Michael

P I a Dn oe ot

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N e w

Defendant Michael D. Planet, in his official capacity as Executive Officer and Clerk of the Superior Court of California, County of Ventura ("Ventura Superior Court") herby responds to plaintiff Courthouse News Service's ("CNS") objections to the declarations of Julie Camacho, Cheryl Kanatzar, Robert Sherman, and Karen Dalton-Koch, submitted by Ventura Superior Court in support of its opposition to CNS's Motion for Preliminary Injunction.

#### I. VENTURA SUPERIOR COURT'S RESPONSE TO CNS'S OBJECTIONS TO THE DECLARATION OF JULIE CAMACHO

| <b>Evidence</b>          | CNS's Objections                | Ventura Superior Court's Response   |
|--------------------------|---------------------------------|-------------------------------------|
| Declaration of           | Hearsay (FRE 802); Not          | THE EVIDENCE IS NOT HEARSAY:        |
| Julie Camacho            | Subject to Any Exception        | The evidence objected to does not   |
| in Support of            | (FRE 803). This evidence        | reflect an out-of-court statement;  |
| <u>Defendant's</u>       | comprises, relates, or is based | _                                   |
| Opposition to            | upon an out-of-court            | events based on her own personal    |
| Plaintiff's              | statement offered to prove      | perceptions—that is, the actions    |
| Motion for               | the truth of the matter         | she took and the results she        |
| Preliminary              | asserted and is therefore       | obtained upon conducting her        |
| <u>Injunction</u>        | inadmissible as hearsay. FRE    | independent review and analysis of  |
| ("Camacho                | 801, 802. It is not subject to  | the unlimited general civil         |
| <u>Decl."), ¶ 4</u> : "I | either the business or public   | complaints that were filed with     |
| conducted my             | records exceptions because it   | Ventura Superior Court between      |
| own                      | lacks any indicia of            | August 8, 2011, and September 2,    |
| independent              | trustworthiness. FRE 803(6),    | 2011. Thus, it is not hearsay.      |
| analysis of the          | (8)(C). It is untrustworthy     | (FRE 802.)                          |
| new unlimited            | because Ms. Camacho made        |                                     |
| general civil            | her analysis underlying the     | Because Ms. Camacho's               |
| complaints that          | evidence during the course of   | statements are (i) rationally based |

1 were filed by litigation, more than two upon her own personal perception 2 the Ventura months after the events in (and based upon records 3 **Superior Court** question, and without her or admissible under several hearsay 4 her subordinate specifically exceptions, discussed infra), at the Hall of 5 confirming the physical (ii) helpful to understand her Justice 6 location of any complaints. testimony, and (iii) not based on courthouse 7 between August See Sullivan v. Dollar Tree specialized knowledge, they are 8 8, 2011, and proper opinion testimony under Stores, Inc., 623 F.3d 770, 9 September 2, 778 (9th Cir. 2010) (listing FRE 701. 10 2011. ... In bias and untimeliness as 11 general, my factors indicating Ms. Camacho has also established 12 analysis untrustworthiness); Olender the foundational facts and requisite 13 showed exactly v. United States, 210 F.2d personal knowledge to declare to 14 the opposite of 795, 801 (9th Cir. 1954) the matters stated in her 15 what CNS ("reports based upon general declaration. (Camacho Decl. ¶ 1 16 investigations and upon ("I am responsible for overseeing claims. The 17 overwhelming information gleaned second the operations . . . of the Ventura 18 bulk (more than hand from random sources Superior Court and the 19 75%) of new [CPAs] . . . . I have personal must be excluded"). 20 complaints Moreover, no evidence is knowledge of the facts stated in 21 offered corroborating the were received, this Declaration . . . . ").) (FRE 22 processed and underlying record or showing 104(b); 602.) 23 it was made with firsthand sent to the 24 THE RECORDS FALL knowledge or actually Media Bin on WITHIN EXCEPTIONS TO 25 the same or indicated what it purported to **HEARSAY:** 26 reflect; it should therefore be next day." **Public Records (FRE 803(A))** 27 excluded. United States v. The Ventura Superior Court 28

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Chu Kong Yin, 935 F.2d 990, 998-999 (9th Cir. 1991) (public records inadmissible where government failed to show record was prepared by persons with firsthand knowledge). Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602). The evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the assertions made, specifically whether she personally witnessed any complaints being placed in the Media Bin. Kemp v. Balboa, 23 F.3d 211, 213 (8th Cir. 1994) (error to allow witness to testify to events described in medical records where she had no personal knowledge of said events). Irrelevant (FRE 402); Insufficiently Probative (FRE

records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS) are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . . " As a result, they are admissible as a public record. (See FRE 803(8)(A); see also United States v. Loera, 923 F.2d 725, 730 (9th Cir. 1991) (affirming trial court's admission of traffic court docket entries as falling within scope of public records exception); G. Weissenberger, Weissenberger's Fed. Evid., § 803.42 (discussing public records exception and providing "[e]xamples of evidence admissible as proof of the activities of official agencies," including "docket and journal entries of courts"). The CCMS records "are uncomplicated and concern factual matters involving

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403). The evidence is irrelevant and inadmissible because it does not show that the particular complaint was placed in the media bin on a particular date; rather it only shows that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. **Improper Opinion Testimony** (FRE 701). The evidence is inadmissible as improper lay opinion testimony because Ms. Camacho offers an opinion not rationally based on her own personal perception, and thus is not helpful to a clear understanding of her

the internal function of the particular agency, they are likely to be accurate and thus they qualify for admission [as a public record]." Weissenberger's Fed. Evid., § 803.42.)

As the party opposing the introduction of the public record, CNS "bears the burden of coming forward with enough negative factors to persuade a court that a report should not be admitted." Johnson v. City of Pleasanton, 982 F.2d 350, 352-53 (9th Cir. 1992). Because the CCMS records fall within the public records exception, the Court "is entitled to presume that the public records are trustworthy." Id. The public records exception "is premised on the assumption that public officials perform their duties properly without motive or interest other than to submit accurate and fair reports." *Id.* CNS identified two "factors" to substantiate its

testimony or the

1 determination of a fact in objection, but they are insufficient 2 issue. FRE 701(a), (b). to overcome the presumption that 3 **Unsubstantiated Summary** the CCMS records are trustworthy. (FRE 1006). The evidence is *First*, the date upon which Ms. 5 inadmissible because Camacho subsequently reviewed 6 Defendant has not provided the underlying CCMS records is 7 Courthouse News with an irrelevant to the trustworthiness of 8 opportunity to examine the the records themselves. Second, 9 underlying writings or Ms. Camacho is not required to 10 recordings. have personally observed each 11 event or activity reported into 12 CCMS for the public records 13 exception to apply. To so require 14 would undermine the purposes for 15 the exception—for example, it 16 would be "burdensome and 17 inconvenient to call public 18 officials to appear in the myriad of 19 cases in which their testimony 20 might be required," Olender v. 21 United States, 210 F.2d 795, 801 22 (1954)—and the appropriate 23 assumption underlying the 24 exception that public officials 25 perform their duties properly. 26 Johnson v. City of Pleasanton, 982 27 F.2d 350, 352-53 (9th Cir. 1992). 28

| 1                               | Moreover, it would improperly        |
|---------------------------------|--------------------------------------|
| 2                               | shift the burden to the proponent    |
| 3                               | of the record. Cf. id. at 352-53.    |
| 4                               |                                      |
| 5                               | The cases CNS cites in support of    |
| 6                               | its objection are inapposite, either |
| 7                               | because they are based upon an       |
| 8                               | exception other than FRE             |
| 9                               | 803(6)(A), or are factually          |
| 10                              | distinguishable. See Sullivan v.     |
| 11                              | Dollar Tree Stores, Inc., 623 F.3d   |
| 12                              | 770, 778 (9th Cir. 2010) (holding    |
| 13                              | district court properly refused to   |
| 14                              | consider a Department of Labor       |
| 15                              | report under Rule 803(8)(C)          |
| 16                              | (records setting forth factual       |
| 17                              | findings from an investigation       |
| 18                              | made pursuant to authority granted   |
| 19                              | by law) as "not trustworthy,"        |
| 20                              | because the report, offered by a     |
| <ul><li>21</li><li>22</li></ul> | plaintiff in a civil case, was       |
|                                 | missing exhibits and appeared to     |
| <ul><li>23</li><li>24</li></ul> | be a draft); Olender, 210 F.2d at    |
|                                 | 801 (ruling private individuals'     |
| 25                              | statements made to a public entity   |
| 26                              | and contained in the entity's        |
| <ul><li>27</li><li>28</li></ul> | record were inadmissible hearsay);   |
| 20                              |                                      |

| 1  | United States v. Chu Kong Yin,                  |
|----|-------------------------------------------------|
| 2  | 935 F.2d 990 (9th Cir. 1991)                    |
| 3  | (ruling that "Certificates of Trial"            |
| 4  | from Hong Kong that were created                |
| 5  | between seven and twenty years                  |
| 6  | after the incidents in question took            |
| 7  | place and at the request of the INS             |
| 8  | lacked trustworthiness under the                |
| 9  | circumstances and thus were                     |
| 10 | inadmissible as a public record).               |
| 11 | In comparison, Ventura Superior                 |
| 12 | Court's records set forth "the                  |
| 13 | activities of the office or agency"             |
| 14 | (FRE 803(8)(A)); the CPAs                       |
| 15 | generate the information contained              |
| 16 | within the records; and the                     |
| 17 | record's creation occurs either at              |
| 18 | or near the time of the receipt of              |
| 19 | the information. (See Camacho                   |
| 20 | Decl. ¶ 13-14, 22; see also                     |
| 21 | Declaration of Cheryl Kanatzar                  |
| 22 | ("Kanatzar Decl."), ¶ 14.) Thus,                |
| 23 | CNS's inapposite cases do not                   |
| 24 | negate the conclusion that Ventura              |
| 25 | Superior Court's CCMS records                   |
| 26 | are public records and, as such,                |
| 27 | admissible.                                     |
| 28 | Def's Response to Pltf's Evidentiary Objections |

| 1  | Records of a Regularly                          |
|----|-------------------------------------------------|
| 2  | <b>Conducted Activity (FRE 803(6)).</b>         |
| 3  | The CCMS records, which are                     |
| 4  | created and kept in the regular                 |
| 5  | course of Ventura Superior                      |
| 6  | Court's business, are also                      |
| 7  | admissible under the business                   |
| 8  | records exception to the hearsay                |
| 9  | rule. (FRE 803(6).) As                          |
| 10 | established in the Camacho                      |
| 11 | Declaration, and further explained              |
| 12 | in the Kanatzar Declaration, Ms.                |
| 13 | Camacho oversees the Court                      |
| 14 | Processing Assistants (the                      |
| 15 | "CPAs"), who are responsible for                |
| 16 | receiving, filing, and processing in            |
| 17 |                                                 |
| 18 | excess of 151,000 separate filings              |
| 19 | each year in the CCMS.                          |
| 20 | (Camacho Decl. ¶ 1; Kanatzar                    |
| 21 | Decl. ¶ 5, 6.) The CPAs are                     |
| 22 | responsible for fully opening new               |
| 23 | files and are required to enter the             |
| 24 | file's information into the CCMS                |
| 25 | before a file number can be                     |
| 26 | generated. (See Kanatzar Decl.                  |
| 27 | ¶ 14.) As such, the CCMS records                |
| 28 | are created in the regular course of            |
| 20 | Dof's Pagnanga to Pltf's Evidentiary Objections |

