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 22 COURTHOUSE NEWS SERVICE

23 **IN THE UNITED STATES DISTRICT COURT**  
 24 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 25 **SOUTHERN DIVISION**

26 Courthouse News Service,  
 27 Plaintiff,  
 28 vs.  
 29 David Yamasaki, in his official capacity  
 30 as Court Executive Officer/Clerk of the  
 31 Orange County Superior Court,  
 32 Defendant.

Case No. 8:17-cv-00126 AG (KESx)

**DECLARATION OF WILLIAM  
 GIRDNER IN SUPPORT OF  
 PLAINTIFF CNS'S OPPOSITION  
 TO DEFENDANT'S MOTION FOR  
 SUMMARY JUDGEMENT**

Date: January 29, 2018  
 Time: 10:00 a.m.  
 Courtroom: 10D, Santa Ana Division  
 Judge: Hon. Andrew J. Guilford

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I, William Girdner, declare and state as follows:

1. I am the editor and publisher of plaintiff Courthouse News Service (“CNS”). I make this declaration after reviewing Defendant David Yamasaki’s Motion for Summary Judgment, the supporting declarations and the deposition transcripts of Mr. Yamasaki, Deborah Kruse, Sara Ochoa, and Jeffrey Wertheimer. I have personal knowledge of the following facts, except where otherwise stated, and could and would competently testify to the same if called as a witness.

2. I started my career in journalism in about 1980, when I was hired as a news reporter by the Los Angeles *Daily Journal*. At the time, two other journalists, Milt Policzer and Don DeBenedictis, were working at the *Daily Journal* in the same newsroom in a building on Spring Street and 2nd Street, across from the *Los Angeles Times*. Both Mr. Policzer and Mr. DeBenedictis currently work for CNS covering legal news in Los Angeles and Orange County.

3. From roughly 1980-1983, I wrote news stories at the *Daily Journal* on a wide range of topics that included profiles of John Van de Kamp and his opponent when they were running for California Attorney General, a host of political measures, and a large number of judicial profiles, including an interview and profile of then-Chief Judge Manuel Real. Between 1983 and 1990, I wrote articles for *California Lawyer* magazine, one a cover story on Night Court at Los Angeles County Superior Court, and also wrote for national newspapers including the *Boston Globe*, *New York Times*, *Miami Herald* and *Dallas Morning News*, on topics ranging from plane crashes to earthquakes, cricket infestations to wine country controversies, spy trials to immigration policy.

**CNS Publications and Subscribers**

4. In 1990, I started the *Central District Almanac*, a bi-weekly print publication that was the precursor to CNS, which reported on, among other things,

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1 the new civil actions filed in that court and the opinions of its judges. The reporting  
2 on new civil actions was prompted by a conversation with a Skadden Arps lawyer,  
3 formerly with the U.S. Attorney’s Office, who told me the *Los Angeles Times* had  
4 stopped publishing docket information from federal court on its business page,  
5 information that had been of great interest to him. The *Central District Almanac*  
6 later expanded to cover rulings from all four federal districts in California and is  
7 now called the *Four Districts Almanac*, still published by CNS on a bi-weekly basis.

8 5. In the years since its founding, CNS has grown steadily and now  
9 employs more than 240 people, most of them reporters, across almost all 50 states.  
10 In California alone, CNS currently employs 78 people, including administrative  
11 staff, a Western Bureau Chief, and 52 reporters who cover the state and federal trial  
12 and appellate courts of California. CNS offers numerous publications, through  
13 which it reports on all stages of civil litigation, from the initial complaint or petition  
14 to subsequent filings, hearings, and rulings, on through final appeal in federal and  
15 state courts around the nation, including the U.S. Supreme Court.

16 6. CNS offers a variety of publications, including a monthly *Securities*  
17 *Law Digest*, monthly *Entertainment Law Digest*, and *Daily Brief*, a national report  
18 summarizing and linking to federal and state appellate court opinions. Another  
19 category is its New Litigation Reports, which contain original, staff-written  
20 summaries of significant and newsworthy new civil complaints. These reports are  
21 sent to subscribers via email each evening. The New Litigation Reports do not  
22 cover criminal or family law matters, and in California state courts, they only cover  
23 unlimited jurisdiction cases. Prior to the unification of superior and municipal  
24 courts in California’s state court system, CNS covered only superior courts (where  
25 what are now called “unlimited” complaints were filed).

26 7. As of the date of this declaration, CNS offers 124 New Litigation  
27 Reports, 16 of which focus on California, providing daily coverage of new litigation  
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1 filed in all four California federal district courts as well as daily coverage of the  
2 California superior courts for the counties of Alameda, Contra Costa, Fresno, Kern,  
3 Los Angeles (downtown and Santa Monica courthouses), Orange, Placer, Riverside,  
4 Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis  
5 Obispo, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, and  
6 Ventura. The New Litigation Report that covers the Orange County Superior Court  
7 (“OCSC”) and the Southern Division (Santa Ana) of the United States District Court  
8 for the Central District of California is called the *Orange County Report* and has  
9 about 275 subscribers.

10 8. As noted, CNS’s other subscription publications include two monthly  
11 publications, the *Securities Law Digest*, and the *Entertainment Law Digest*, as well  
12 as the *Daily Brief*, which summarizes and links to federal and state appellate court  
13 opinions throughout the nation. Examples of these publications are attached as  
14 exhibits to my declaration filed in this action on March 31, 2017, including the Four  
15 Districts Almanac (Ex. 2 to Dkt. No. 34) and the Daily Brief Report (Ex. 3 to Dkt  
16 No. 34). Subscribers can also sign up for a “dinger” that notifies them when new  
17 cases are filed within parameters they set, and they can set up a “tracker” that will  
18 follow an ongoing case and send an email notice when a new filing is made in that  
19 case. Both dingers and trackers are sent to subscribers via e-mail throughout the  
20 day, as we become aware of a new complaint, subsequent filing, or ruling through  
21 our news reporting. Many of CNS’s subscribers receive all of these publications as  
22 part of a package subscription.

23 9. As of the date of this declaration, CNS has more than 2,100 subscribers  
24 nationwide. All but a very few of the nation’s large and mid-sized law firms  
25 subscribe to one or more of our publications. California represents CNS’s most  
26 substantial subscriber base, with more than 500 of CNS’s subscribers having one or  
27 more offices in the state.

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1           10. Many academic institutions also subscribe to CNS, including UCLA  
2 School of Law, UC Hastings College of Law, Baylor College, Boston College Law  
3 School, Boston University, Case Western Reserve University, Harvard Law School,  
4 MIT School of Management, University of Pittsburgh, and Wake Forest University,  
5 among others.

