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

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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13 COURTHOUSE NEWS SERVICE,

14 Plaintiff,

15 v.

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

19 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DEFENDANT’S RESPONSES TO
COURTHOUSE NEWS
SERVICE’S OBJECTIONS TO
THE DECLARATIONS OF
JULIE CAMACHO, CHERYL
KANATZAR, ROBERT
SHERMAN, AND KAREN
DALTON-KOCH SUBMITTED
BY DEFENDANT IN
OPPOSITION TO
COURTHOUSE NEWS’
MOTION FOR PRELIMINARY
INJUNCTION**

Date: November 21, 2011
Time: 10:00 a.m.
Courtroom: 8

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1 Defendant Michael D. Planet, in his official capacity as Executive Officer
 2 and Clerk of the Superior Court of California, County of Ventura (“Ventura
 3 Superior Court”) hereby responds to plaintiff Courthouse News Service’s (“CNS”) objections to the declarations of Julie Camacho, Cheryl Kanatzar, Robert Sherman,
 4 and Karen Dalton-Koch, submitted by Ventura Superior Court in support of its
 5 opposition to CNS’s Motion for Preliminary Injunction.
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 8 **I. VENTURA SUPERIOR COURT’S RESPONSE TO CNS’S
 OBJECTIONS TO THE DECLARATION OF JULIE CAMACHO**

<u>Evidence</u>	<u>CNS’s Objections</u>	<u>Ventura Superior Court’s Response</u>
<p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p> <p><u>Declaration of Julie Camacho in Support of Defendant’s Opposition to Plaintiff’s Motion for Preliminary Injunction (“Camacho Decl.”), ¶ 4: “I conducted my own independent analysis of the new unlimited general civil complaints that</u></p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of-court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u> The evidence objected to does not reflect an out-of-court statement; rather, Ms. Camacho is describing events based on her own personal perceptions—that is, the actions she took and the results she obtained upon conducting her independent review and analysis of the unlimited general civil complaints that were filed with Ventura Superior Court between August 8, 2011, and September 2, 2011. Thus, it is not hearsay. (FRE 802.) Because Ms. Camacho’s statements are (i) rationally based</p>