1 the CPAs' regular business 2 activities, and it is a regular 3 practice of Ventura Superior Court to make such CCMS records. 5 6 Summaries (FRE 1006). 7 Ms. Camacho's testimony 8 summarizes the contents of 147 9 CCMS case files and 10 accompanying documents—a 11 voluminous set of records that 12 could not conveniently be 13 examined in court and are 14 therefore admissible as a 15 summary. (FRE 1006.) To the 16 extent CNS desires to review the 17 underlying documents, the 18 originals or duplicates will be 19 made available for examination or 20 copying at a reasonable time and 21 place. 22 23 THE EVIDENCE IS RELEVANT (FRE 402). 24 Ms. Camacho's declaration 25 establishes that Ventura Superior 26 Court makes newly filed civil 27 complaints publicly available 28

| 1  | within a reasonable time from the     |
|----|---------------------------------------|
| 2  | complaint's receipt. Relevant         |
| 3  | evidence is "evidence having any      |
| 4  | tendency to make the existence of     |
| 5  | any fact" of consequence to the       |
| 6  | case more or less probable than it    |
| 7  | would be without the evidence.        |
| 8  | (FRE 401, emphasis added).            |
| 9  |                                       |
| 10 | Ms. Camacho's statements are          |
| 11 | relevant because they rebut the       |
| 12 | type of delay to access of public     |
| 13 | records that CNS claims.              |
| 14 | Moreover, CNS claims the alleged      |
| 15 | delays reflect the official policy of |
| 16 | the clerk's office and thus, Mr.      |
| 17 | Planet is acting under the color of   |
| 18 | state law within the meaning of 42    |
| 19 | U.S.C. § 1983. (Compl. ¶ 8.) But      |
| 20 | the fact that Ventura Superior        |
| 21 | Court's records show that its         |
| 22 | policy (and practice) is to place the |
| 23 | records in the Media Bin on the       |
| 24 | dates reflected negates CNS's         |
| 25 | section 1983 claim. See Polk          |
| 26 | County v. Dodson, 454 U.S. 312,       |
| 27 | 326, 102 S.Ct. 445, 70 L.Ed.2d        |
| 28 |                                       |

| 1  | 509 (1981) (holding official policy |
|----|-------------------------------------|
| 2  | must be "the moving force of the    |
| 3  | constitutional violation" in order  |
| 4  | to establish the liability under    |
| 5  | section 1983); see also Rizzo v.    |
| 6  | Goode, 423 U.S. 362, 370-77, 96     |
| 7  | S.Ct. 598, 46 L.Ed.2d 561 (1976)    |
| 8  | (general allegation of              |
| 9  | administrative negligence fails to  |
| 10 | state a constitutional claim        |
| 11 | cognizable under section 1983).     |
| 12 |                                     |
| 13 | Finally, CNS's claim that the       |
| 14 | evidence is irrelevant because it   |
| 15 | "does not show that the particular  |
| 16 | complaint was placed in the media   |
| 17 | bin on a particular date" lacks     |
| 18 | merit. See United States v. Curtin, |
| 19 | 489 F.3d 935, 943 (9th Cir. 2007)   |
| 20 | ("To be 'relevant,' evidence need   |
| 21 | not be conclusive proof of a fact   |
| 22 | sought to be proved, or even        |
| 23 | strong evidence of the same. All    |
| 24 | that is required is a 'tendency' to |
| 25 | establish the fact at issue.")      |
| 26 | CNS is claiming a constitutional    |
| 27 | right to same-day access to newly   |
| 28 |                                     |

| 1  | filed complaints, and this evidence             |
|----|-------------------------------------------------|
| 2  | is directly relevant to that claim.             |
| 3  | CNS is not claiming a                           |
| 4  | constitutional right to access a                |
| 5  | complaint prior to the time                     |
| 6  | Ventura Superior Court has fully                |
| 7  | processed the complaint. Even if                |
| 8  | it were, however, ample other                   |
| 9  | evidence demonstrates why a                     |
| 10 | complaint cannot be made                        |
| 11 | available prior to its being fully              |
| 12 | processed. (See Kanatzar Decl.                  |
| 13 | ¶¶ 32-34.)                                      |
| 14 |                                                 |
| 15 | THE PROBATIVE VALUE OF                          |
| 16 | THE EVIDENCE IS NOT OUTWEIGHED BY DANGER        |
| 17 | OF UNFAIR PREJUDICE (FRE                        |
| 18 | 403).                                           |
| 19 | CNS misstates the rule when it                  |
| 20 | claims Ms. Camacho's declaration                |
| 21 | is "insufficiently probative" to be             |
| 22 | admissible. FRE 403 provides that               |
| 23 | "evidence may be excluded if its                |
| 24 | probative value is substantially                |
| 25 | outweighed by the danger of unfair              |
| 26 | prejudice, confusion of the issues,             |
| 27 | or misleading the jury, or by                   |
| 28 | considerations of undue delay,                  |
|    | Def's Response to Pitf's Evidentiary Objections |

| 1                                                     |                  |                                 | waste of time, or needless                 |
|-------------------------------------------------------|------------------|---------------------------------|--------------------------------------------|
| 2                                                     |                  |                                 | presentation of cumulative                 |
| 3                                                     |                  |                                 | evidence." Here, CNS offers no             |
| 4                                                     |                  |                                 | facts establishing any of these            |
| 5                                                     |                  |                                 | factors that would outweigh the            |
| 6                                                     |                  |                                 | probative value of Ms. Camacho's           |
| 7                                                     |                  |                                 | declaration. The evidence is               |
| 8                                                     |                  |                                 | admissible.                                |
| 9                                                     | Camacho Decl.    | Hearsay (FRE 802); Not          | THE EVIDENCE IS NOT                        |
| 10                                                    | ¶ 7 & Ex. B:     | Subject to Any Exception        | HEARSAY: The evidence objected to does not |
| 11                                                    | "For each new    | (FRE 803). This evidence        | reflect an out-of-court statement;         |
| 12                                                    | unlimited        | comprises, relates, or is based | rather, Ms. Camacho is describing          |
| 13                                                    | general civil    | upon an out-of- court           | events based upon her own                  |
| 14                                                    | complaint, I     | statement offered to prove      | personal perceptions. It is not            |
| 15                                                    | reviewed the     | the truth of the matter         | hearsay.                                   |
| 16                                                    | CCMS Records     | asserted and is therefore       |                                            |
| 17                                                    | Management—      | inadmissible as hearsay. FRE    | Ms. Camacho also has established           |
| 18                                                    | Location         | 801, 802. It is not subject to  | the foundational facts and requisite       |
| 19                                                    | History screen   | either the business or public   | personal knowledge to declare to           |
| <ul><li>20</li><li>21</li><li>22</li><li>23</li></ul> | for the matter.  | records exceptions because it   | the matters stated in her                  |
|                                                       | That screen      | lacks any indicia of            | declaration. (Camacho Decl. ¶ 1.)          |
|                                                       | shows the        | trustworthiness. FRE 803(6),    |                                            |
| 23                                                    | location of the  | (8)(C). It is untrustworthy     | THE RECORDS FALL                           |
| 24                                                    | case file at any | because Ms. Camacho made        | WITHIN EXCEPTIONS TO HEARSAY:              |
| 25                                                    | particular point | her analysis underlying the     | Public Records (FRE 803(A)).               |
| 26                                                    | in time          | evidence during the course of   | The Ventura Superior Court                 |
| 27                                                    | following its    | litigation, more than two       | records to which Ms. Camacho               |
| 28                                                    |                  |                                 |                                            |

| 1                          | processing date. | months after the events in        |  |
|----------------------------|------------------|-----------------------------------|--|
| 2                          | For example,     | question, and without her or      |  |
| 3 4                        | the attached     | her subordinate specifically      |  |
|                            | screen shot      | confirming the physical           |  |
| 5                          | shows the        | location of any complaints.       |  |
| 6                          | Location         | See Sullivan, 623 F.3d at         |  |
| 7                          | History page     | 778; <i>Olender</i> , 210 F.2d at |  |
| 8                          | for City         | 801. Moreover, no evidence        |  |
| 9                          | National Bank    | is offered corroborating the      |  |
| 10                         | v. Star          | underlying record or showing      |  |
| 11                         | Marketing &      | it was made with firsthand        |  |
| 12                         | Media Inc., one  | knowledge or actually             |  |
| 13                         | of the unlimited | indicated what it purported to    |  |
| 14<br>15<br>16<br>17<br>18 | general civil    | reflect; it should therefore be   |  |
|                            | complaints filed | excluded. Chu Kong Yin, 935       |  |
|                            | on August 8,     | F.2d at 998-999.                  |  |
|                            | 2011: [image]    | Lacks Foundation (FRE             |  |
|                            | A full-page      | 104(b)); Lacks Personal           |  |
| 19                         | copy of this     | Knowledge (FRE 602). The          |  |
| 20                         | screen shot of   | evidence is inadmissible          |  |
| 21                         | the Location     | because Ms. Camacho lacks         |  |
| 22                         | History page     | any foundation for or             |  |
| 23                         | for City         | personal knowledge of the         |  |
| 24                         | National Bank    | assertions made, specifically     |  |
| 25                         | v. Star          | whether she personally            |  |
| 26                         | Marketing &      | witnessed any complaints          |  |
| 27                         | Media Inc. is    | being placed in the Media         |  |
| 28                         |                  |                                   |  |

refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See*Ventura Superior Court's response re Camacho Decl. ¶ 4.