6           11. A substantial set of news and entertainment outlets are also CNS  
7 subscribers, including but not limited to the *Los Angeles Times*, *Los Angeles*  
8 *Business Journal*, *Pacific Coast Business Times*, *San Jose Mercury News*, *The*  
9 *Boston Globe*, *The Atlanta Journal Constitution*, *Austin American-Statesman*,  
10 *BuzzFeed*, *The Dallas Morning News*, *Detroit Free Press*, Fox Entertainment  
11 Group, *The Salt Lake Tribune*, *San Antonio News Express*, *The Wall Street Journal*,  
12 Warner Bros., and many TV stations.

13           12. CNS’s news media subscribers rely on us to provide them with timely  
14 information about civil litigation, our specialty, so they can provide information  
15 about those cases to their own readers and viewers. In recent years, as the  
16 traditional news industry has withered, we have seen an increasing number of news  
17 organizations become CNS subscribers. At the same time, we have seen news  
18 organizations cut back on court coverage. The end result is that in many courts CNS  
19 effectively serves as a pool reporter, with its reporter sometimes the only journalist  
20 reporting on that court.

21           13. A number of government agencies also subscribe to CNS, including the  
22 Los Angeles City Attorney’s Office, the Bakersfield City Attorney’s Office, the  
23 Kern County Counsel’s Office, the San Diego City Attorney’s Office, the City of  
24 Santa Monica, Monterey County Superior Court, and the Ninth Circuit Library in  
25 Los Angeles, as well as watchdog groups such as the Washington, D.C.-based  
26 Center for Public Integrity.

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1 14. In addition to CNS’s numerous subscription publications, CNS also  
2 publishes a webpage (www.courthousenews.com) every weekday that focuses on  
3 law and politics, including trial court hearings in major criminal and civil cases,  
4 appellate arguments and rulings, in the federal circuit courts, the U.S. Supreme  
5 Court and the European Court of Justice. CNS’s webpage publishes approximately  
6 20-35 original articles per day, written by CNS staff reporters, in addition to  
7 Associated Press stories on domestic and international topics.

8 15. Articles posted on CNS’s webpage include stories based on new  
9 complaints filed at the courts covered by CNS, including new complaints filed at  
10 OCSC. True and correct copies of recent examples of web articles based on  
11 complaints filed at OCSC are attached as **Exhibit 1**. The complaints giving rise to  
12 these articles include allegations against local amusement parks accused of causing  
13 personal injuries (articles dated 8/30/17 and 11/16/17), claims against local  
14 municipalities (articles dated 7/21/17, 7/24/17, 7/28/17 and 8/1/17), a complaint  
15 filed by an Orange County developer over an improperly filled oil well (article dated  
16 7/13/17), a products liability case filed against Heineken, USA, Inc. (article dated  
17 8/4/17) and a case alleging fraud against Toyota Motor Sales, U.S.A., Inc. (article  
18 dated 7/25/17). As discussed further below CNS’s ability to timely publish stories  
19 based on new civil complaints on its webpage depends on the willingness of that  
20 court’s clerk’s office to provide timely access to those complaints. Additional  
21 examples of news stories published on CNS’s web site involving Orange County,  
22 including an appellate ruling (article dated 12/18/17) and state judicial appointments  
23 (article dated 11/2/17), are also included as **Exhibit 1**. Additional examples of  
24 original web articles published on the CNS website based on new complaints filed at  
25 OCSC were attached as Exhibit 5 to my declaration filed in this action on March 31,  
26 2017 (ECF 34, ¶ 17(d), Ex. 5).

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1           16.     Within the nation’s press corps, CNS has been credited as the original  
2 source of reporting by a wide range of publications, including *The Orange County*  
3 *Register*, *ABA Journal*, ABC News, *The Atlantic*, *Austin American Statesman*, Black  
4 Christian News Network, *California Bar Journal*, CBS News, The Daily Beast, *The*  
5 *Christian Science Monitor*, *The Dallas Morning News*, Forbes, Fox News, *The*  
6 *Guardian*, The Hill, *Houston Chronicle*, The Huffington Post, *Long Island Press*,  
7 *Los Angeles Times*, *Mother Jones*, NBC News, *New York Daily News*, *New York*  
8 *Magazine*, *The New York Times*, NPR, Politico, *The Telegraph* (UK), *Rolling Stone*,  
9 *San Antonio Express-News*, Slate, *Salt Lake City Tribune*, *The Washington Times*,  
10 *Women’s Health Policy Report*, *U.S. News and World Report*, *USA Today*, *The Wall*  
11 *Street Journal*, *The Washington Post*, UPI, and others. In addition, U.S., Canadian,  
12 and New Zealand radio shows have interviewed CNS reporters. Examples of stories  
13 published by *The Orange County Register*, and some stories published by news  
14 agencies other than *The Orange County Register*, in which CNS was credited were  
15 submitted in support of my declaration filed in this action on March 31, 2017 (ECF  
16 34, ¶ 18; ECF 35).

17           17.     CNS’s *Orange County Report* regularly includes original reports on  
18 new complaints filed at OCSC that are also independently reported on by *The*  
19 *Orange County Register*. Examples of new complaints filed at OCSC that were  
20 reported on by both CNS and *The Orange County Register* were identified and  
21 submitted in support of my declaration filed in this action on March 31, 2017 (ECF  
22 34, ¶¶ 19, 20, Ex. 8; ECF 35-1, 35-2).

23           18.     In Defendant Yamasaki’s motion papers, he refers to CNS as a “news  
24 aggregator.” The claim illustrates a lack of knowledge about the news business, and  
25 it is false. A news aggregator is an entity that links to news articles written and  
26 published by others. An aggregator creates no original content. CNS is the polar  
27 opposite of a news aggregator in that all of CNS’s publications, including its New  
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1 Litigation Reports, its monthly publications, the *Daily Brief*, and the CNS website,  
2 are written entirely by either our own reporters or Associated Press reporters based  
3 on a paid subscription to AP. The analysis contained in reports in new litigation,  
4 district court rulings and appellate opinions are wholly created by CNS reporters.

5 **Access to Civil Unlimited Complaints in California**

6 19. Through my experience covering civil litigation for more almost four  
7 decades, including but not limited to my own in-person visits to many state and  
8 federal courts, discussions with court officials, as well as the supervision of CNS’s  
9 reporters and editors around the country, I have developed extensive personal  
10 knowledge of the procedures used by courts to provide the press with access to new  
11 complaints. I have observed a longstanding tradition in state and federal courts  
12 throughout the country whereby news reporters review new complaints on the day  
13 they are received, before clerks performed the administrative tasks that follow a  
14 court’s receipt of a new complaint. These tasks used to be called “docketing,” but  
15 are now more commonly referred to as “processing,” especially by e-filing courts.

