goodwill not be entirely speculative, *Colorado River Indian Tribes v. Town of*
12 *Parker*, 776 F.2d 846, 849 (9th Cir. 1985), it does not require that such loss have
13 already occurred or even be certain to occur. It is sufficient that there be evidence of a
14 “threatened” loss of prospective customers and goodwill, and the resulting “possibility
15 of irreparable harm.” *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
16 832, 841 (9th Cir. 2001). The evidence that Courthouse News has presented, as set
17 forth in the findings of fact above, is thus sufficient to establish irreparable harm in the
18 form of an un-compensable loss of goodwill.

19 **The Balance Of Equities Tips In Favor Of Courthouse News**

20 30. Defendants, in contrast, will suffer no injury. Were an injunction to
21 issue, Defendant would only need to adopt one of the numerous procedures used by
22 other courts in California and across the country, including this one, that successfully
23 provide same-day access to case-initiating submissions even if processing is still
24 underway. This Court agrees with the finding of the district judge in Texas who
25 found that Courthouse News was entitled to same-day access to newly filed civil
26 complaints in the Harris County, Texas courthouse, a case obviously very similar to
27 the one before this Court. *Jackson*, 2009 U.S. Dist. LEXIS 62300, at *14. As in the
28 *Jackson* case, absent injunctive relief “Plaintiff will be denied its First Amendment

1 right of access to new case-initiating documents unless the Court issues this
2 preliminary injunction, while Defendant[] ha[s] alternative, constitutional ways to
3 achieve [his] goals and address [his] administrative concerns.” *Id.* at *14 (concluding
4 injury to Courthouse News outweighed any damage any injunction requiring same-
5 day access could cause Houston court clerk).

6 31. Defendant again relies on its financial limitations to tip the balance of
7 equities back in its favor. However, as discussed above, Courthouse News is not
8 asking this Court to make Ventura Superior spend more money, or hire staff, or make
9 any similar resource addition. The problem is not the lack of resources. The problem
10 is Defendant’s insistence on denying access to newly filed complaints until after they
11 have been fully processed. As discussed above, each of the concerns Defendant has
12 about providing access prior to final processing can be addressed in ways that do not
13 infringe on Courthouse News’ and the public’s First Amendment rights, and do not
14 require Defendant to reallocate his existing resources in any significant way. I again
15 agree with the *Jackson* court in this respect. *See id.* Indeed, the balance of interests
16 here tips so sharply in favor of Courthouse News that it also satisfies the more
17 demanding balancing that accompanies the “serious questions” standard.

18 **The Preliminary Injunction Will Serve The Public Interest**

19 32. The public interest inquiry primarily addresses the impact on non-parties
20 rather than parties. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009).
21 The plaintiff bears the initial burden of showing that the injunction is in the public
22 interest. *See Stormans*, 586 F.3d at 1139. If he does, the court can then consider
23 whether the likely consequences of the preliminary injunction on the public outweigh
24 the benefit. In so doing, the court need not consider public consequences that are too
25 remote, insubstantial, or speculative and not supported by evidence. *Id.*

26 33. The Ninth Circuit has consistently recognized the significant public
27 interest in upholding First Amendment rights. *Klein v. City of San Clemente*, 584
28 F.3d 1196, 1208 (9th Cir. 2009). But the public interest is even more pronounced in

1 court access cases, in which the press serves as the surrogate of the public. *Richmond*
2 *Newspapers*, 448 U.S. at 573. The public thus suffers the same irreparable
3 constitutional injury as the press when the press is denied same day access to case-
4 initiating records.

5 34. Although the public has an interest in each of the justifications for its no-
6 access policy, as discussed above, this preliminary injunction will not require that any
7 of those interest be compromised.

8 35. Any finding of fact deemed to be a conclusion of law is hereby
9 incorporated into the conclusions of law.

10 **Bond is Waived**

11 36. This Court has “discretion to dispense with the security requirement, or
12 to request mere nominal security.” *Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning*
13 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (finding proper the district court’s
14 exercise of its discretion to waive bond), *amended on other grounds*, 775 F.2d 998
15 (9th Cir.); *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1985)
16 (determining nominal \$1,000 bond in class action not to be an abuse of discretion).
17 Indeed, the waiver of bond is proper in any case, such as this one, in which the court
18 concludes that there is no realistic likelihood of harm to the defendant. *Barahona-*
19 *Gomez*, 167 F.3d at 1237. As with its other arguments, Defendant once again relies
20 on its erroneous belief that the preliminary injunction will “result in substantial and
21 practical harm to Ventura Superior Court.” However, as discussed above, the
22 preliminary injunction will only bar Defendant from denying access before processing
23 is completed.

24 **PRELIMINARY INJUNCTION**

25 Accordingly, it is hereby ORDERED that Plaintiff Courthouse News Service’s
26 motion for preliminary injunction is GRANTED. It is further ORDERED that
27 Defendant Michael D. Planet, in his official capacity as Court Executive Officer/Clerk
28 of the Superior Court of California, County of Ventura, and his agents, employees and

1 all persons acting at his direction, is hereby preliminarily enjoined from enforcing
2 Defendant's policy of denying Courthouse News access to new unlimited jurisdiction
3 civil complaints submitted to the Ventura County Superior Court until after processing
4 has been completed, and from failing to provide Courthouse News with access to new
5 complaints no later than the end of the day on which they are submitted to the court,
6 except in those instances where the filing party is seeking a temporary restraining
7 order or the complaint otherwise requires immediate judicial attention or where the
8 filing party has properly filed the pleading under seal.

9 It is further ORDERED that bond is waived.

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11 Date: _____

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14 The Hon. Manuel L. Real
15 United States District Judge
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