## Records of a Regularly Conducted Activity (FRE 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).)

attached hereto as Exhibit B."

Bin. Kemp, 23 F.3d at 213. <u>Irrelevant (FRE 402);</u> **Insufficiently Probative (FRE** 403). The evidence is irrelevant and inadmissible because it does not show that the particular complaint in question was placed in the media bin on a particular date; rather it only shows that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully processed, but fails to establish why a complaint could not be made available

### THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also* 

| 1  |                        | before it is fully processed,   | Rizzo, 423 U.S. at 370-377.                 |
|----|------------------------|---------------------------------|---------------------------------------------|
| 2  |                        | and as such, is irrelevant.     | Finally, Ms. Camacho's statements           |
| 3  |                        |                                 | do not need to establish why a              |
| 4  |                        |                                 | complaint cannot be made                    |
| 5  |                        |                                 | available prior to its being fully          |
| 6  |                        |                                 | processed, but ample other                  |
| 7  |                        |                                 | evidence does. (See Kanatzar                |
| 8  |                        |                                 | Decl. ¶¶ 32-34.)                            |
| 9  |                        |                                 |                                             |
| 10 |                        |                                 | THE PROBATIVE VALUE OF                      |
| 11 |                        |                                 | THE EVIDENCE IS NOT OUTWEIGHED BY DANGER    |
| 12 |                        |                                 | OF UNFAIR PREJUDICE.                        |
| 13 |                        |                                 | (FRE 403.) CNS offers no facts establishing |
| 14 |                        |                                 | CNS offers no facts establishing            |
| 15 |                        |                                 | any of the above factors that would         |
| 16 |                        |                                 | outweigh the probative value of             |
| 17 |                        |                                 | Ms. Camacho's declaration and               |
| 18 |                        |                                 | thus the evidence is admissible.            |
| 19 | Camacho Decl.          | Hearsay (FRE 802); Not          | THE EVIDENCE IS NOT HEARSAY:                |
| 20 | <u>¶ 8:</u> "The type- | Subject to Any Exception        | The evidence objected to does not           |
| 21 | written notes at       | (FRE 803). This evidence        | reflect an out-of-court statement;          |
| 22 | the bottom of          | comprises, relates, or is based | rather, Ms. Camacho is describing           |
| 23 | the screen shot        | upon an out-of- court           | events based upon her own                   |
| 24 | are notes I            | statement offered to prove      | personal perceptions. It is not             |
| 25 | inputted as I          | the truth of the matter         | hearsay.                                    |
| 26 | evaluated the          | asserted and is therefore       | -                                           |
| 27 | date on which          | inadmissible as hearsay. FRE    | Ms. Camacho also has established            |
| 28 | each case was          | 801, 802. It is not subject to  | the foundational facts and requisite        |
|    |                        |                                 |                                             |

received, processed, and sent to the Media Bin." Camacho Decl. ¶ 10: "The entries below the Case Header box reflect the Location History for that particular file on any given date after it has been processed and entered into CCMS."

either the business or public records exceptions because it lacks any indicia of trustworthiness. FRE 803(6), (8)(C). It is untrustworthy because Ms. Camacho made her analysis underlying the evidence during the course of litigation, more than two months after the event in question, and without her or her subordinate specifically confirming the physical location of any complaints. See Sullivan, 623 F.3d at 778; Olender, 210 F.2d at 801. Moreover, no evidence is offered corroborating the underlying record or showing it was made with firsthand knowledge or actually indicated what it purported to reflect; it should therefore be excluded. Chu Kong Yin, 935 F.2d at 998-999. Lacks Foundation (FRE

personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See*Ventura Superior Court's response re Camacho Decl. ¶ 4.

104(b)); Lacks Personal

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Knowledge (FRE 602). The evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the assertions made, specifically whether she personally witnessed any complaints being placed in the Media Bin. *Kemp*, 23 F.3d at 213 (8th Cir. 1994) (error to allow witness to testify to events described in medical records where she had no personal knowledge of said events). Irrelevant (FRE 402); Insufficiently Probative (FRE 403). The evidence is irrelevant and inadmissible because it does not show when a particular complaint was placed in the Media Bin; rather it only shows that those complaints ought to

## Records of a Regularly Conducted Activity (FRE 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).)

### THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *Curtin*, 489 F.3d at 943.

Ms. Camacho's statements are relevant because they rebut the

have been placed in the

Media Bin. FRE 402. Absent

27

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some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully processed, but fails to establish why a complaint could not be made available for review before it is fully processed, and as such, is irrelevant. FRE 402.

type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also Rizzo*, 423 U.S. at 370-377.

Finally, Ms. Camacho's statements do not need to establish why a complaint cannot be made available prior to its being fully processed, but ample other evidence does. (*See* Kanatzar Decl. ¶¶ 32-34.)

#### THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)

CNS offers no facts establishing any of the above factors that would outweigh the probative value of Ms. Camacho's declaration and thus the evidence is admissible.

Camacho Decl. Hearsay (FRE 802); Not ¶ 11: "As the Subject to Any Exception (FRE 803). This evidence above screen shot shows, comprises, relates, or is based City National upon an out-of-court statement offered to prove Bank v. Star Marketing & the truth of the matter Media Inc. was asserted and is therefore inadmissible as hearsay. FRE received and filed on August 801, 802. It is not subject to 8, 2011. It was either the business or public processed and records exceptions because it sent to the lacks any indicia of Media Bin on trustworthiness. FRE 803(6), August 8, 2011 (8)(C). It is untrustworthy because Ms. Camacho made — the same day her analysis underlying the it was received. evidence during the course of In accordance with our litigation, more than two months after the event in standard practice, the file question, and without her or remained in the her subordinate specifically confirming the physical Media Bin in the Records location of any complaints. Department for See Sullivan, 623 F.3d at ten days and 778; *Olender*, 210 F.2d at was then 801. Moreover, no evidence

### THE EVIDENCE IS NOT HEARSAY:

The evidence objected to does not reflect an out-of-court statement; rather, Ms. Camacho is describing events based upon her own personal perceptions. It is not hearsay.

Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)

## THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY:

Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are

| 1  | removed from   | is offered corroborating the       | admissible as a public record. (See |
|----|----------------|------------------------------------|-------------------------------------|
| 2  | the Media Bin  | underlying record or showing       | FRE 803(8)(A).)                     |
| 3  | and shelved in | it was made with firsthand         |                                     |
| 4  | Records."      | knowledge or actually              | CNS's cases are inapposite and its  |
| 5  |                | indicated what it purported to     | "factors" are insufficient to       |
| 6  |                | reflect; it should therefore be    | overcome the presumption that the   |
| 7  |                | excluded. Chu Kong Yin, 935        | records are trustworthy. See        |
| 8  |                | F.2d at 998-999.                   | Ventura Superior Court's response   |
| 9  |                | Lacks Foundation (FRE              | re Camacho Decl. ¶ 4.               |
| 10 |                | 104(b)); Lacks Personal            | Records of a Regularly              |
| 11 |                | Knowledge (FRE 602). The           | Conducted Activity (FRE             |
| 12 |                | evidence is inadmissible           | <u>803(6)).</u>                     |
| 13 |                | because Ms. Camacho lacks          | The CCMS records, which are         |
| 14 |                | any foundation for or              | created and kept in the regular     |
| 15 |                | personal knowledge of the          | course of business, are also        |
| 16 |                | assertions made, specifically      | admissible under the business       |
| 17 |                | whether she personally             | records exception to the hearsay    |
| 18 |                | witnessed any complaints           | rule. (FRE 803(6).)                 |
| 19 |                | being placed in the Media          | THE EVIDENCE IS                     |
| 20 |                | Bin. <i>Kemp</i> , 23 F.3d at 213. | RELEVANT (FRE 402).                 |
| 21 |                | Irrelevant (FRE 402);              | Ms. Camacho's statements            |
| 22 |                | Insufficiently Probative (FRE      | establish that Ventura Superior     |
| 23 |                | 403). The evidence is              | Court makes newly filed civil       |
| 24 |                | irrelevant and inadmissible        | complaints publicly available       |
| 25 |                | because it does not show that      | within a reasonable amount of       |
| 26 |                | the particular complaint in        | time from the complaint's receipt.  |
| 27 |                | question was placed in the         | Relevant evidence is "evidence      |
| 28 |                |                                    |                                     |

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media bin on a particular date; rather it only shows that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully processed, but fails to establish why a complaint could not be made available before it is fully processed, and as such, is irrelevant. FRE 402.

having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also Rizzo*, 423 U.S. at 370-377.