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<p>were filed by the Ventura Superior Court at the Hall of Justice courthouse between August 8, 2011, and September 2, 2011. . . . In general, my analysis showed exactly the opposite of what CNS claims. The overwhelming bulk (more than 75%) of new complaints were received, processed and sent to the Media Bin on the same or next day.”</p>	<p>litigation, more than two months after the events in question, and without her or her subordinate specifically confirming the physical location of any complaints. <i>See Sullivan v. Dollar Tree Stores, Inc.</i>, 623 F.3d 770, 778 (9th Cir. 2010) (listing bias and untimeliness as factors indicating untrustworthiness); <i>Olender v. United States</i>, 210 F.2d 795, 801 (9th Cir. 1954) (“reports based upon general investigations and upon information gleaned second hand from random sources must be excluded”). 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. <i>United States v.</i></p>	<p>upon her own personal perception (and based upon records admissible under several hearsay exceptions, discussed <i>infra</i>), (ii) helpful to understand her testimony, and (iii) not based on specialized knowledge, they are proper opinion testimony under FRE 701.</p> <p>Ms. Camacho has also established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1 (“I am responsible for overseeing the operations . . . of the Ventura Superior Court and the [CPAs] I have personal knowledge of the facts stated in this Declaration”).) (FRE 104(b); 602.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY:</u> <u>Public Records (FRE 803(A))</u></p> <p>The Ventura Superior Court</p>
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	<p><i>Chu Kong Yin</i>, 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).</p> <p><u>Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602)</u>. 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. <i>Kemp v. Balboa</i>, 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).</p> <p><u>Irrelevant (FRE 402); Insufficiently Probative (FRE</u></p>	<p>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. (<i>See</i> FRE 803(8)(A); <i>see also United States v. Loera</i>, 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, <i>Weissenberger’s Fed. Evid.</i>, § 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</p>
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	<p><u>403</u>). 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.</p> <p><u>Improper Opinion 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</p>	<p>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.)</p> <p>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.” <i>Johnson v. City of Pleasanton</i>, 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.” <i>Id.</i> 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.” <i>Id.</i> CNS identified two “factors” to substantiate its</p>
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	<p>determination of a fact in issue. FRE 701(a), (b).</p> <p><u>Unsubstantiated Summary (FRE 1006)</u>. The evidence is inadmissible because Defendant has not provided Courthouse News with an opportunity to examine the underlying writings or recordings.</p>	<p>objection, but they are insufficient to overcome the presumption that the CCMS records are trustworthy. <i>First</i>, the date upon which Ms. Camacho subsequently reviewed the underlying CCMS records is irrelevant to the trustworthiness of the records themselves. <i>Second</i>, Ms. Camacho is not required to have personally observed each event or activity reported into CCMS for the public records exception to apply. To so require would undermine the purposes for the exception—for example, it would be “burdensome and inconvenient to call public officials to appear in the myriad of cases in which their testimony might be required,” <i>Olender v. United States</i>, 210 F.2d 795, 801 (1954)—and the appropriate assumption underlying the exception that public officials perform their duties properly. <i>Johnson v. City of Pleasanton</i>, 982 F.2d 350, 352-53 (9th Cir. 1992).</p>
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		<p>Moreover, it would improperly shift the burden to the proponent of the record. <i>Cf. id.</i> at 352-53.</p> <p>The cases CNS cites in support of its objection are inapposite, either because they are based upon an exception other than FRE 803(6)(A), or are factually distinguishable. <i>See Sullivan v. Dollar Tree Stores, Inc.</i>, 623 F.3d 770, 778 (9th Cir. 2010) (holding district court properly refused to consider a Department of Labor report under Rule 803(8)(C) (records setting forth factual findings from an investigation made pursuant to authority granted by law) as “not trustworthy,” because the report, offered by a plaintiff in a civil case, was missing exhibits and appeared to be a draft); <i>Olender</i>, 210 F.2d at 801 (ruling private individuals’ statements made to a public entity and contained in the entity’s record were inadmissible hearsay);</p>
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		<p><i>United States v. Chu Kong Yin</i>, 935 F.2d 990 (9th Cir. 1991) (ruling that “Certificates of Trial” from Hong Kong that were created between seven and twenty years after the incidents in question took place and at the request of the INS lacked trustworthiness under the circumstances and thus were inadmissible as a public record). In comparison, Ventura Superior Court’s records set forth “the activities of the office or agency” (FRE 803(8)(A)); the CPAs generate the information contained within the records; and the record’s creation occurs either at or near the time of the receipt of the information. (<i>See Camacho Decl.</i> ¶ 13-14, 22; <i>see also Declaration of Cheryl Kanatzar (“Kanatzar Decl.”)</i>, ¶ 14.) Thus, CNS’s inapposite cases do not negate the conclusion that Ventura Superior Court’s CCMS records are public records and, as such, admissible.</p>
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		<p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>The CCMS records, which are created and kept in the regular course of Ventura Superior Court’s business, are also admissible under the business records exception to the hearsay rule. (FRE 803(6).) As established in the Camacho Declaration, and further explained in the Kanatzar Declaration, Ms. Camacho oversees the Court Processing Assistants (the “CPAs”), who are responsible for receiving, filing, and processing in excess of 151,000 separate filings each year in the CCMS. (Camacho Decl. ¶ 1; Kanatzar Decl. ¶ 5, 6.) The CPAs are responsible for fully opening new files and are required to enter the file’s information into the CCMS before a file number can be generated. (See Kanatzar Decl. ¶ 14.) As such, the CCMS records are created in the regular course of</p>
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the CPAs’ regular business activities, and it is a regular practice of Ventura Superior Court to make such CCMS records.

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.

THE EVIDENCE IS RELEVANT (FRE 402).