16 20. Before the advent of e-filing, federal and state courts in California  
17 typically gave reporters access to the day’s complaints by providing them in paper  
18 form in a box, bin or stack on, behind, beside, or near the intake counter at the end  
19 of the day, when courthouse beat reporters would visit the court to learn what had  
20 been filed that day. Reporters would look through the entire stack to determine  
21 which complaints they wanted to report on.

22 21. For example, when I began covering the United States District Court  
23 for the Central District of California in downtown Los Angeles in the 1980s as a  
24 journalist writing news articles for *The Boston Globe* and *The New York Times*, I  
25 would regularly go to the clerk’s office between 4 and 5 p.m. each day to look over  
26 a stack of new civil complaints filed that day, long before they were docketed. I was  
27 routinely joined in this practice by an array of other reporters for United Press  
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1 International (UPI), the *Los Angeles Times*, *The Orange County Register*, and *Los*  
 2 *Angeles Daily News*. Since the Central District implemented e-filing, new  
 3 complaints for all Divisions of that Court have flowed into public view on  
 4 courthouse terminals or online via PACER immediately upon receipt, even on nights  
 5 and weekends, before staff review or other processing. Reporters can see new cases  
 6 almost immediately after filing on public terminals in the records rooms or other  
 7 public areas of Central District courthouses, or via the Internet. I think of this  
 8 access as an electronic in-box, similar to the bin, box or stack where paper filed  
 9 complaints were traditionally placed for media review before docketing. The  
 10 Central District courthouse located at 350 West 1<sup>st</sup> Street, in downtown Los  
 11 Angeles, has a press room with a PACER computer terminal on the 10th floor,  
 12 where journalists can stay past the time the courthouse closes to finish working.

13 22. Similarly, when I began covering the Stanley Mosk Courthouse of what  
 14 is now Los Angeles County Superior Court in 1993, I checked out a cart that held  
 15 that day's new civil complaints and petitions, none of which had been docketed. A  
 16 court employee brought the new complaints from the intake counter, also pre-  
 17 docketing, in batches, including a last batch when the filing window closed at 4:30.  
 18 Reporters stayed in the records room to review the new complaints until 5:00, after  
 19 the general public was asked to leave the records room at 4:30. Based on my direct  
 20 supervision of CNS's Los Angeles Superior reporter and my own personal  
 21 observation, I know that the court now provides timely access by promptly scanning  
 22 new complaints – which are still filed in paper – on the day of filing, before  
 23 docketing. Reporters review the scans of new complaints through terminals in the  
 24 courthouse press room, which stays open after the court closes for the day so the  
 25 press can review late-filed cases.

26 23. In 1994, I hired a former UPI reporter to cover the federal and state  
 27 courts in San Francisco for our news service. In 2001, I visited the clerk's office of  
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1 the Phillip Burton Federal Building, which houses the United States District Court  
 2 for the Northern District of California in downtown San Francisco, where I observed  
 3 our reporter go behind the counter to review new complaints filed that same day,  
 4 regardless of whether they had been docketed. She was also able to check bins  
 5 holding complaints being sent to the Oakland and San Jose divisions of the court.  
 6 Working in the press room alongside CNS and also reviewing the new civil  
 7 complaints were journalists from the *San Francisco Chronicle*, *National Law*  
 8 *Journal*, and Bloomberg News. That tradition of timely access before processing  
 9 continues into the present where journalists review new complaints on terminals at  
 10 the courthouse when they are received, before any action is taken by a court clerk.  
 11 These same complaints can be seen online via PACER, immediately upon receipt,  
 12 whether the complaint is filed during the work day, after hours or on weekends.

13         24. CNS's coverage of the San Francisco Civic Center Courthouse, which  
 14 houses the Superior Court of California, County of San Francisco, also began in  
 15 1994. On a visit to the court in 2001, I and other journalists entered the records  
 16 room on the ground floor of the courthouse, presented a driver's license, signed in  
 17 and left a driver's license as collateral. We then went into a large hall behind the  
 18 intake counter that housed shelves of records as well as docket clerks who worked  
 19 immediately behind intake clerks at the counter. Reporters worked at a set of carrels  
 20 placed between the record shelves and the docketing clerks. Journalists gathered the  
 21 new complaints directly from the intake and docketing clerks and put them in a bin  
 22 kept at the reporters' carrels. Reporters from *San Francisco Recorder*, Bloomberg  
 23 News, *San Francisco Examiner*, *Los Angeles Daily Journal* and *The Wall Street*  
 24 *Journal* also used the reporters' station to review new complaints and case files kept  
 25 in the shelves. In 2001, Clerk Gordon Park-Li met with me and about five other  
 26 journalists to establish a protocol for access to new complaints. The result was a  
 27 written memorandum promising timely access to the new actions "whether or not  
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1 the cases have been entered in the computer.” A true and correct copy of that  
2 written protocol is attached as **Exhibit 2**.

3 25. In 1995, I went to the OCSC courthouse on Civic Center Drive in Santa  
4 Ana and – along with reporters for *The Orange County Register*, *Los Angeles Times*,  
5 *Los Angeles Daily Journal* and City News Service – I checked a wooden box at the  
6 back of the records room containing that day’s new civil complaints, all filed in  
7 paper form. The records room was next to the intake counters. I watched as a  
8 records room clerk gathered up the new complaints from the intake clerks at the end  
9 of the day to give to reporters, who reviewed the new actions on the day they were  
10 received, before docketing.

11 26. In the same time period and in the same manner, journalists covered  
12 new civil complaints filed in the United States District Court for the Central District  
13 of California’s Southern Division in Santa Ana, where the Clerk’s Office filing  
14 window closed at 4:00. Every court day between 4:00 and 5:00, the intake clerk  
15 opened a doorway separating the press room from the clerk’s office, held the door  
16 with her foot and placed the day’s newly-filed actions in a shallow, black plastic  
17 tray that sat on a shelf below the glass partition and the Clerk’s docketing area. In  
18 the morning, a clerk retrieved the contents of the tray for docketing. That routine,  
19 which paralleled press access in the Western Division, prevailed from the time the  
20 Santa Ana federal courthouse was built in 1992 until 2012 when mandatory e-filing  
21 of civil cases was required – with the exception of pro se complaints and complaints  
22 where the filing party moves for or requests sealing, as well as cases where filing  
23 under seal is authorized by statute, all of which by rule are required to be filed in  
24 paper form, per the court’s Local Rule 79-5. As a result, the District Court provided  
25 timely access to all complains on the day of filing, without conditioning that access  
26 on docketing or processing, then and now.