Finally, Ms. Camacho's statements do not need to establish why a complaint cannot be made available prior to its being fully processed, but ample other evidence does. (*See* Kanatzar

| 1  |                 |                                 | Decl. ¶¶ 32-34.)                                |
|----|-----------------|---------------------------------|-------------------------------------------------|
| 2  |                 |                                 | " "                                             |
| 3  |                 |                                 | THE PROBATIVE VALUE OF                          |
| 4  |                 |                                 | THE EVIDENCE IS NOT OUTWEIGHED BY DANGER        |
| 5  |                 |                                 | OF UNFAIR PREJUDICE.                            |
| 6  |                 |                                 | (FRE 403.)                                      |
| 7  |                 |                                 | CNS offers no facts establishing                |
| 8  |                 |                                 | any of the above factors that would             |
| 9  |                 |                                 | outweigh the probative value of                 |
| 10 |                 |                                 | Ms. Camacho's declaration and                   |
| 11 |                 |                                 | thus the evidence is admissible.                |
| 12 | Camacho Decl.   | Hearsay (FRE 802); Not          | THE EVIDENCE IS NOT HEARSAY:                    |
| 13 | ¶ 12 & Ex. C:   | Subject to Any Exception        | The evidence objected to does not               |
| 14 | "For each case  | (FRE 803). This evidence        | reflect an out-of-court statement;              |
| 15 | that was filed  | comprises, relates, or is based | rather, Ms. Camacho is describing               |
| 16 | but not sent to | upon an out-of-court            | events based upon her own                       |
| 17 | the Media Bin   | statement offered to prove      | personal perceptions. It is not                 |
| 18 | on the same     | the truth of the matter         | hearsay.                                        |
| 19 | day, I reviewed | asserted and is therefore       |                                                 |
| 20 | the Case        | inadmissible as hearsay. FRE    | Ms. Camacho also has established                |
| 21 | History screen  | 801, 802. It is not subject to  | the foundational facts and requisite            |
| 22 | in CCMS to      | either the business or public   | personal knowledge to declare to                |
| 23 | determine when  | records exceptions because it   | the matters stated in her                       |
| 24 | the file was    | lacks any indicia of            | declaration. (Camacho Decl. ¶ 1.)               |
| 25 | processed. For  | trustworthiness. FRE            |                                                 |
| 26 | example, the    | 803(6),(8)(C). It is            |                                                 |
| 27 | following       | untrustworthy because Ms.       |                                                 |
| 28 | screen shot     | Camacho made her analysis       |                                                 |
|    |                 |                                 | Def's Response to Pltf's Evidentiary Objections |

underlying the evidence shows the Location during the course of History page litigation, more than two months after the event in for Power question, and without her or Gomez v. her subordinate specifically LaCouture, a confirming the physical case that was received and location of any complaints. deemed filed on See Sullivan, 623 F.3d at August 8, 2011, 778; Olender, 210 F.2d at 801. Moreover, no evidence but was not is offered corroborating the sent to the Media Bin until underlying record or showing August 9, 2011: it was made with firsthand [image] A fullknowledge or actually page copy of indicated what it purported to this screen shot reflect; it should therefore be excluded. Chu Kong Yin, 935 of the Location History page F.2d at 998for Power 999. Lacks Foundation (FRE Gomez v. 104(b)); Lacks Personal LaCouture is attached hereto Knowledge (FRE 602). The as Exhibit C." evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See*Ventura Superior Court's response re Camacho Decl. ¶ 4.

## Records of a Regularly Conducted Activity (FRE 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also

assertions made, specifically whether she personally witnessed any complaints being placed in the Media Bin. Kemp, 23 F.3d at 213. Irrelevant (FRE 402); **Insufficiently Probative (FRE** 403). The evidence is irrelevant and inadmissible because it does not show that the particular complaint in question was placed in the media bin on a particular date; rather it only shows that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a

admissible under the business records exception to the hearsay rule. (FRE 803(6).)

### THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims.

Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place

| 1  |                | complaint has been fully        | the records in the Media Bin on                       |
|----|----------------|---------------------------------|-------------------------------------------------------|
| 2  |                | processed, but fails to         | the dates reflected negates CNS's                     |
| 3  |                | establish why a complaint       | section 1983 claim. See Polk                          |
| 4  |                | could not be made available     | County, 454 U.S. at 326; see also                     |
| 5  |                | before it is fully processed,   | Rizzo, 423 U.S. at 370-377.                           |
| 6  |                | and as such, is irrelevant.     |                                                       |
| 7  |                | FRE 402.                        | Finally, Ms. Camacho's statements                     |
| 8  |                |                                 | do not need to establish why a                        |
| 9  |                |                                 | complaint cannot be made                              |
| 10 |                |                                 | available prior to its being fully                    |
| 11 |                |                                 | processed, but ample other                            |
| 12 |                |                                 | evidence does. (See Kanatzar                          |
| 13 |                |                                 | Decl. ¶¶ 32-34.)                                      |
| 14 |                |                                 | 2 <b>co</b> n.       2 2 3 m)                         |
| 15 |                |                                 | THE PROBATIVE VALUE OF THE EVIDENCE IS NOT            |
| 16 |                |                                 | OUTWEIGHED BY DANGER                                  |
| 17 |                |                                 | OF UNFAIR PREJUDICE.                                  |
| 18 |                |                                 | (FRE 403.) CNS affors no facts establishing           |
| 19 |                |                                 | CNS offers no facts establishing                      |
| 20 |                |                                 | any of the above factors that would                   |
| 21 |                |                                 | outweigh the probative value of                       |
| 22 |                |                                 | Ms. Camacho's declaration and                         |
| 23 |                | (                               | thus the evidence is admissible.  THE EVIDENCE IS NOT |
| 24 | Camacho Decl.  | Hearsay (FRE 802); Not          | HEARSAY:                                              |
| 25 | ¶ 13 & Ex. D:  | Subject to Any Exception        | The evidence objected to does not                     |
| 26 | "The Case      | (FRE 803). This evidence        | reflect an out-of-court statement;                    |
| 27 | History screen | comprises, relates, or is based | rather, Ms. Camacho is describing                     |
| 28 | in the system  | upon an out-of- court           | events based upon her own                             |
|    |                |                                 | Daf's Dagnangs to Diff's Evidentians Objections       |

statement offered to prove shows even the truth of the matter more detail, including each asserted and is therefore inadmissible as hearsay. FRE document that was processed 801, 802. It is not subject to along with the either the business or public new complaint. records exceptions because it Thus, for Power lacks any indicia of trustworthiness. FRE 803(6), Gomez v. LaCouture, a (8)(C). It is untrustworthy complaint, because Ms. Camacho made declaration for her analysis underlying the evidence during the course of court assignment, and litigation, more than two civil case cover months after the event in question, and without her or sheet were processed as her subordinate specifically part of the confirming the physical initial filing of location of any complaints. See Sullivan, 623 F.3d at the complaint. Because the 778; Olender, 210 F.2d at complaint was 801. Moreover, no evidence is offered corroborating the received on August 8, all underlying record or showing documents have it was made with firsthand a filed date of knowledge or actually indicated what it purported to August 8 as

personal perceptions. It is not hearsay.

Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See* 

well. However, reflect; it should therefore be by placing my excluded. Chu Kong Yin, 935 cursor over the F.2d at 998person icon on 999. the screen I am Lacks Foundation (FRE 104(b)); Lacks Personal determine that Knowledge (FRE 602). The the documents evidence is inadmissible because Ms. Camacho lacks backdated. A any foundation for or personal knowledge of the assertions made, specifically opens up to show the actual whether she personally witnessed this particular date and time the documents complaint being placed in the were processed, Media Bin. Kemp, 23 F.3d at not just the date 213. Irrelevant (FRE 402); deemed filed: Insufficiently Probative (FRE [image] A full-403). The evidence is page copy of irrelevant and inadmissible this screen shot because it does not show that the particular complaint cited was placed in the media bin *LaCouture* is on a particular date; rather it attached hereto only shows that those as Exhibit D." complaints ought to have

Ventura Superior Court's response re Camacho Decl. ¶ 4.

#### Records of a Regularly **Conducted Activity (FRE** 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).)

#### THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having any tendency to make the existence of any fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); see Curtin, 489 F.3d at 943.

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Camacho Decl. ¶ 14: "All the documents for the *Power* Gomez v. LaCouture file were processed on August 9, 2011, at 8:16 a.m. essentially the first thing the next morning after it was received. And as the prior screen shot shows, the file was sent to the Media Bin that same day."

been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully processed, but fails to establish why a complaint could not be made available before it is fully processed, and as such, is irrelevant. FRE 402.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also Rizzo*, 423 U.S. at 370-377.

Finally, Ms. Camacho's statements do not need to establish why a complaint cannot be made available prior to its being fully processed, but ample other evidence does. (*See* Kanatzar Decl. ¶¶ 32-34.)

#### THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)

CNS offers no facts establishing any of the above factors that would outweigh the probative value of

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Camacho Decl. Hearsay (FRE 802); Not ¶¶ 15-21, Subject to Any Exception relating Ms. (FRE 803). This evidence comprises, relates, or is based Camacho's analysis of all upon an out-of- court new unlimited statement offered to prove general civil the truth of the matter complaints filed asserted and is therefore inadmissible as hearsay. FRE on all court days between 801, 802. It is not subject to either the business or public August 8, 2011, and September records exceptions because it 2, 2011: lacks any indicia of "15. I trustworthiness. FRE 803(6), (8)(C). It is untrustworthy conducted an identical because Ms. Camacho made her analysis underlying the analysis for all evidence during the course of new unlimited general civil litigation, more than two complaints filed months after the events in on all court question, and without her or her subordinate specifically days between August 8, 2011, confirming the physical and September location of any complaints. 2, 2011. My See Sullivan, 623 F.3d at

Ms. Camacho's declaration and thus the evidence is admissible.

### THE EVIDENCE IS NOT HEARSAY:

The evidence objected to does not reflect an out-of-court statement; rather, Ms. Camacho is describing events based upon her own personal perceptions. It is not hearsay.

Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets

| 1  | analysis       | 778; Olender, 210 F.2d at          | forth "the activities of the office or         |
|----|----------------|------------------------------------|------------------------------------------------|
| 2  | revealed that  | 801. Moreover, no evidence         | agency " As a result, they are                 |
| 3  | 147 new        | is offered corroborating the       | admissible as a public record. (See            |
| 4  | unlimited      | underlying record or showing       | FRE 803(8)(A).)                                |
| 5  | general civil  | it was made with firsthand         |                                                |
| 6  | complaints     | knowledge or actually              | CNS's cases are inapposite and its             |
| 7  | were filed by  | indicated what it purported to     | "factors" are insufficient to                  |
| 8  | Ventura        | reflect; it should therefore be    | overcome the presumption that the              |
| 9  | Superior Court | excluded. Chu Kong Yin, 935        | records are trustworthy. See                   |
| 10 | during that    | F.2d at 998-999.                   | Ventura Superior Court's response              |
| 11 | time.          | Lacks Foundation (FRE              | re Camacho Decl. ¶ 4.                          |
| 12 | 16. Of those   | 104(b)); Lacks Personal            |                                                |
| 13 | 147 new        | Knowledge (FRE 602). The           | Records of a Regularly Conducted Activity (EDE |
| 14 | unlimited      | evidence is inadmissible           | Conducted Activity (FRE 803(6)).               |
| 15 | general civil  | because Ms. Camacho lacks          | The CCMS records, which are                    |
| 16 | complaints, 47 | any foundation for or              | created and kept in the regular                |
| 17 | of them were   | personal knowledge of the          | course of business, are also                   |
| 18 | received,      | assertions made, specifically      | admissible under the business                  |
| 19 | processed and  | whether she personally             | records exception to the hearsay               |
| 20 | placed in the  | witnessed any complaints           | rule. (FRE 803(6).)                            |
| 21 | Media Bin all  | being placed in the Media          |                                                |
| 22 | on the same    | Bin. <i>Kemp</i> , 23 F.3d at 213. | Summaries (FRE 1006).                          |
| 23 | day.           | Irrelevant (FRE 402);              | Ms. Camacho's testimony                        |
| 24 | 17. Fifty-four | Insufficiently Probative (FRE      | summarizes the contents of 147                 |
| 25 | (54) of them   | 403). The evidence is              | CCMS case files and                            |
| 26 | were received  | irrelevant and inadmissible        | accompanying documents—a                       |
| 27 | on one day and | because it does not show           | voluminous set of records that                 |
| 28 |                |                                    |                                                |

processed and placed in the Media Bin on the next day. 18. Another 18 of them were processed and placed in the Media Bin within two days of receipt. 19. Seventeen (17) of the 147 new unlimited general civil complaints needed to be directed to a judicial officer immediately, or were transferred in from a Superior Court in another county. 20. Seven (7) of them did not

when any complaints were placed in the Media Bin; rather it only shows that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully processed, but fails to establish why a complaint could not be made available before it is fully processed, and as such, is irrelevant. FRE 402. Furthermore, the evidence purports to link the availability of a particular complaint to whether or not a complaint has been fully

could not conveniently be examined in court and are therefore admissible as a summary. (FRE 1006.) To the extent CNS desires to review the underlying documents, the originals or duplicates will be made available for examination or copying at a reasonable time and place.

### THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

get placed in the Media Bin due to an inadvertent clerical error. 21. Of the remaining four (4) files, three filings were backdated five (5) days and one filing was backdated 10 days. These files had delays that were due either to being received and couriered from the Simi Valley branch, or from an anomaly in processing that cannot be tracked through CCMS or independently

processed, but fails to
establish why a complaint
could not be made available
before it is fully processed,
and as such, is irrelevant.
FRE 402.

<u>Unsubstantiated Summary</u>
(FRE 1006). The evidence is
inadmissible because
Defendant has not provided
Plaintiff with an opportunity

to examine the underlying

writings or recordings.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also Rizzo*, 423 U.S. at 370-377.

Finally, Ms. Camacho's statements do not need to establish why a complaint cannot be made available prior to its being fully processed, but ample other evidence does. (*See* Kanatzar Decl. ¶¶ 32-34.)

#### THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)

CNS offers no facts establishing any of the above factors that would outweigh the probative value of

|                   |                                | T                                   |
|-------------------|--------------------------------|-------------------------------------|
| recalled by the   |                                | Ms. Camacho's declaration and       |
| CPAs who          |                                | thus the evidence is admissible.    |
| processed the     |                                |                                     |
| filings. Given    |                                |                                     |
| the hundreds of   |                                |                                     |
| documents our     |                                |                                     |
| CPAs must         |                                |                                     |
| process by hand   |                                |                                     |
| each day, this is |                                |                                     |
| not surprising.   |                                |                                     |
| Those             |                                |                                     |
| remaining files,  |                                |                                     |
| however, did      |                                |                                     |
| eventually        |                                |                                     |
| make it to the    |                                |                                     |
| Media Bin."       |                                |                                     |
| Camacho Decl.     | Hearsay (FRE 802); Not         | THE EVIDENCE IS NOT HEARSAY:        |
| ¶ 22: "I further  | Subject to Any Exception       | The evidence objected to does not   |
| understand that   | (FRE 803). This evidence       | reflect an out-of-court statement;  |
| CNS has           | comprises, relates, or is      | rather, Ms. Camacho is describing   |
| complained in     | based upon an out-of- court    | events based upon her own           |
| the past about    | statement offered to prove     | personal perceptions. It is not     |
| four specific     | the truth of the matter        | hearsay.                            |
| case files and    | asserted and is therefore      |                                     |
| alleged delays    | inadmissible as hearsay.       | Ms. Camacho also has established    |
| of access to      | FRE 801, 802. It is not        | the foundational facts and requisit |
| each ranging      | subject to either the business | personal knowledge to declare to    |

1 from eight to 13 2 days. I have 3 researched 4 those files 5 through the 6 information 7 available in 8 CCMS and 9 have 10 determined the 11 following: 12 (a) Estrada v. 13 Rubio's 14 Restaurant, 15 Inc., 16 Case No. 56-17 2010-18 00387332: This 19 case was 20 received, 21 processed into 22 CCMS, and 23 deemed filed all 24 on December 25 20, 26 2010, and then 27 sent to the 28

or public records exceptions because it lacks any indicia of trustworthiness. FRE 803(6), (8)(C). It is untrustworthy because Ms. Camacho made her analysis underlying the evidence during the course of litigation, months after the events in question, and without her or her subordinate specifically confirming the physical location of any complaints. See Sullivan, 623 F.3d at 778; Olender, 210 F.2d at 801. Moreover, no evidence is offered corroborating the underlying record or showing it was made with firsthand knowledge or actually indicated what it purported to reflect; it should therefore be excluded. Chu Kong Yin, 935 F.2d at 998-999.

the matters stated in her declaration. (Camacho Decl. ¶ 1.)

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See*Ventura Superior Court's response re Camacho Decl. ¶ 4.

Lacks Foundation (FRE

Media Bin that 104(b)); Lacks Personal same day. Knowledge (FRE 602). The (b) Berber v. evidence is inadmissible Holiday because Ms. Camacho lacks Retirement, any foundation for or personal knowledge of the Case No. 56-2010assertions made, specifically 00387945: This whether she personally witnessed any complaints case was received and being placed in the Media deemed filed on Bin. *Kemp*, 23 F.3d at 213. Irrelevant (FRE 402); December 28, 2010, and was **Insufficiently Probative** processed into (FRE 403). The evidence is CCMS on irrelevant and inadmissible January 4, because it does not show that any of the cited 2011. The file was sent to the complaints were actually placed in the Media Bin on Media Bin the same day it was the date that Ms. Camacho processed. The claims they were placed in delay in the media bin; rather it only processing shows that those complaints likely was due ought to have been placed in to the the Media Bin. FRE 402. intervening Absent some correlation New Year's between the matter asserted

## Records of a Regularly Conducted Activity (FRE 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).)

#### Summaries (FRE 1006).

Ms. Camacho's testimony summarizes the contents of 147 CCMS case files and accompanying documents—a voluminous set of records that could not conveniently be examined in court and are therefore admissible as a summary. (FRE 1006.) To the extent CNS desires to review the underlying documents, the originals or duplicates will be made available for examination or copying at a reasonable time and place.

Holiday. (c) Harrison v. Rite Aide Corp., Case No. 56-2010-00387942: This case was received and deemed filed on December 28, 2010, and was processed into CCMS on January 4, 2011. The file was sent to the Media Bin the same day it was processed. The delay in processing likely was due to the intervening New Year's Holiday.

(d) Latham v.

and the actual location
history of any complaint, the
evidence is insufficiently
probative to be admissible.
FRE 403.
Unsubstantiated Summary
(FRE 1006). The evidence is
inadmissible because

inadmissible because

Defendant has not provided

Plaintiff with an opportunity
to examine the underlying
writings or recordings.

## THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

Ms. Camacho's statements are relevant because they rebut the type of delay to access of newly filed complaints that CNS claims. Moreover, the fact that the Ventura Superior Court's records show that its policy (and practice) is to place the records in the Media Bin on the dates reflected negates CNS's section 1983 claim. *See Polk County*, 454 U.S. at 326; *see also* 

| 1      | Bumbarger,       |                             | Rizzo, 423 U.S. at 370-377.                     |
|--------|------------------|-----------------------------|-------------------------------------------------|
| 2 3    | Case No.         |                             |                                                 |
|        | 56-2011-         |                             | Finally, Ms. Camacho's statements               |
| 4<br>5 | 00389425: This   |                             | do not need to establish why a                  |
| 6      | case was         |                             | complaint cannot be made                        |
| 7      | received,        |                             | available prior to its being fully              |
| 8      | processed and    |                             | processed, but ample other                      |
| 9      | deemed filed on  |                             | evidence does. (See Kanatzar                    |
| 10     | January 12,      |                             | Decl. ¶¶ 32-34.)                                |
| 11     | 2011, and was    |                             | THE PROPATIVE VALUE OF                          |
| 12     | immediately      |                             | THE PROBATIVE VALUE OF THE EVIDENCE IS NOT      |
| 13     | delivered to a   |                             | OUTWEIGHED BY DANGER                            |
| 14     | judicial officer |                             | OF UNFAIR PREJUDICE.<br>(FRE 403.)              |
| 15     | for review of a  |                             | CNS offers no facts establishing                |
| 16     | fee waiver that  |                             | any of the above factors that would             |
| 17     | was presented    |                             | outweigh the probative value of                 |
| 18     | with the         |                             | Ms. Camacho's declaration and                   |
| 19     | complaint."      |                             | thus the evidence is admissible.                |
| 20     | Camacho Decl.    | Hearsay (FRE 802); Not      | THE EVIDENCE IS NOT HEARSAY:                    |
| 21     | ¶ 23: "None of   | Subject to Any Exception    | The evidence objected to does not               |
| 22     | these cases      | (FRE 803). This evidence    | reflect an out-of-court statement;              |
| 23     | reflect the type | comprises, relates, or is   | rather, Ms. Camacho is describing               |
| 24     | of delay to      | based upon an out of- court | events based upon her own                       |
| 25     | access that      | statement offered to prove  | personal perceptions. It is not                 |
| 26     | CNS claims."     | the truth of the matter     | hearsay.                                        |
| 27     |                  | asserted and is therefore   |                                                 |
| 28     |                  | inadmissible as hearsay.    |                                                 |
|        | 1                |                             | Def's Response to Pltf's Evidentiary Objections |

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FRE 801, 802. It is not subject to either the business or public records exceptions because it lacks any indicia of trustworthiness. FRE 803(6), (8)(C). It is untrustworthy because Ms. Camacho made her analysis underlying the evidence during the course of litigation, months after the event in question, and without her or her subordinate specifically confirming the physical location of any complaints. See Sullivan, 623 F.3d at 778; Olender, 210 F.2d at 801. Moreover, no evidence is offered corroborating the underlying record or showing it was made with firsthand knowledge or actually indicated what it purported to reflect; it should therefore be excluded. Chu Kong Yin,

Because Ms. Camacho's statements are (i) rationally based upon her own personal perceptions (and based upon records admissible under several hearsay exceptions, discussed infra), (ii) helpful to understand her testimony, and (iii) not based on specialized knowledge, they are proper opinion testimony under FRE 701.

Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)

# THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).

The Ventura Superior Court records to which Ms. Camacho refers—information concerning complaints filed with the court and maintained in the Court Case Management System ("CCMS)—are a "data compilation[], in any

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935 F.2d at 998-999. Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602). The evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the assertions made, specifically whether she personally witnessed any complaints being placed in the Media Bin. Kemp, 23 F.3d at 213. Irrelevant (FRE 402); **Insufficiently Probative** (FRE 403). The evidence is irrelevant and inadmissible because it does not show when any complaints were placed in the Media Bin; rather it purports only to show that those complaints ought to have been placed in the Media Bin. FRE 402. Absent some correlation between the matter asserted and the actual location

form" of a public agency that sets forth "the activities of the office or agency . . . ." As a result, they are admissible as a public record. (*See* FRE 803(8)(A).)

CNS's cases are inapposite and its "factors" are insufficient to overcome the presumption that the records are trustworthy. *See*Ventura Superior Court's response re Camacho Decl. ¶ 4.

# Records of a Regularly Conducted Activity (FRE 803(6)).

The CCMS records, which are created and kept in the regular course of business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).)

#### Summaries (FRE 1006).

Ms. Camacho's testimony summarizes the contents of 147 CCMS case files and accompanying documents—a

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history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. **Improper Opinion** <u>Testimony (FRE 701)</u>. The evidence is inadmissible as improper lay opinion testimony because Ms. Camacho offers an opinion not rationally based on her own personal perception, and thus is not helpful to a clear understanding of her testimony or the determination of a fact in issue. FRE 701(a), (b). **Unsubstantiated Summary** (FRE 1006). The evidence is inadmissible because Defendant has not provided Plaintiff with an opportunity to examine the underlying writings or recordings.

voluminous set of records that could not conveniently be examined in court and are therefore admissible as a summary. (FRE 1006.) To the extent CNS desires to review the underlying documents, the originals or duplicates will be made available for examination or copying at a reasonable time and place.

## THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho's statements establish that Ventura Superior Court makes newly filed civil complaints publicly available within a reasonable amount of time from the complaint's receipt. Relevant evidence is "evidence having *any* tendency to make the existence of *any* fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); *see Curtin*, 489 F.3d at 943.

| 1  | Ms. Camacho's statements are                    |
|----|-------------------------------------------------|
| 2  | relevant because they rebut the                 |
| 3  | type of delay to access of newly                |
| 4  | filed complaints that CNS claims.               |
| 5  | Moreover, the fact that the Ventura             |
| 6  | Superior Court's records show that              |
| 7  | its policy (and practice) is to place           |
| 8  | the records in the Media Bin on                 |
| 9  | the dates reflected negates CNS's               |
| 10 | section 1983 claim. See Polk                    |
| 11 | County, 454 U.S. at 326; see also               |
| 12 | Rizzo, 423 U.S. at 370-377.                     |
| 13 | 111220, 423 O.B. at 370 377.                    |
| 14 | Finally, Ms. Camacho's statements               |
| 15 | do not need to establish why a                  |
| 16 |                                                 |
| 17 | complaint cannot be made                        |
| 18 | available prior to its being fully              |
| 19 | processed, but ample other                      |
| 20 | evidence does. (See Kanatzar                    |
| 21 | Decl. ¶¶ 32-34.)                                |
| 22 | THE PROBATIVE VALUE OF                          |
| 23 | THE EVIDENCE IS NOT OUTWEIGHED BY DANGER        |
| 24 | OF UNFAIR PREJUDICE.                            |
| 25 | (FRE 403.)                                      |
| 26 | CNS offers no facts establishing                |
| 27 | any of the above factors that would             |
| 28 | outweigh the probative value of                 |
|    | Def's Response to Pltf's Evidentiary Objections |

| 1 |  | Ms. Camacho's declaration and    |
|---|--|----------------------------------|
| 2 |  | thus the evidence is admissible. |
| 3 |  |                                  |

#### II. OBJECTIONS TO THE DECLARATION OF CHERYL KANATZAR

| <b>Evidence</b>                 | CNS's Objections           | Ventura Superior Court's Response   |
|---------------------------------|----------------------------|-------------------------------------|
| Declaration of                  | Irrelevant (FRE 402).      | THE EVIDENCE IS RELEVANT (FRE 402). |
| Cheryl Kanatzar                 | The evidence is            | Ms. Kanatzar's statement            |
| ("Kanatzar Decl."),             | inadmissible as            | demonstrates the significant        |
| $\frac{\P 5:}{}$ "[T]he CPAs in | irrelevant to the legal    | number of civil filings that        |
| the civil clerks                | issues posed by            | Ventura Superior Court has had to   |
| office are                      | Courthouse News            | contend with over the last several  |
| responsible for                 | Service in connection      | years, which CNS does not           |
| receiving, filing and           | with its preliminary       | dispute. That fact is relevant not  |
| processing in excess            | injunction motion.         | only to CNS's legal claim           |
| of 151,000 separate             | Courthouse News does       | regarding the court's failure to    |
| filings each year:              | not dispute that the staff | provide same-day access to newly    |
| 2008 Civil Filings –            | at Ventura Superior        | filed civil unlimited jurisdiction  |
| 144,184                         | processes large amounts    | complaints, but also to Ventura     |
| 2009 Civil Filings –            | of court records, just as  | Superior Court's defense that the   |
| 151,281                         | other courts do.           | relief CNS seeks in this case       |
| 2010 Civil Filings –            |                            | warrants this Court's abstention.   |
| 151,203"                        |                            | Relevant evidence is "evidence      |
|                                 |                            | having any tendency to make the     |
|                                 |                            | existence of any fact" of           |
|                                 |                            | consequence to the case more or     |
|                                 |                            | less probable than it would be      |
|                                 |                            | without the evidence. (FRE 401,     |

| 1 2 | <b>Evidence</b>           | CNS's Objections          | Ventura Superior Court's Response     |
|-----|---------------------------|---------------------------|---------------------------------------|
| 3   |                           |                           | emphasis added); see also Boyd v.     |
| 4   |                           |                           | City & Cnty. of S.F., 576 F.3d        |
| 5   |                           |                           | 938, 943 (9th Cir. 2009)              |
| 6   |                           |                           | ("Evidence may be relevant even       |
| 7   |                           |                           | if it is redundant or cumulative, or  |
| 8   |                           |                           | if it relates to undisputed facts.")  |
| 9   | Kanatzar Decl. ¶¶         | Irrelevant (FRE 402).     | THE EVIDENCE IS RELEVANT (FRE 402).   |
| 10  | <u>6-11, 29, 32 &amp;</u> | The evidence is           | Ms. Kanatzar's statements and         |
| 11  | Exhs.                     | inadmissible as           | accompanying exhibits                 |
| 12  | A, B: Ms. Kanatzar        | irrelevant to the legal   | demonstrate that the Ventura          |
| 13  | reviews the Ventura       | issues posed by           | Superior Court is critically          |
| 14  | Superior Court's          | Courthouse News           | understaffed and underfunded in       |
| 15  | office staffing and       | Service in connection     | light of the significant number of    |
| 16  | caseload generally,       | with its preliminary      | civil filings its clerks are required |
| 17  | and also cites the        | injunction motion.        | to process on a daily basis. CNS      |
| 18  | court's current           | Courthouse News does      | does not dispute these facts,         |
| 19  | budget difficulties.      | not dispute that Ventura  | which are relevant not only to        |
| 20  |                           | Superior is facing        | CNS's legal claim regarding the       |
| 21  |                           | serious staffing and      | court's failure to provide same-      |
| 22  |                           | budget difficulties, and  | day access to newly filed civil       |
| 23  |                           | Courthouse News is not    | unlimited jurisdiction complaints,    |
| 24  |                           | asking Defendant or his   | but also to Ventura Superior          |
| 25  |                           | staff to process          | Court's defense that the relief       |
| 26  |                           | records any faster or     | CNS seeks in this case warrants       |
| 27  |                           | spend more money          | this Court's abstention. The          |
| 28  |                           | to hire additional staff. | evidence is also relevant to          |

| 1 2 | <b>Evidence</b>        | CNS's Objections         | Ventura Superior Court's Response               |
|-----|------------------------|--------------------------|-------------------------------------------------|
| 3   |                        |                          | dispute CNS's contention that it is             |
| 4   |                        |                          | not asking Ventura Superior                     |
| 5   |                        |                          | Court to process records faster or              |
| 6   |                        |                          | spend more money to provide                     |
| 7   |                        |                          | same-day access to newly filed                  |
| 8   |                        |                          | civil complaints: it may not be                 |
| 9   |                        |                          | directly asking for those things,               |
| 10  |                        |                          | but the practical effect of its                 |
| 11  |                        |                          | requested relief requires them.                 |
| 12  |                        |                          | (FRE 401); <i>Boyd</i> , 576 F.3d at            |
| 13  |                        |                          | 943.                                            |
| 14  | Kanatzar Decl. ¶ 12    | Irrelevant (FRE 402).    | THE EVIDENCE IS RELEVANT (FRE 402).             |
| 15  | & Ex. C: "First, we    | The evidence is          | Ms. Kanatzar's statement and                    |
| 16  | reduced the public     | inadmissible as          | accompanying exhibit                            |
| 17  | business hours for     | irrelevant to the legal  | demonstrate that the Ventura                    |
| 18  | the clerk's office     | issues posed by          | Superior Court is operating on a                |
| 19  | effective July 1,      | Courthouse News          | reduced schedule in order to                    |
| 20  | 2009. As can be        | Service in connection    | accommodate critical budgetary                  |
| 21  | seen from this         | with its preliminary     | and staffing constraints, which                 |
| 22  | excerpt from the       | injunction motion.       | CNS does not dispute. These                     |
| 23  | July 1, 2009           | Courthouse News does     | facts are relevant not only to                  |
| 24  | memorandum             | not dispute that Ventura | CNS's legal claim regarding the                 |
| 25  | issued to all staff in | Superior is facing       | court's failure to provide same-                |
| 26  | the clerk's office,    | serious staffing and     | day access to newly filed civil                 |
| 27  | which I approved,      | budget difficulties, and | unlimited jurisdiction complaints,              |
| 28  | the public and         | Courthouse News is not   | but also to Ventura Superior                    |
|     |                        |                          | Def's Response to Pltf's Evidentiary Objections |