Ms. Camacho’s declaration establishes that Ventura Superior Court makes newly filed civil complaints publicly available

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		<p>within a reasonable time from the complaint’s receipt. Relevant evidence is “evidence having <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added).</p> <p>Ms. Camacho’s statements are relevant because they rebut the type of delay to access of public records that CNS claims.</p> <p>Moreover, CNS claims the alleged delays reflect the official policy of the clerk’s office and thus, Mr. Planet is acting under the color of state law within the meaning of 42 U.S.C. § 1983. (Compl. ¶ 8.) But the fact that 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. <i>See Polk County v. Dodson</i>, 454 U.S. 312, 326, 102 S.Ct. 445, 70 L.Ed.2d</p>
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		<p>509 (1981) (holding official policy must be “the moving force of the constitutional violation” in order to establish the liability under section 1983); <i>see also Rizzo v. Goode</i>, 423 U.S. 362, 370-77, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976) (general allegation of administrative negligence fails to state a constitutional claim cognizable under section 1983).</p> <p>Finally, CNS’s claim that the evidence is irrelevant because it “does not show that the particular complaint was placed in the media bin on a particular date” lacks merit. <i>See United States v. Curtin</i>, 489 F.3d 935, 943 (9th Cir. 2007) (“To be ‘relevant,’ evidence need not be conclusive proof of a fact sought to be proved, or even strong evidence of the same. All that is required is a ‘tendency’ to establish the fact at issue.”) CNS is claiming a constitutional right to same-day access to newly</p>
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		<p>filed complaints, and this evidence is directly relevant to that claim. CNS is not claiming a constitutional right to access a complaint prior to the time Ventura Superior Court has fully processed the complaint. Even if it were, however, ample other evidence demonstrates why a complaint cannot be made available prior to its being fully processed. (See Kanatzar Decl. ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE (FRE 403).</u></p> <p>CNS misstates the rule when it claims Ms. Camacho’s declaration is “insufficiently probative” to be admissible. FRE 403 provides that “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay,</p>
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		<p>waste of time, or needless presentation of cumulative evidence.” Here, CNS offers no facts establishing any of these factors that would outweigh the probative value of Ms. Camacho’s declaration. The evidence is admissible.</p>
<p><u>Camacho Decl. ¶ 7 & Ex. B:</u> “For each new unlimited general civil complaint, I reviewed the CCMS Records Management—Location History screen for the matter. That screen shows the location of the case file at any particular point in time following its</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of- court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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, more than two</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u> 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.) <u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u> The Ventura Superior Court records to which Ms. Camacho</p>

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<p>processing date. For example, the attached screen shot shows the Location History page for City National Bank v. Star Marketing & Media Inc., one of the unlimited general civil complaints filed on August 8, 2011: [image] A full-page copy of this screen shot of the Location History page for City National Bank v. Star Marketing & Media Inc. is</p>	<p>months after the events in question, and without her or her subordinate specifically confirming the physical location of any complaints. See <i>Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE 104(b))</u>; <u>Lacks Personal Knowledge (FRE 602)</u>. 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</p>	<p>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. (<i>See</i> FRE 803(8)(A).) CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4. <u>Records of a Regularly Conducted Activity (FRE 803(6)).</u> 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).)</p>
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<p>attached hereto as Exhibit B.”</p>	<p>Bin. Kemp, 23 F.3d at 213. <u>Irrelevant (FRE 402); Insufficiently Probative (FRE 403)</u>. 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</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p> <p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also</i></p>
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	<p>before it is fully processed, and as such, is irrelevant.</p>	<p><i>Rizzo</i>, 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.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>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.</p>
<p><u>Camacho Decl. ¶ 8</u>: “The type-written notes at the bottom of the screen shot are notes I inputted as I evaluated the date on which each case was</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803)</u>. This evidence comprises, relates, or is based upon an out-of- court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. FRE 801, 802. It is not subject to</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u></p> <p>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.</p> <p>Ms. Camacho also has established the foundational facts and requisite</p>