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1           27. In 1996, I also set up our coverage of the Santa Clara County Superior  
2 Court at the First Street courthouse in San Jose. I went through a swinging wooden  
3 gate next to the counter in the records room on the ground floor. I reviewed the new  
4 superior court civil complaints received earlier that same day and placed in a  
5 cardboard box on an empty desk behind the counter. They had not been docketed.  
6 While I was there, a reporter from a small local publication was also reviewing the  
7 new actions. These procedures changed over the years, and, as discussed further  
8 below, in April 2010, the court’s then-Chief Executive Officer, David Yamasaki  
9 took the position in a letter to CNS’s counsel that “our Court must process a new  
10 complaint in order for it be ‘filed.’” A true and correct copy of this letter, dated  
11 April 23, 2010, is attached as **Exhibit 3**.

12           28. In 1998, I set up our coverage of the Robert T. Matsui United States  
13 Courthouse for the Eastern District of California. Chief Deputy Clerk Pat Sandlin  
14 provided me with access to the new complaints received earlier that day in a narrow  
15 area outside the intake windows. It is my understanding, based on my direct  
16 supervision of the reporter we hired to cover the court, that in 1998 he reviewed the  
17 new complaints from behind the counter on the day they were filed, before they  
18 were docketed. The tradition has continued into the present. The Eastern District  
19 now provides access to the newly e-filed complaints on the day they are received,  
20 without any processing by court employees, via public terminals at the courthouse  
21 or online via PACER. Some of the new cases have permanent numbers and other  
22 still have “AT” numbers, temporary numbers assigned to a case upon receipt.

23           29. Also in 1998, I visited the Gordon D. Schaber Courthouse housing the  
24 Superior Court of California, County of Sacramento (“Sacramento Superior”),  
25 where a bin was kept just inside the intake counter holding the previous day’s civil  
26 complaints. Reporters reviewed the complaints at a small, wooden desk outside the  
27 counter. Years later, after delays grew to extraordinary lengths, the court’s

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1 presiding judge issued a standing order in 2011 requiring that filers submit a copy of  
2 new civil complaints for public review, an order that is being enforced by the clerk’s  
3 office. It is my understanding, based on my supervision of the reporter and personal  
4 efforts to resolve access issues in that court, that a “Public Access Bin” now sits on  
5 a table outside the counter, across from the intake clerks. Journalists, including the  
6 CNS reporter, review the new actions at a nearby desk, well before they are  
7 docketed. The result is access to the new complaints on the day they are filed, all  
8 filed in paper form, long before docketing.

9 30. Also in the late 1990s, I visited the Superior Court of California,  
10 County of Alameda (“Alameda County Superior”) at the Rene C. Davidson  
11 Courthouse on Fallon Street. I and other reporters checked out a wooden box from a  
12 clerk in the records area of the clerk’s office, containing new complaints filed that  
13 day. The tradition of timely continues today, which I know due to having personally  
14 managed issues relating to access at Alameda County Superior over the years.  
15 Complaints are still filed in paper form. A rudimentary docket is created  
16 immediately upon filing, similar to an intake log, that can be viewed on the court’s  
17 website. The civil complaints are then scanned and attached to that preliminary  
18 docket. If at the end of the day, some cases have not been scanned and attached,  
19 reporters send an email to the court and the scans are promptly made available for  
20 review, on terminals at the courthouse and on the court’s website. The result is a  
21 high percentage of same-day access for unlimited civil cases at Alameda County  
22 Superior, currently more than 90%. Alameda County complaints can be viewed for  
23 free on that court’s website for the first five days after they are received for filing;  
24 after that time, they go behind a “paid” wall.

25 31. The tradition of timely access to newly filed civil complaints is alive  
26 and well in the present day, including in courts such as the California Superior Court  
27 for the counties of Los Angeles, Alameda, Sacramento, San Luis Obispo, San  
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1 Mateo, and, most recently, in San Joaquin, Fresno and, Ventura, in addition to all  
2 four federal courts in California. Ventura County Superior Court (“VCSC”) began  
3 providing timely access pursuant to this Court’s May 2016 injunction in the case  
4 *Courthouse News Service v. Planet*, Case No. 2:11-cv-08083-SJO-FFM, and San  
5 Joaquin County Superior Court began providing timely access in response to a letter  
6 from me citing the *Planet* ruling. Fresno Superior, now one of California’s few  
7 mandatory e-filing courts, provides access to new e-filed complaints on receipt and  
8 before clerk review or other processing in the same manner as most federal district  
9 courts and a growing number of state e-filing courts, something I discuss further  
10 below.

11 32. However, in my capacity as editor of CNS, I have seen a trend in recent  
12 years in which a handful of state court clerks have started taking a hard line on press  
13 access to new civil actions, refusing to allow journalists to see new complaints  
14 promptly after the court receives them and instead taking the position that these new  
15 complaints are not “filed” and that the press and public have no right to see them  
16 until after processing – which in the e-filing environment often includes but is not  
17 limited to official “acceptance” by a court clerk. These clerks’ offices withhold  
18 complaints from the press until after processing, no matter how long that takes –  
19 even after being alerted to this Court’s May 2016 *Planet* ruling.

20 33. The tradition of press access was alive and well in the superior courts  
21 of California when the paper medium was dominant. The advent of the digital age  
22 weakened newspapers because their advertising revenue went down sharply, and  
23 also weakened press access, because a few state court clerks began imposing pre-  
24 conditions on access tied to scanning and e-filing. Defendant argues CNS’s Report  
25 Card from January 2011 identifying 6-10 courts with poor grades in timely access  
26 show there is no tradition of timely access. The 2011 Report Card was part of an  
27 attempt by CNS to halt that erosion in press access in California without the need  
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1 for litigation. Many of the superior courts that had bad grades on the Report Card  
 2 were willing to return traditional access to news reporters, including Kern, Fresno,  
 3 Sacramento, Solano, Contra Costa and San Mateo superior courts. Kern is a case in  
 4 point. The clerk's office staff referred to a "media room" behind the counter but  
 5 denied journalists access to the room. After I met with the court's presiding judge,  
 6 the court returned first-rate access to the press corps which has continued into the  
 7 present. The courts that refused requests for a return of traditional press access were  
 8 primarily the users and early adopters of California's Court Case Management  
 9 System ("CCMS"), namely, Orange, Ventura, and San Diego County Superior  
 10 Courts. Ventura Superior returned to timely access only after five years of  
 11 litigation. The tradition of access also exists outside of California courts, and is  
 12 demonstrated by the many courthouses covered by CNS across the country in which  
 13 timely access the new civil complaints is provided regardless of whether the  
 14 complaints have been fully processed. These courts are addressed in detail in the  
 15 declarations submitted by myself, and current and former CNS employees, in the  
 16 *Courthouse News v. Planet* case. True and correct copies of those declarations were  
 17 filed in this case on January 30, 2017, in support CNS's motion for preliminary  
 18 injunction (ECF 12, 12-1, 12-2 and 12-3, Exs. 1 -36).