| 1  | Evidonas              | CNS's Objections         | Ventura Superior Court's                        |
|----|-----------------------|--------------------------|-------------------------------------------------|
| 2  | <u>Evidence</u>       | CNS's Objections         | Response                                        |
| 3  | telephone hours       | asking Defendant or his  | Court's defense that the relief                 |
| 4  | were reduced so       | staff to process records | CNS seeks in this case warrants                 |
| 5  | that the doors to the | any faster or spend more | this Court's abstention. The                    |
| 6  | clerk's office would  | money to hire additional | evidence also is relevant to                    |
| 7  | be closed at 4:00     | staff.                   | dispute CNS's contention that it is             |
| 8  | p.m., rather than     |                          | not asking Ventura Superior                     |
| 9  | 5:00 p.m."            |                          | Court to process records faster or              |
| 10 |                       |                          | spend more money to provide                     |
| 11 |                       |                          | same-day access to newly filed                  |
| 12 |                       |                          | unlimited civil complaints: it may              |
| 13 |                       |                          | not be <i>directly</i> asking for those         |
| 14 |                       |                          | things, but the practical effect of             |
| 15 |                       |                          | its requested relief <i>requires</i> them.      |
| 16 |                       |                          | (FRE 401); <i>Boyd</i> , 576 F.3d at            |
| 17 |                       |                          | 943.                                            |
| 18 | Kanatzar Decl. ¶¶     | Irrelevant (FRE 402).    | THE EVIDENCE IS RELEVANT (FRE 402).             |
| 19 | <u>13-17:</u> Ms.     | The evidence is          | Paragraphs 13-17 demonstrate                    |
| 20 | Kanatzar reviews      | inadmissible as          | efforts taken by Ventura Superior               |
| 21 | the various methods   | irrelevant to the legal  | Court to accommodate reduced                    |
| 22 | by which litigants    | issues posed by          | staffing levels while still ensuring            |
| 23 | can file new          | Courthouse News          | the efficient processing of civil               |
| 24 | complaints at         | Service in connection    | filings. These changes, including               |
| 25 | Ventura Superior.     | with its preliminary     | requiring complaints to be                      |
| 26 |                       | injunction motion.       | dropped off for later processing                |
| 27 |                       |                          | by behind-the-counter clerks, are               |
| 28 |                       |                          | factually relevant not only to                  |
|    |                       | <u> </u>                 | Def's Response to Pitf's Evidentiary Objections |

| 1 2 | <b>Evidence</b>      | CNS's Objections        | Ventura Superior Court's Response           |
|-----|----------------------|-------------------------|---------------------------------------------|
| 3   |                      |                         | CNS's legal claim regarding the             |
| 4   |                      |                         | court's failure to provide same-            |
| 5   |                      |                         | day access to newly filed civil             |
| 6   |                      |                         | unlimited jurisdiction complaints,          |
| 7   |                      |                         | but also to Ventura Superior                |
| 8   |                      |                         | Court's defense that the relief             |
| 9   |                      |                         | CNS seeks in this case warrants             |
| 10  |                      |                         | this Court's abstention. (FRE               |
| 11  |                      |                         | 401.)                                       |
| 12  | Kanatzar Decl. ¶     | Irrelevant (FRE 402).   | THE EVIDENCE IS RELEVANT (FRE 402).         |
| 13  | 18: "As a practical  | The evidence is         | Paragraph 18 demonstrates that              |
| 14  | matter, CNS's        | inadmissible as         | Ventura Superior Court provides             |
| 15  | reporter is the only | irrelevant to the legal | the same access to CNS that it              |
| 16  | 'reporter' who asks  | issues posed by         | provides to the general public.             |
| 17  | to see our new case  | Courthouse News         | This fact is relevant to dispute            |
| 18  | files. The Superior  | Service in connection   | CNS's claim that, as a "surrogate           |
| 19  | Court only           | with its preliminary    | for the public," it is legally              |
| 20  | infrequently         | injunction motion.      | entitled to greater access to newly         |
| 21  | receives requests    |                         | filed unlimited civil complaints—           |
| 22  | from other reporters |                         | <i>i.e.</i> , prior to full processing—than |
| 23  | for access to case   |                         | the public. (FRE 401.)                      |
| 24  | files or new         |                         |                                             |
| 25  | complaints. As is    |                         |                                             |
| 26  | the case with CNS,   |                         |                                             |
| 27  | we grant other       |                         |                                             |
| 28  | reporters the same   |                         |                                             |

| 1  | <b>Evidence</b>     | CNS's Objections           | Ventura Superior Court's               |
|----|---------------------|----------------------------|----------------------------------------|
| 2  | access we provide   |                            | <u>Response</u>                        |
| 3  | _                   |                            |                                        |
| 4  | to members of the   |                            |                                        |
| 5  | general public."    |                            | THE EVIDENCE IS                        |
| 6  | Kanatzar Decl. ¶¶   | Irrelevant (FRE 402).      | RELEVANT (FRE 402).                    |
| 7  | 30-34: Ms.          | The evidence is            | Ms. Kanatzar's statements              |
| 8  | Kanatzar offers     | inadmissible as            | demonstrate three distinct reasons     |
| 9  | various reasons why | irrelevant to the legal    | why it is not possible for Ventura     |
| 10 | she believes it is  | issues posed by            | Superior Court to provide same-        |
| 11 | "not possible" to   | Courthouse News            | day access to newly filed              |
| 12 | provide same-day    | Service in connection      | unlimited civil complaints. These      |
| 13 | access to newly-    | with its preliminary       | facts are relevant not only to         |
| 14 | filed unlimited     | injunction motion. The     | CNS's legal claim regarding the        |
| 15 | complaints.         | assertions set forth in ¶¶ | court's failure to provide same-       |
| 16 |                     | 30-34 do not address       | day access to newly filed civil        |
| 17 |                     | why it is "not possible"   | complaints, but also to Ventura        |
| 18 |                     | to provide same-day        | Superior Court's defense that the      |
| 19 |                     | access to new civil        | relief CNS seeks in this case          |
| 20 |                     | unlimited complaints.      | warrants this Court's abstention.      |
| 21 |                     | Rather, they offer Ms.     | (FRE 401.) Despite CNS's               |
| 22 |                     | Kanatzar's reasons for     | argument to the contrary,              |
| 23 |                     | why the processing of      | paragraphs 32-34 <i>do</i> demonstrate |
| 24 |                     | new civil unlimited        | why it is not possible for Ventura     |
| 25 |                     | complaints may be          | Superior Court to provide same         |
| 26 |                     | delayed.                   | day access.                            |
| 27 |                     | <u> </u>                   |                                        |