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<p>received, processed, and sent to the Media Bin.” <u>Camacho Decl. ¶ 10</u>: “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.”</p>	<p>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. <i>See Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE 104(b))</u>; <u>Lacks Personal</u></p>	<p>personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u></p> <p>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. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p>
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	<p><u>Knowledge (FRE 602).</u> 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. <i>Kemp</i>, 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).</p> <p><u>Irrelevant (FRE 402);</u> <u>Insufficiently Probative (FRE 403).</u> 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 have been placed in the Media Bin. FRE 402. Absent</p>	<p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>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).)</p> <p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>Curtin</i>, 489 F.3d at 943.</p> <p>Ms. Camacho’s statements are relevant because they rebut the</p>
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	<p>some correlation between the matter asserted and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403.</p> <p>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.</p>	<p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>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.</p>
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<p><u>Camacho Decl.</u> ¶ 11: “As the above screen shot shows, City National Bank v. Star Marketing & Media Inc. was received and filed on August 8, 2011. It was processed and sent to the Media Bin on August 8, 2011 — the same day it was received. In accordance with our standard practice, the file remained in the Media Bin in the Records Department for ten days and was then</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of-court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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, 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; <i>Olender</i>, 210 F.2d at 801. Moreover, no evidence</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u> 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.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY:</u> <u>Public Records (FRE 803(A)).</u> 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</p>
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<p>1 removed from 2 the Media Bin 3 and shelved in 4 Records.”</p>	<p>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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE</u> <u>104(b)); Lacks Personal</u> <u>Knowledge (FRE 602)</u>. 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. <i>Kemp</i>, 23 F.3d at 213. <u>Irrelevant (FRE 402);</u> <u>Insufficiently Probative (FRE</u> <u>403)</u>. The evidence is irrelevant and inadmissible because it does not show that the particular complaint in question was placed in the</p>	<p>admissible as a public record. (<i>See</i> FRE 803(8)(A).) CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4. <u>Records of a Regularly</u> <u>Conducted Activity (FRE</u> <u>803(6))</u>. 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).) <u>THE EVIDENCE IS</u> <u>RELEVANT (FRE 402)</u>. 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</p>
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	<p>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.</p>	<p>having <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p> <p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar</i></p>
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		<p>Decl. ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>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.</p>
<p><u>Camacho Decl. ¶ 12 & Ex. C:</u> “For each case that was filed but not sent to the Media Bin on the same day, I reviewed the Case History screen in CCMS to determine when the file was processed. For example, the following screen shot</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of-court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u></p> <p>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.</p> <p>Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)</p>

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<p>shows the Location History page for Power <i>Gomez v. LaCouture</i>, a case that was received and deemed filed on August 8, 2011, but was not sent to the Media Bin until August 9, 2011: [image] A full-page copy of this screen shot of the Location History page for Power <i>Gomez v. LaCouture</i> is attached hereto as Exhibit C.”</p>	<p>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. <i>See Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602)</u>. The evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the</p>	<p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u></p> <p>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. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p> <p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>The CCMS records, which are created and kept in the regular course of business, are also</p>
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	<p>assertions made, specifically whether she personally witnessed any complaints being placed in the Media Bin. <i>Kemp</i>, 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</p>	<p>admissible under the business records exception to the hearsay rule. (FRE 803(6).)</p> <p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p> <p>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</p>
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	<p>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.</p>	<p>the records in the Media Bin on the dates reflected negates CNS’s section 1983 claim. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>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.</p>
<p><u>Camacho Decl.</u> ¶ 13 & Ex. D: “The Case History screen in the system</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of- court</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u></p> <p>The evidence objected to does not reflect an out-of-court statement; rather, Ms. Camacho is describing events based upon her own</p>