19 34. As is discussed further below, one of the clerks who has been most  
 20 strident in the position that a complaint is not a public record until after it has been  
 21 processed or officially "accepted" is Alan Carlson, the Clerk and Court Executive  
 22 Officer of OCSC from 2008 until his recent retirement in late 2016. During a  
 23 meeting I had with Mr. Carlson in 2010, he stated that he does not believe the press  
 24 should have access to new civil actions e-filed in his court until after they are  
 25 officially "accepted" into the court's docketing system.

26 35. CNS also encountered a no-access-until-processing practice from  
 27 David Yamasaki when he was the Clerk and Court Executive officer of Santa Clara  
 28

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1 County Superior Court. On December 2, 2016, Mr. Yamasaki replaced Mr. Carlson  
2 as the Clerk and Court Executive Officer of OCSC. During the years when he was  
3 the clerk in Santa Clara County, the clerk’s office procedures changed from the  
4 traditional press box behind the counter to a requirement that new complaints must  
5 first be processed before they can be made available to the public. Delays are now  
6 the norm in Santa Clara as the result of that office’s practice of not permitting the  
7 press to review new unlimited complaints until after processing. In his deposition  
8 taken in this case, Mr. Yamasaki acknowledged that access procedures changed at  
9 Santa Clara, and that he endorses the current practice of withholding access to new  
10 complaints until after processing.

11 36. In my experience watching courts across the country transition to e-  
12 filing, delays that are antithetical to news coverage inevitably result where clerks  
13 withhold access while they complete the administrative tasks that follow a court’s  
14 receipt of a new complaint, namely, processing. Press access is then dependent on  
15 the work schedules of court employees, and it inevitably suffers. Even in the most  
16 efficient clerks’ offices, any number of factors can delay processing, including staff  
17 numbers, sickness, holidays, vacations, office birthday celebrations, holiday parties  
18 and so on.

19 **Delays in Access at OCSC**

20 37. As noted above, I personally set up CNS’s coverage of OCSC in 1995,  
21 and have first-hand experience of reviewing the day’s complaints at the court from  
22 that time. In subsequent years, I hired and supervised CNS’s reporters covering  
23 OCSC. Currently I serve as the editor for CNS’s OCSC reporter, Joanna Mendoza,  
24 directly supervising her work at the court. In this role, I have closely monitored  
25 access delays and become familiar with the court’s administrative processes.

26 38. When CNS began covering OCSC in 1995, the court provided the press  
27 with a “media box,” a wooden box containing the day’s complaints in paper form.  
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1 Towards the end of the day, a records room clerk would gather the new complaints  
2 from the intake clerks regardless of whether the complaints had been docketed (as  
3 the intake tasks were then called), place them in the media box, and hand the box to  
4 reporters. Reporters for *The Orange County Register*, *Los Angeles Times*, *Los*  
5 *Angeles Daily Journal*, and City News Service were among those who checked the  
6 media box each day. In this way, we were consistently able to review new  
7 complaints promptly after they had been received by the court each day and to  
8 provide timely reporting based on our review.

9 39. I personally observed the media box containing new complaints when  
10 CNS first established coverage of OCSC in 1995. I observed a records room clerk  
11 gather the new complaints from the intake clerks, place them in a wooden media  
12 box, and hand the box to reporters. Based on my review of the transcript of  
13 Deborah Kruse in the case, I understand that she saw the same box that OCSC used  
14 to provide access to new complaints to the press. Based on my review of the  
15 transcript of the deposition of Sarah Ochoa in this case, it is my understanding that a  
16 plastic bin is still used at OCSC to collect paper-filed complaints, which are still  
17 permitted at OCSC for self-represented litigants. However, journalists are no longer  
18 allowed to review its contents. Instead, news reporters must wait to see the new  
19 complaints until they have been processed, scanned and manually uploaded  
20 electronic terminals in the Clerk’s Office, which is the only place other than  
21 OCSC’s paid web site where they can be viewed.

22 40. Also in around 1995, I observed the access procedures used by the  
23 press covering the new civil actions filed at the United States District Court for the  
24 Central District of California, Southern Division, in Santa Ana. I am also familiar  
25 with these procedures from supervising CNS’s reporter, Joanna Mendoza. The  
26 Southern Division Clerk’s Office filing window closed at 4:00. Every day between  
27 4:00 and 5:00, the intake clerk opened a doorway separating the press room from the  
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1 clerk’s office, held the door with her foot and place the day’s newly-filed actions in  
2 a shallow, black plastic tray that sat on a shelf below the glass partition and the  
3 Clerk’s docketing area. This procedure prevailed from the time the Santa Ana  
4 federal courthouse was built in 1992 until 2012, when the Court began mandatory e-  
5 filing for all civil cases– with the exception of pro se cases, those where the filing  
6 party files a motion or request to seal, and those filed under seal by statute, all of  
7 which by rule are required to be filed in paper form. Since then, the Court has and  
8 continues to this day to provide access to all the new cases upon receipt, before  
9 processing, any time of day or night via PACER. For instance, on January 5, 2018,  
10 CNS was able to access and report on a new complaint e-filed and made available  
11 after 5:00 p.m. that day, Case No 8:18cv17, *Self Insured Schools of California and*  
12 *on Behalf of All Others Similarly Situated v. Allergan Inc.*

13 41. Shortly after starting CNS coverage of OCSC in 1995, I traveled to the  
14 Santa Clara County Superior Court (“SCCSC”) courthouse in 1996 to set up  
15 coverage there. I went through a swinging wooden gate in the records room on the  
16 ground floor of the Santa Clara County Courthouse on North First Street in San  
17 Jose, and reviewed the new superior court civil complaints placed in a cardboard  
18 box on an empty desk behind the counter. They had been received earlier that day  
19 and had not been docketed. While I was there, a reporter from a small local  
20 publication was also reviewing the new actions.

21 42. Mr. Yamasaki was named the Clerk of SCCSC in 2008. During his  
22 tenure, Mr. Yamasaki originally provided access to new complaints before full  
23 processing by making them available for review in a box located behind the counter  
24 in the clerk’s office, as described above. I understand based on my review of Mr.  
25 Yamasaki’s deposition testimony in this case that at some point he changed his view  
26 on when a complaint becomes a public document and he started delaying access  
27 until after full processing. As noted above, Mr. Yamasaki expressed his belief that  
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1 “our Court must process a new complaint in order for it to be ‘filed’” in a letter  
2 dated April 23, 2010 (Exhibit 3). Press access then became highly inconsistent, with  
3 delays that often ran for several days based on the work schedules of a harried staff,  
4 a state of affairs that has continued into the present.

5 43. When I established coverage at OCSC and SCCSC in the mid-1990s,  
6 newspapers were still strong in California. OCSC in particular was part of a robust  
7 and competitive media market later weakened by economic forces, particularly the  
8 advent of the Internet, and by policies of successive clerks that degraded and  
9 delayed press access.