#### III. OBJECTIONS TO THE DECLARATION OF ROBERT SHERMAN

| Declaration of Robert Sherman in Support of Defendant's Deposition to Defendant's Defendant's Defendant's Defendant's Defendant's Defendant's Defendant's Deposition to Defendant's Defendant's Deposition to Defendant's Defendant's Defendant's Defendant ventura Superior Court on only to CNS's legal Calaim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute these facts, which are relevant not only to CNS's legal claim regardi | 2  | <b>Evidence</b>   | CNS's Objections        | Ventura Superior Court's            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------------------|-------------------------|-------------------------------------|
| Declaration of Robert Sherman in Support of Defendant's irrelevant to the legal issues posed by Plaintiff's Motion for Preliminary Injunction with its preliminary injunction motion.   Miles Exhs. A and B; Mr. Sherman bed; Mr. Sherman supperior Court is critically understaffed and underfunded in light California's unprecedented budget crisis. CNS does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed civil complaints: it may not be dispute these facts, which are relevant not only to CNS's seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed civil complaints: it may not be                      | 3  |                   |                         |                                     |
| Robert Sherman in Support of Defendant's irrelevant to the legal issues posed by Plaintiff's Motion for Preliminary Injunction ("Sherman Deel.").  10 Injunction ("Sherman Deel.").  11 Injunction ("Sherman Deel.").  12 Injunction ("Sherman Deel.").  13 Injunction ("Sherman Deel.").  14 Injunction ("Sherman Deel.").  15 Injunction ("Sherman Deel.").  15 Injunction ("Sherman Deel.").  16 Injunction ("Sherman Deel.").  17 Injunction ("Sherman Deel.").  18 Injunction (Superior is facing serious budget asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  18 Injunction (Stephen Superior is facing serious budget asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  18 Injunction (Superior is facing serious budget asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  18 Injunction (Superior is facing serious budget asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  19 Injunction (Superior Court is critically understaffed and underfunded in light California's unprecedented budget crisis. CNS does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's abstention.  16 Injunction (Service in connection with its preliminary injunction motion.  17 Injunction (Service in connection dispute that Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  18 Injunction (Service in connection dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be dispute |    |                   | ,                       |                                     |
| Support of Defendant's   Defendant or his staff   Defendant or his staff.   Defendant's   Defendant or his staff   Defendant or his staff.   Defendant's   Defendant or his staff   Defendant or his or his provide   Defendant or his staff   Defendant or his or h   |    | Robert Sherman in |                         | Mr. Sherman's statements and        |
| Defendant's   irrelevant to the legal   issues posed by   Plaintiff's Motion   for Preliminary   Injunction   motion   Courthouse News does   not dispute that Ventura   summarizes the shortfalls of revenue incumbent   on Ventura   Superior.   Superior is facing staff to process records any faster or spend more money to hire additional   staff.   Superior more with its preliminary   injunction motion.   Courthouse News does   not dispute that Ventura   Superior is facing   to provide same-day access to   newly filed   civil complaints; but also to Ventura   Superior Court's defense that the relief CNS seeks in this case   warrants this Court's abstention.   The evidence also is relevant to dispute CNS's contention that it is   not asking Ventura Superior Court to process records   same-day access to newly filed   civil complaints: it may not be   civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |    | Support of        | inadmissible as         | accompanying exhibits               |
| Superior Court is critically understaffed and underfunded in light California's unprecedented budget crisis. CNS does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure shortfalls of revenue incumbent on Ventura Superior.  Courthouse News is not Superior.  Superior Court is critically understaffed and underfunded in light California's unprecedented budget crisis. CNS does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |    |                   | irrelevant to the legal | demonstrate that Ventura            |
| Plaintiff's Motion for Preliminary Injunction Injunctio | 8  |                   |                         | Superior Court is critically        |
| Injunction with its preliminary injunction motion.  ("Sherman Decl."), injunction motion.  (Courthouse News does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |    |                   |                         | understaffed and underfunded in     |
| Injunction ("Sherman Decl."),  12 2-15 & Exhs. A and B: Mr. Sherman summarizes the shortfalls of revenue incumbent on Ventura Superior.  Superior.  With its preliminary injunction motion. Courthouse News does not dispute these facts, which are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |                   |                         | light California's unprecedented    |
| 12   13   14   15   16   17   18   19   20   21   22   23   24   25   26   27   18   19   10   10   10   10   10   10   10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |    |                   |                         | budget crisis. CNS does not         |
| and B: Mr. Sherman summarizes the shortfalls of revenue incumbent on Ventura  Superior.  Superior is facing serious budget difficulties, and courthouse News is not asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  The evidence also is relevant to only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |                   |                         | dispute these facts, which are      |
| summarizes the shortfalls of revenue incumbent on Ventura Superior.  Superior is facing serious budget difficulties, and Courthouse News is not asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  Superior is facing to provide same-day access to newly filed unlimited civil complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention. The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 13 |                   |                         | relevant not only to CNS's legal    |
| shortfalls of revenue incumbent on Ventura Superior.  Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior  Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 14 |                   | -                       | claim regarding the court's failure |
| revenue incumbent on Ventura  Superior.  difficulties, and Courthouse News is not asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  complaints, but also to Ventura Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed unlimited civil                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 15 |                   |                         | to provide same-day access to       |
| On Ventura Superior.  Courthouse News is not asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  Courthouse News is not asking Defendant or his staff to process records any faster or spend more money to hire additional staff.  Courthouse News is not Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior  Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 16 |                   | _                       | newly filed unlimited civil         |
| Superior.  Superior.  Superior.  Superior Court's defense that the relief CNS seeks in this case warrants this Court's abstention.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior  Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 17 |                   | ·                       | complaints, but also to Ventura     |
| staff to process records any faster or spend more money to hire additional staff.  The evidence also is relevant to dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 18 |                   |                         | Superior Court's defense that the   |
| 20 21 22 23 24 25 26 26 27 28 29 20 20 20 21 21 22 22 23 24 25 26 27 28 29 20 20 20 21 21 22 22 23 24 25 26 27 27 28 28 29 20 20 20 21 21 22 22 23 24 25 26 27 27 28 28 29 20 20 20 21 21 21 22 22 23 24 25 26 27 27 28 28 29 20 20 20 21 21 21 22 22 23 24 25 26 27 27 28 28 29 29 20 20 21 21 22 22 23 24 25 26 27 27 28 28 28 28 28 28 29 29 20 20 20 21 21 22 22 23 24 25 26 27 27 28 28 28 28 28 28 28 28 28 28 28 29 29 20 20 20 21 21 22 22 23 24 25 26 27 28 28 28 28 28 28 28 28 28 28 28 28 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 19 | Superior.         |                         | relief CNS seeks in this case       |
| money to hire additional dispute CNS's contention that it is not asking Ventura Superior Court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 20 |                   | •                       | warrants this Court's abstention.   |
| staff.  staff.  court to process records faster or spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 21 |                   |                         | The evidence also is relevant to    |
| 23 24 25 26 27 28 28 29 20 20 20 21 20 21 21 22 22 23 24 25 26 27 27 28 28 29 20 20 20 20 20 20 20 20 20 20 20 20 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 22 |                   | _                       | dispute CNS's contention that it is |
| spend more money to provide same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 23 |                   | starr.                  | not asking Ventura Superior         |
| same-day access to newly filed civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 24 |                   |                         | Court to process records faster or  |
| civil complaints: it may not be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 25 |                   |                         | spend more money to provide         |
| diversal to a state of | 26 |                   |                         | same-day access to newly filed      |
| 28 directly asking for those things,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 27 |                   |                         | civil complaints: it may not be     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 28 |                   |                         | directly asking for those things,   |

Def's Response to Pltf's Evidentiary Objections Case No. CV11-08083 R (MANx)

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | <b>Evidence</b> | CNS's Objections | Ventura Superior Court's Response    |
|----------------------------------------|-----------------|------------------|--------------------------------------|
| 3                                      |                 |                  | but the practical effect of its      |
| $_{4}\parallel$                        |                 |                  | requested relief requires them.      |
| 5                                      |                 |                  | (FRE 401); <i>Boyd</i> , 576 F.3d at |
| 6                                      |                 |                  | 943.                                 |

#### IV. OBJECTIONS TO THE DECLARATION OF KAREN DALTON-KOCH

| 8  | <b>Evidence</b>     | CNS's Objections          | Ventura Superior Court's Response   |
|----|---------------------|---------------------------|-------------------------------------|
| 10 | Declaration of      | Irrelevant (FRE 402);     | FOUNDATION/ADMISSION.               |
| 11 | Karen Dalton-Koch   | Lacks Foundation (FRE     | Ms. Dalton-Koch, an officer of      |
| 12 | in Support of       | 104(b)). Ms. Dalton-      | the Superior Court, testified that  |
| 13 | <u>Defendant's</u>  | Koch's exhibit, offered   | her office received the document    |
| 14 | Opposition to       | to dispute Courthouse     | entitled "Score: Report Card        |
| 15 | Plaintiff's Motion  | News' assertion that      | Detail" (the "Report Card"), and    |
| 16 | for Preliminary     | there is a tradition of   | CNS does not dispute the            |
| 17 | Injunction, Exhibit | timely access to new      | authenticity of the document it     |
| 18 | A: (document        | complaints, is irrelevant | created. Thus, a proper             |
| 19 | entitled "Score:    | that proposition. FRE     | foundation has been laid for Ms.    |
| 20 | Report Card         | 401. The document was     | Dalton-Koch's testimony.            |
| 21 | Detail")            | produced to document      | Moreover, the document is           |
| 22 |                     | the recent deterioration  | admissible as an admission of a     |
| 23 |                     | of access at some courts; | party-opponent. (FRE                |
| 24 |                     | not as an historical      | 801(d)(2).)                         |
| 25 |                     | overview of access.       | THE EVIDENCE IS                     |
| 26 |                     |                           | RELEVANT (FRE 402).                 |
| 27 |                     |                           | CNS's Report Card purports to       |
| 28 |                     |                           | give letter grades to the courts in |

| 1                                                     | <b>Evidence</b> | CNS's Objections | Ventura Superior Court's                                        |
|-------------------------------------------------------|-----------------|------------------|-----------------------------------------------------------------|
| 2                                                     |                 |                  | Response                                                        |
| 3                                                     |                 |                  | California based on their                                       |
| 4                                                     |                 |                  | provision of "same-day access"                                  |
| 5                                                     |                 |                  | to newly filed complaints. The                                  |
| 6                                                     |                 |                  | Report Card gives only <i>five</i> out                          |
| 7                                                     |                 |                  | of seventeen courts "A" grades,                                 |
| 8                                                     |                 |                  | and gives a full ten of the                                     |
| 9                                                     |                 |                  | seventeen courts "C," "D," and                                  |
| 10                                                    |                 |                  | "F" grades. CNS's "grading" of                                  |
| 11                                                    |                 |                  | the California courts' provision                                |
| 12                                                    |                 |                  | of same-day access is directly                                  |
| 13                                                    |                 |                  | relevant to CNS's claim of a                                    |
| 14                                                    |                 |                  | "tradition" of same-day access                                  |
| 15                                                    |                 |                  | and underscores the lack of any                                 |
| 16                                                    |                 |                  | such "tradition."                                               |
| 17                                                    |                 |                  |                                                                 |
| 18                                                    |                 |                  | Separately, the purpose for                                     |
| 19                                                    |                 |                  | which the Report Card                                           |
| 20                                                    |                 |                  | purportedly was created is                                      |
| 21                                                    |                 |                  | irrelevant to determining its                                   |
| 22                                                    |                 |                  | admissibility. Moreover,                                        |
| 23                                                    |                 |                  | notwithstanding CNS's contrary                                  |
| 24                                                    |                 |                  | claims, the Report Card does not                                |
| 25                                                    |                 |                  | indicate that it was meant to only                              |
|                                                       |                 |                  | reflect the <i>deterioration</i> of same-                       |
|                                                       |                 |                  | day access in the courts                                        |
|                                                       |                 |                  | surveyed.                                                       |
| <ul><li>25</li><li>26</li><li>27</li><li>28</li></ul> |                 |                  | reflect the <i>deterioration</i> of sa day access in the courts |

| 1        | Dated: November 14, 2011 | Respectfully submitted,                                                         |
|----------|--------------------------|---------------------------------------------------------------------------------|
| 2        |                          | JONES DAY                                                                       |
| 3        |                          |                                                                                 |
| 4        |                          | By: s/Robert A. Naeve Robert A. Naeve                                           |
| 5        |                          |                                                                                 |
| 6        |                          | Attorneys for Defendant<br>MICHAEL PLANET, IN HIS<br>OFFICIAL CAPACITY AS COURT |
| 7        |                          | EXECUTIVE OFFICER/CLERK OF<br>THE VENTURA COUNTY                                |
| 8        |                          | SUPERIOR COURT                                                                  |
| 9        |                          |                                                                                 |
| 10       |                          |                                                                                 |
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| 26       |                          |                                                                                 |
| 27       |                          |                                                                                 |
| 28       |                          |                                                                                 |
|          |                          | Def's Despense to Diff's Evidentiary Objections                                 |