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<p>shows even more detail, including each document that was processed along with the new complaint. Thus, for <i>Power Gomez v. LaCouture</i>, a complaint, declaration for court assignment, and civil case cover sheet were processed as part of the initial filing of the complaint. Because the complaint was received on August 8, all documents have a filed date of August 8 as</p>	<p>statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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, more than two months after the event in question, and without her or her subordinate specifically confirming the physical location of any complaints. <i>See Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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</p>	<p>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.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u></p> <p>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. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i></p>
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<p>well. However, by placing my cursor over the person icon on the screen I am able to determine that the documents were backdated. A small box opens up to show the actual date and time the documents were processed, not just the date they were deemed filed: [image] A full-page copy of this screen shot for <i>Power Gomez v. LaCouture</i> is attached hereto as Exhibit D.”</p>	<p>reflect; it should therefore be excluded. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602)</u>. The evidence is inadmissible because Ms. Camacho lacks any foundation for or personal knowledge of the assertions made, specifically whether she personally witnessed this particular complaint being placed in the Media Bin. <i>Kemp</i>, 23 F.3d at 213. <u>Irrelevant (FRE 402); Insufficiently Probative (FRE 403)</u>. The evidence is irrelevant and inadmissible because it does not show that the particular complaint cited was placed in the media bin on a particular date; rather it only shows that those complaints ought to have</p>	<p>Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p> <p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>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).)</p> <p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p>
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<p><u>Camacho Decl.</u> ¶ 14: “All the documents for the <i>Power Gomez v. LaCouture</i> 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.”</p>	<p>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.</p>	<p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>CNS offers no facts establishing any of the above factors that would outweigh the probative value of</p>
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		Ms. Camacho’s declaration and thus the evidence is admissible.
<p><u>Camacho Decl.</u> <u>¶¶ 15-21,</u> <u>relating Ms.</u> <u>Camacho’s</u> <u>analysis of all</u> <u>new unlimited</u> <u>general civil</u> <u>complaints filed</u> <u>on all court</u> <u>days between</u> <u>August 8, 2011,</u> <u>and September</u> <u>2, 2011:</u> “15. I conducted an identical analysis for all new unlimited general civil complaints filed on all court days between August 8, 2011, and September 2, 2011. My</p>	<p><u>Hearsay (FRE 802); Not</u> <u>Subject to Any Exception</u> <u>(FRE 803).</u> This evidence comprises, relates, or is based upon an out-of- court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. 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, more than two months after the events in question, and without her or her subordinate specifically confirming the physical location of any complaints. <i>See Sullivan</i>, 623 F.3d at</p>	<p><u>THE EVIDENCE IS NOT</u> <u>HEARSAY:</u> 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.) <u>THE RECORDS FALL</u> <u>WITHIN EXCEPTIONS TO</u> <u>HEARSAY:</u> <u>Public Records (FRE 803(A)).</u> 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</p>

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<p>analysis revealed that 147 new unlimited general civil complaints were filed by Ventura Superior Court during that time.</p> <p>16. Of those 147 new unlimited general civil complaints, 47 of them were received, processed and placed in the Media Bin all on the same day.</p> <p>17. Fifty-four (54) of them were received on one day and</p>	<p>778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999.</p> <p><u>Lacks Foundation (FRE 104(b)); Lacks Personal Knowledge (FRE 602)</u>. 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. <i>Kemp</i>, 23 F.3d at 213.</p> <p><u>Irrelevant (FRE 402); Insufficiently Probative (FRE 403)</u>. The evidence is irrelevant and inadmissible because it does not show</p>	<p>forth “the activities of the office or agency” As a result, they are admissible as a public record. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p> <p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>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).)</p> <p><u>Summaries (FRE 1006).</u></p> <p>Ms. Camacho’s testimony summarizes the contents of 147 CCMS case files and accompanying documents—a voluminous set of records that</p>
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<p>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</p>	<p>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</p>	<p>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.</p> <p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p>
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<p>get placed in the Media Bin due to an inadvertent clerical error.</p> <p>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</p>	<p>processed, but fails to establish why a complaint could not be made available before it is fully processed, and as such, is irrelevant.</p> <p>FRE 402.</p> <p><u>Unsubstantiated Summary (FRE 1006).</u> The evidence is inadmissible because Defendant has not provided Plaintiff with an opportunity to examine the underlying writings or recordings.</p>	<p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>CNS offers no facts establishing any of the above factors that would outweigh the probative value of</p>
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<p>recalled by the CPAs who 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.”</p>		<p>Ms. Camacho’s declaration and thus the evidence is admissible.</p>
<p><u>Camacho Decl.</u> ¶ 22: “I further understand that CNS has complained in the past about four specific case files and alleged delays of access to each ranging</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out-of- court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay. FRE 801, 802. It is not subject to either the business</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u> 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</p>