10 44. At the time, OCSC maintained a press room in a small, adjacent  
11 building located next to the main courthouse, with easy access to the clerk’s office,  
12 that housed reporters for City News Service, *The Daily Journal*, the *Los Angeles*  
13 *Times*, *The Orange County Register* and CNS. Reporters would go into the clerk’s  
14 office before 5:00 p.m. and check the new filings in the box in the records room. In  
15 the period between 1995 and 2000, then-Clerk Alan Slater began charging rent for  
16 space in the press room for all news reporters in the press room except those for *The*  
17 *Orange County Register* and the *Los Angeles Times*. When Mr. Slater began  
18 charging rent, I spoke with him by phone and he explained his dispensation of the  
19 two largest papers in the region by saying they reached more people. I answered  
20 that he was tilting the playing field in favor of those with the most money and reach.  
21 The argument fell on deaf ears, and we paid rent.

22 45. Mr. Slater eventually closed the press room entirely, in effect evicting  
23 the journalists who covered the court. It is my recollection that the closure was part  
24 of a remodel of the clerk’s office which I believe took place in the late 1990s. After  
25 the remodel, the clerk then leased a room to *The Orange County Register* directly  
26 across from the viewing area for court records, a room which I understand, based on  
27 CNS’s coverage of the court, that newspaper still leases today. I have seen that  
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1 room. The room is big enough for two reporters and it has no curfew, allowing the  
2 *Register* reporters to finish writing their stories long after the clerk’s office locks its  
3 doors at 4:00. Based on my review of the transcript of Mr. Yamasaki’s deposition  
4 in this case, it is my understanding there is no reason, other than OCSC’s current  
5 process-first policy, why OCSC could not put a computer terminal into that room for  
6 the press to review new complaints as they are received and before processing,  
7 including complaints that are e-filed after the clerk’s office closes for the day, which  
8 under OCSC local rules are given that day’s “filed” date if filed before midnight.

9 46. In 2002, OCSC supervisor Connie Pilcher called a meeting to tell news  
10 reporters covering the court that they would no longer see new complaints in the  
11 press box at the end of the day, and would henceforth be required to review them on  
12 the day following receipt. At the time our news service was small and we could not  
13 mount a challenge to the policy ourselves.

14 47. A few months later, in early 2003, *Los Angeles Times* reporter, Monte  
15 Morin and I met with OCSC Public Information Officer Carole Levitzky to discuss  
16 the delays and request a return of access to the new complaints received that day.  
17 Ms. Levitzky began to express sympathy and some agreement with our request,  
18 when Mr. Slater rushed out of his office to interrupt the meeting. Mr. Slater  
19 acknowledged that press access to new complaints had been delayed by at least four  
20 or five days but expressed the view that such delays were just fine. He was adamant  
21 in his refusal to consider our request to reinstate traditional press access on the day  
22 of filing, and made it clear he was willing to litigate the matter.

23 48. In March 2003, *Los Angeles Times* reporter Seema Mehta and I met  
24 with Ms. Levitzky and other OCSC staff to review the court’s intake system, which  
25 confirmed that the delays in access were due to the clerk’s just-implemented policy  
26 of docketing new complaints ahead of press access. We were shown the scanning  
27 room and I learned in talking with the people doing the scanning that they scanned



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1 new complaints last, after all subsequent filings. During that visit, Ms. Mehta  
2 informed the clerk’s staff that because of the delays, the *Times* had largely stopped  
3 reporting on new cases filed in that court. She explained that reporters could not  
4 “sell” a breaking story to editors when it was a day old.

5 49. In practical terms, what Mr. Slater had accomplished was to push  
6 journalists from the point of intake where they traditionally reviewed the new civil  
7 action down the line past the point of docketing and then past the point of scanning,  
8 down to the very end of the new complaint’s path into the court’s case management  
9 system, days after the cases had been filed.

10 **Harm Caused By Withholding Access Until After Processing**

11 50. A new civil complaint serves as the opening bell in a legal contest, and,  
12 especially at a major court like OCSC, the new complaint can signal a contest of  
13 great public interest. Obtaining complaints directly from the court is the only way  
14 for reporters to provide the public with consistent and reliable information about  
15 new civil actions at the court. There is no alternative, other than to request copies  
16 from the filing parties, who have no obligation to provide them. OCSC’s policy and  
17 practice of withholding complaints from the press and public until after processing  
18 means that CNS cannot inform its subscribers and the public of who has been haled  
19 into court or why, because the action is hidden from view, often for days at a time.

20 51. I have fielded complaints from our subscribers about late reporting,  
21 asking why a new complaint was reported late. When complaints from subscribers  
22 come to my attention, I respond directly because I believe the reputation of CNS is  
23 at stake. I will investigate the reason for the delayed reporting and give the  
24 subscriber an explanation, which is sometimes the fault of a reporter or a technical  
25 problem on the side of CNS, but more often is due to a clerk’s policy or practice of  
26 withholding access.

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1           52. OCSC’s withholding policy causes CNS subscribers to question why  
2 we are reporting on stale events, thus damaging the worth of our publications. On  
3 numerous occasions, the court failed to make any complaints available because its  
4 document imaging system broke down. On those days, we explained the lack of  
5 reporting to our subscribers with the following note: “Orange County Superior’s  
6 CCMS-based software system has cut off access to the newly filed civil actions for  
7 the entire day. There is no alternate route of access. Court officials themselves  
8 continue to have steady and consistent access to the new actions, while the public  
9 and press are shut out. The same officials say they are working on the problem, a  
10 recurring theme.”

11           53. A delay of even one day caused by OCSC’s policy means that news is  
12 delayed by a full news cycle. An intervening weekend or holiday, or both, extends  
13 the delay significantly. And it has been CNS’s experience that the more important  
14 and newsworthy actions tend to be filed late in the day, making them particularly  
15 prone to extended delays in press access where courts condition access on  
16 processing.

17           54. Prompt and complete access is essential to accuracy in news reporting.  
18 In those instances where courts withhold access to complaints until after processing,  
19 news about a new complaint is prone to inaccuracies because the actual complaint is  
20 not available. As a result, the public and CNS subscribers are given information  
21 from the filing parties, in press releases and interviews, that is far inferior to a full,  
22 timely, and accurate description of the factual and legal allegations contained in the  
23 complaint itself. By the time the complaint is released for public review, the news  
24 cycle has moved on, and it is very unlikely a reporter will take it upon him/herself to  
25 re-report the story based on the actual complaint.

26           55. Based on my many years as a journalist covering the courts and my  
27 personal experience overseeing CNS, I have found that the initiation of litigation  
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1 can affect many people beyond the litigants. When courts withhold access to new  
2 complaints, the ability of lawyers, professors, law students, news reporters, and  
3 readers of our web site to know about and freely discuss a new legal contest pending  
4 in a public court of law is suppressed. A lawyer’s ability to advise clients about new  
5 litigation in a timely manner is impaired. A news organization’s ability to follow  
6 the story is hampered. The goodwill of CNS, on whom subscribers rely to give  
7 them thorough and timely reports on new litigation, is damaged. The public’s  
8 interest in a major case declines, and the practical ability of the public to comment  
9 on events in an important public institution is impeded or eliminated altogether.

10 56. Among the many noxious effects of withholding press access during a  
11 limbo period, when a complaint is in fact filed but cannot be seen by the press, is  
12 manipulation by the plaintiff who has a minor monopoly on information about the  
13 filing. This effect is more pronounced in big, competitive media markets. In state  
14 court in Manhattan, for example, a suit in June 2015 by then-candidate Donald  
15 Trump against Spanish-language network Univision over cancellation of his beauty  
16 pageant was leaked to the *New York Post*. The newspaper linked to a copy of the  
17 complaint that had been received by the court, based on the document’s stamps, but  
18 had not been processed and, under the court’s procedures at the time, was being  
19 withheld from the press until after processing. As a result, reporters who cover the  
20 court could not see a complaint that was the subject of international coverage based  
21 on the leak. That incident was the spark that started the legal action by CNS against  
22 the New York Supreme Clerk, which I discuss further below, and resulted in a  
23 federal judge’s injunction against his practice of withholding the new complaints for  
24 processing.

25 57. At OCSC, the clerk’s process-first access policy has similarly allowed  
26 plaintiffs to control coverage of new civil lawsuits. For example, a complaint was  
27 filed against a popular amusement park in Orange County, Knott’s Berry Farm, on  
28

1 August 28, 2017, *Miller v. Cedar Fair, LP, et al*, Case No. 30-2017-00940556. The  
 2 complaint was newsworthy because a park visitor was injured on the log ride, which  
 3 had been repeatedly cited by the State of California for safety violations. Based on  
 4 court records, the complaint was filed at 4:05 p.m. on August 28, 2017, just after the  
 5 time the records area where complaints can be viewed on public access terminals  
 6 closes to the press and public at OCSC.

7 58. According to CNS's records and records produced by OCSC in this  
 8 action, the OCSC clerk's office withheld this new case until the following morning.  
 9 *The Los Angeles Times* published a story on this complaint by 3:00 p.m. on August  
 10 29, 2017, with a Sacramento dateline. Since the *Times* no longer staffs OCSC with  
 11 a reporter, and the story was written from Sacramento, it is very likely the complaint  
 12 was forwarded to the *Times* by the plaintiff attorney, allowing the *Times* to play up  
 13 the story while beating its rival of old, *The Orange County Register*. CNS reported  
 14 on the case as part of its *Orange County Report* later that same day, at 5:53 p.m. and  
 15 followed with a webpage story written the next day. As a result of the Clerk's  
 16 process-first policy, reporting on an important complaint against a celebrated local  
 17 business was held up by 23 and 26 normal hours. Attached as **Exhibit 4** is a true  
 18 and correct copy of the caption page to *Miller* complaint, and a copy of a report  
 19 page produced by OCSC in this action show the date and time the court received the  
 20 complaint, and the date and time it completed processing of the complaint.

21 Attached as **Exhibit 5** is a true and correct copy of the *Los Angeles Times* article on  
 22 this complaint, and **Exhibit 6** is a true and correct copy of CNS's *Orange County*  
 23 *Report* covering the complaint.

24 59. Additional examples of instances where news agencies, including *The*  
 25 *Los Angeles Times* and *The Orange County Register*, reported on newly filed  
 26 complaints after they were filed but before they had been made available to the  
 27 public and the press at large (including CNS), were identified and submitted in  
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1 support of my declaration filed in this action on March 31, 2017 (ECF 34, ¶¶ 22-25,  
 2 Exs. 9-10; ECF 36, 37). Where one news agency is able to report exclusively on a  
 3 new complaint before it has been made available to the public and press at large it  
 4 suggests the initial reporting agency was provided advance or preferential access to  
 5 the complaint on which it reported by the plaintiff or its counsel. When court  
 6 officials keep the new complaints away from the press, the power to control news  
 7 about the initiation of litigation is held by the plaintiff alone. The plaintiff is able to  
 8 feed the news to a friendly publication, which in my experience can result in a more  
 9 prominent and favorable coverage in exchange for exclusive access. When a single  
 10 news outlet is the only media that can report on a newly filed complaint, the public  
 11 is deprived of competing coverage and impartial viewpoints.

12 60. More difficult to explain is the destructive power of inconsistency.  
 13 When some complaints are made available in a timely manner while others are  
 14 withheld, for no reason other than the random factors that affect a court worker's  
 15 schedule – sickness, vacations, meetings, smoke breaks, phone calls, office  
 16 celebrations with cake and punch – news reporters cannot do their jobs of covering  
 17 the court in an effective and efficient manner. The complaints that are withheld the  
 18 longest might be the big ones, or they might not be. A reporter cannot rely on daily  
 19 access to the day's new complaints to reveal the new court's new business on a  
 20 given day, and must go back day after day re-check an earlier day's batch of filings,  
 21 if he or she wants to make sure nothing was missed. In the end, the practical effect  
 22 of inconsistency is to shut off that source of news.

23 **Arrival of E-Filing at Orange County Superior**

24 61. In 2006, it was still common for OCSC to deny press access to new  
 25 complaints for at least 48 hours, so I raised the issue again with Ms. Levitzky. She  
 26 informed me that she discussed the matter with her supervisor, who flatly denied the  
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1 delays. At the time, CNS did not have the financial strength to mount a legal  
2 challenge.

3 62. In 2008, Mr. Carlson became the clerk in OCSC. A few months later,  
4 about November 2009, the court began providing remote access to civil case  
5 documents through its web site, charging a fee of \$7.50 to \$40, depending on the  
6 number of pages, for each document viewed.

7 63. In June 2010, still during Mr. Carlson’s tenure, OCSC began offering  
8 optional e-filing for civil unlimited cases. At that time, press access to new  
9 complaints was still delayed by at least one to two days after the filing date. I met  
10 with Mr. Carlson and Ms. Levitzky on June 10, 2010, to discuss those delays. I  
11 explained that e-filing provided an opportunity for an easy way to improve press  
12 access because the court could provide access to the new complaints through an  
13 electronic in-box (a term I explain in paragraph 21 above), rather than withholding  
14 them. I explained that this electronic in-box solution had worked well in other  
15 courts. Since the court supported e-filing for complex civil cases, I suggested that  
16 the clerk start by allowing press access to new complex case complaints, the court’s  
17 most newsworthy actions, as they flowed into an electronic in-box. But I did not  
18 hear further from Mr. Carlson, and access did not improve.