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<p>from eight to 13 days. I have researched those files through the information available in CCMS and have determined the following: (a) Estrada v. Rubio’s Restaurant, Inc., Case No. 56-2010-00387332: This case was received, processed into CCMS, and deemed filed all on December 20, 2010, and then sent to the</p>	<p>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. <i>See Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>, 935 F.2d at 998-999. <u>Lacks Foundation (FRE</u></p>	<p>the matters stated in her declaration. (Camacho Decl. ¶ 1.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u></p> <p>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. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p>
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<p>Media Bin that same day. (b) Berber v. Holiday Retirement, Case No. 56-2010-00387945: 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</p>	<p><u>104(b)); Lacks Personal Knowledge (FRE 602).</u> 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. <i>Kemp</i>, 23 F.3d at 213. <u>Irrelevant (FRE 402); Insufficiently Probative (FRE 403).</u> The evidence is irrelevant and inadmissible because it does not show that any of the cited complaints were actually placed in the Media Bin on the date that Ms. Camacho claims they 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</p>	<p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u> 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).)</p> <p><u>Summaries (FRE 1006).</u> 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.</p>
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<p>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.</p>	<p>and the actual location history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403. <u>Unsubstantiated Summary (FRE 1006)</u>. The evidence is inadmissible because Defendant has not provided Plaintiff with an opportunity to examine the underlying writings or recordings.</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u> 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 <i>any</i> tendency to make the existence of <i>any</i> fact" of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also</i></p>
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<p>Bumbarger, Case No. 56-2011- 00389425: This case was received, processed and deemed filed on January 12, 2011, and was immediately delivered to a judicial officer for review of a fee waiver that was presented with the complaint.”</p>		<p><i>Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>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.</p>
<p><u>Camacho Decl.</u> ¶ 23: “None of these cases reflect the type of delay to access that CNS claims.”</p>	<p><u>Hearsay (FRE 802); Not Subject to Any Exception (FRE 803).</u> This evidence comprises, relates, or is based upon an out of- court statement offered to prove the truth of the matter asserted and is therefore inadmissible as hearsay.</p>	<p><u>THE EVIDENCE IS NOT HEARSAY:</u></p> <p>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.</p>

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	<p>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. <i>See Sullivan</i>, 623 F.3d at 778; <i>Olender</i>, 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. <i>Chu Kong Yin</i>,</p>	<p>Because Ms. Camacho’s statements are (i) rationally based upon her own personal perceptions (and based upon records admissible under several hearsay exceptions, discussed <i>infra</i>), (ii) helpful to understand her testimony, and (iii) not based on specialized knowledge, they are proper opinion testimony under FRE 701.</p> <p>Ms. Camacho also has established the foundational facts and requisite personal knowledge to declare to the matters stated in her declaration. (Camacho Decl. ¶ 1.)</p> <p><u>THE RECORDS FALL WITHIN EXCEPTIONS TO HEARSAY: Public Records (FRE 803(A)).</u></p> <p>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</p>
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	<p>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. <i>Kemp</i>, 23 F.3d at 213. <u>Irrelevant (FRE 402); Insufficiently Probative (FRE 403).</u> 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</p>	<p>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. (<i>See</i> FRE 803(8)(A).)</p> <p>CNS’s cases are inapposite and its “factors” are insufficient to overcome the presumption that the records are trustworthy. <i>See</i> Ventura Superior Court’s response re Camacho Decl. ¶ 4.</p> <p><u>Records of a Regularly Conducted Activity (FRE 803(6)).</u></p> <p>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).)</p> <p><u>Summaries (FRE 1006).</u></p> <p>Ms. Camacho’s testimony summarizes the contents of 147 CCMS case files and accompanying documents—a</p>
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	<p>history of any complaint, the evidence is insufficiently probative to be admissible. FRE 403.</p> <p><u>Improper Opinion 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).</p> <p><u>Unsubstantiated Summary (FRE 1006)</u>. The evidence is inadmissible because Defendant has not provided Plaintiff with an opportunity to examine the underlying writings or recordings.</p>	<p>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.</p> <p><u>THE EVIDENCE IS RELEVANT (FRE 402)</u>. 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 <i>any</i> tendency to make the existence of <i>any</i> fact” of consequence to the case more or less probable than it would be without the evidence. (FRE 401, emphasis added.); <i>see Curtin</i>, 489 F.3d at 943.</p>
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		<p>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. <i>See Polk County</i>, 454 U.S. at 326; <i>see also Rizzo</i>, 423 U.S. at 370-377.</p> <p>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. (<i>See Kanatzar Decl.</i> ¶¶ 32-34.)</p> <p><u>THE PROBATIVE VALUE OF THE EVIDENCE IS NOT OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE. (FRE 403.)</u></p> <p>CNS offers no facts establishing any of the above factors that would outweigh the probative value of</p>
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		Ms. Camacho’s declaration and thus the evidence is admissible.
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II. OBJECTIONS TO THE DECLARATION OF CHERYL KANATZAR

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

<u>Evidence</u>	<u>CNS's Objections</u>	<u>Ventura Superior Court's Response</u>
		emphasis added); <i>see also Boyd v. City & Cnty. of S.F.</i> , 576 F.3d 938, 943 (9th Cir. 2009) (“Evidence may be relevant even if it is redundant or cumulative, or if it relates to undisputed facts.”)
<p>Kanatzar Decl. ¶¶ 6-11, 29, 32 & Exhs. A, B: Ms. Kanatzar reviews the Ventura Superior Court’s office staffing and caseload generally, and also cites the court’s current budget difficulties.</p>	<p>Irrelevant (FRE 402). The evidence is inadmissible as irrelevant to the legal issues posed by Courthouse News Service in connection with its preliminary injunction motion. Courthouse News does not dispute that Ventura Superior is facing serious staffing and 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.</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>Ms. Kanatzar’s statements and accompanying exhibits demonstrate that the Ventura Superior Court is critically understaffed and underfunded in light of the significant number of civil filings its clerks are required to process on a daily basis. 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 civil unlimited jurisdiction complaints, but also to Ventura Superior Court’s defense that the relief CNS seeks in this case warrants this Court’s abstention. The evidence is also relevant to</p>

<u>Evidence</u>	<u>CNS's Objections</u>	<u>Ventura Superior Court's Response</u>
		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 <i>directly</i> asking for those things, but the practical effect of its requested relief <i>requires</i> them. (FRE 401); <i>Boyd</i> , 576 F.3d at 943.
<p>Kanatzar Decl. ¶ 12 & Ex. C: "First, we reduced the public business hours for the clerk's office effective July 1, 2009. As can be seen from this excerpt from the July 1, 2009 memorandum issued to all staff in the clerk's office, which I approved, the public and</p>	<p>Irrelevant (FRE 402). The evidence is inadmissible as irrelevant to the legal issues posed by Courthouse News Service in connection with its preliminary injunction motion. Courthouse News does not dispute that Ventura Superior is facing serious staffing and budget difficulties, and Courthouse News is not</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u> Ms. Kanatzar's statement and accompanying exhibit demonstrate that the Ventura Superior Court is operating on a reduced schedule in order to accommodate critical budgetary and staffing constraints, which CNS does not dispute. These facts are relevant not only to CNS's legal claim regarding the court's failure to provide same-day access to newly filed civil unlimited jurisdiction complaints, but also to Ventura Superior</p>

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

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

<u>Evidence</u>	<u>CNS's Objections</u>	<u>Ventura Superior Court's Response</u>
<p>1 access we provide 2 to members of the 3 general public.”</p>		
<p>6 Kanatzar Decl. ¶¶ 7 30-34: Ms. 8 Kanatzar offers 9 various reasons why 10 she believes it is 11 “not possible” to 12 provide same-day 13 access to newly- 14 filed unlimited 15 complaints.</p>	<p>Irrelevant (FRE 402). The evidence is inadmissible as irrelevant to the legal issues posed by Courthouse News Service in connection with its preliminary injunction motion. The assertions set forth in ¶¶ 30-34 do not address why it is “not possible” to provide same-day access to new civil unlimited complaints. Rather, they offer Ms. Kanatzar’s reasons for why the processing of new civil unlimited complaints may be delayed.</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u> Ms. Kanatzar’s statements demonstrate three distinct reasons why it is not possible for Ventura Superior Court to provide same- day access to newly filed unlimited civil complaints. These facts are relevant not only to CNS’s legal claim regarding the court’s failure 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. (FRE 401.) Despite CNS’s argument to the contrary, paragraphs 32-34 <i>do</i> demonstrate why it is not possible for Ventura Superior Court to provide same day access.</p>

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1 **III. OBJECTIONS TO THE DECLARATION OF ROBERT SHERMAN**

<u>Evidence</u>	<u>CNS’s Objections</u>	<u>Ventura Superior Court’s Response</u>
<p>2 <u>Declaration of</u></p> <p>3 <u>Robert Sherman in</u></p> <p>4 <u>Support of</u></p> <p>5 <u>Defendant’s</u></p> <p>6 <u>Opposition to</u></p> <p>7 <u>Plaintiff’s Motion</u></p> <p>8 <u>for Preliminary</u></p> <p>9 <u>Injunction</u></p> <p>10 <u>(“Sherman Decl.”),</u></p> <p>11 <u>¶¶ 2-15 & Exhs. A</u></p> <p>12 <u>and B: Mr. Sherman</u></p> <p>13 <u>summarizes the</u></p> <p>14 <u>shortfalls of</u></p> <p>15 <u>revenue incumbent</u></p> <p>16 <u>on Ventura</u></p> <p>17 <u>Superior.</u></p>	<p>Irrelevant (FRE 402).</p> <p>The evidence is inadmissible as irrelevant to the legal issues posed by Courthouse News Service in connection with its preliminary injunction motion.</p> <p>Courthouse News does not dispute that Ventura 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.</p>	<p><u>THE EVIDENCE IS RELEVANT (FRE 402).</u></p> <p>Mr. Sherman’s statements and accompanying exhibits demonstrate that Ventura 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 <i>directly</i> asking for those things,</p>

<u>Evidence</u>	<u>CNS's Objections</u>	<u>Ventura Superior Court's Response</u>
		but the practical effect of its requested relief <i>requires</i> them. (FRE 401); <i>Boyd</i> , 576 F.3d at 943.

IV. OBJECTIONS TO THE DECLARATION OF KAREN DALTON-KOCH

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

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<u>Evidence</u>	<u>CNS's Objections</u>	<u>Ventura Superior Court's Response</u>
		<p>California based on their provision of “same-day access” to newly filed complaints. The Report Card gives only <i>five</i> out of <i>seventeen</i> courts “A” grades, and gives a full ten of the seventeen courts “C,” “D,” and “F” grades. CNS’s “grading” of the California courts’ provision of same-day access is directly relevant to CNS’s claim of a “tradition” of same-day access and underscores the lack of any such “tradition.”</p> <p>Separately, the purpose for which the Report Card purportedly was created is irrelevant to determining its admissibility. Moreover, notwithstanding CNS’s contrary claims, the Report Card does not indicate that it was meant to only reflect the <i>deterioration</i> of same-day access in the courts surveyed.</p>

1 Dated: November 14, 2011

Respectfully submitted,

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JONES DAY

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

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

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