19 64. Later that year, on October 18, 2010, I participated in another meeting  
20 with Mr. Carlson, this time accompanied by CNS counsel. At that meeting, Mr.  
21 Carlson acknowledged that there was a delay between when the court received a  
22 civil complaint for e-filing and when it became available to the press and public. He  
23 said the delay was due to a backlog in processing other filings before his staff  
24 processed new complaints.

25 65. During that October meeting, we discussed the electronic in-box  
26 solution that I had proposed in June. I pointed out that it would eliminate the  
27 processing backlog as an impediment to press access, and provide access to new  
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1 complaints promptly after they were received for filing. Mr. Carlson acknowledged  
2 then in 2010 that the in-box was “technically possible,” or words to that effect,  
3 foreshadowing the mirror concession by Mr. Yamasaki seven years when he said in  
4 deposition in this case that “technically it was possible.”

5 66. In the meeting with Mr. Carlson, he argued with vehemence that the  
6 press had no right to see a filing until his staff had completed administrative  
7 processing, saying words to the effect, “It’s not filed until I put my stamp on it.”  
8 His statement again foreshadowed the view recently advanced Mr. Yamasaki in his  
9 deposition, assenting to a summary of his belief that “the press does not have a right  
10 of access to a newly filed complaint until it's been accepted into the court file.”

11 67. In 2011, I instructed CNS outside counsel to write to Presiding Judge  
12 Thomas Borris to ask for his help in restoring timely access, with practical  
13 suggestions for how the court might go about it. A true and correct copy of the  
14 letter from CNS counsel Rachel Matteo-Boehm to Judge Borris is attached hereto as  
15 **Exhibit 7**. However, Judge Borris’ response simply echoed Mr. Carlson’s view that  
16 no right to view court records existed until after court staff had completed  
17 administrative processing. A true and correct copy of Judge Borris’ August 19,  
18 2011 letter to CNS counsel is attached hereto as **Exhibit 8**.

19 68. The two methods of filing a complaint at OCSC, the old and the new,  
20 continue to operate today under the overarching policy of withholding press access  
21 until the new complaint reaches the very end of the administrative line and is ready  
22 for general consumption. In both mediums, electronic and paper, Carlson followed  
23 the policy of his predecessor, pushing journalists past the point of intake and down  
24 the processing line to where all the Clerk’s administrative tasks had been completed  
25 and the document were online, ready for sale.

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**The CCMS Project**

69. The contacts with court officials at OCSC stopped after the letter from Judge Borris because CNS filed a complaint in September 2011 against Clerk Michael Planet at VCSC in *Courthouse News Service v. Planet*, (Case No. 2:11-cv-08083-SJO-FFM). Like Mr. Carlson in Orange County and later Mr. Yamasaki in Santa Clara, Mr. Planet insisted that the press and public had no right to view civil complaints until court staff completed administrative processing, however long that might take.

70. The clerks in Orange County, San Diego and Ventura were among the small core of so-called “early adopters,” advance troops in the campaign by the Administrative Office of the Courts (“AOC”), which has since been renamed as “the staff” of the Judicial Council, to install new software into California’s courts. The software, called the Court Case Management System or “CCMS,” was being written with the ultimate purpose of bringing e-filing to the courts of California. Mr. Yamasaki in Santa Clara Superior followed the path towards e-filing, although he chose to proceed through a private vendor. I learned through documents produced in the *Planet* case that Mr. Carlson and Mr. Yamasaki, still the clerk in Santa Clara Superior Court at the time, had communicated via e-mail with Mr. Planet about that litigation. For instance, in an email produced by Michael Planet in the *CNS v. Planet* case, Mr. Carlson wrote to Mr. Planet: “Sorry to hear Girdner has decided you are the next victim in his efforts to have us support his business model for free.” A true and correct copy of this email, and other emails produced by Mr. Planet, are attached as **Exhibit 20** to the accompanying Declaration of Jonathan Fetterly. Mr. Yamasaki also stated in his deposition in this case that he has communicated with Mr. Planet and Michael Roddy, the Clerk in San Diego Superior, concerning the *Yamasaki* litigation.

1           71. During the period between 2010 and 2012, CNS was reporting  
2 extensively through its web site on the CCMS project. Our news service chronicled  
3 the rising anger of trial judges in California’s state courts who saw their court  
4 budgets starved and their employees laid off, while the CCMS project siphoned  
5 hundreds of millions of public dollars to the private consultant developing it. The  
6 purpose of the CCMS project’s final V-4 iteration was to permit e-filing of court  
7 documents. After V-4 was released, the AOC’s Office of Communications  
8 published a “fact check” report on January 31, 2102, saying the CCMS project was  
9 “finished.” An article published on the CNS web site on February 16, 2012, titled  
10 “‘Finished’ Court IT Project to Cost State 100s of Millions for Years,” available at  
11 <https://www.courthousenews.com/finished-court-it-project-to-cost-state-100s-of->  
12 [millions-for-years/](https://www.courthousenews.com/finished-court-it-project-to-cost-state-100s-of-millions-for-years/), reported that the CCMS software project would continue to cost  
13 California and the courts \$242,000 every single day, including Saturdays and  
14 Sundays, for years to come. A true and correct copy of this article is attached as  
15 **Exhibit 9.**

16           72. This reporting was based on the AOC’s own budget projections, buried  
17 in a report to the Judicial Council. The Judicial Council pulled the plug on the  
18 software project six weeks later. CNS reported the decision in an article published  
19 on its website on March 27, 2012, titled “IT Project Sinks in Sea of Criticism,”  
20 available at <https://www.courthousenews.com/it-project-sinks-in-sea-of-criticism>,  
21 illustrated by an image of the sinking Titanic taken from a t-shirt distributed by a  
22 Los Angeles Superior judge opposed to the project. A true and correct copy of this  
23 article is attached as **Exhibit 10.**

24           73. I do not believe it is a coincidence that in California, the state courts  
25 clerks who have been the most militant in denying public access to new complaints  
26 until after processing were also deeply involved in the campaign to implement e-  
27 filing in California trial courts, including the court clerks in Ventura, Orange  
28

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1 County, San Diego and Santa Clara. According to pages 1-2 of a report to the  
2 legislature by the Judicial Council of California, a true and correct copy of which is  
3 attached as **Exhibit 11** and is also available online at the California Courts website  
4 at <http://www.courts.ca.gov/documents/status-ccms-2009.pdf>, in 2002, a governance  
5 structure for CCMS was established which included a Steering Committee made up  
6 of, among others, the court executive officers for the Superior Courts for the  
7 counties of Orange, San Diego, and Ventura.

8 **Movement to Degrade Traditional Timely Access To Complaints.**

9 74. The push towards e-filing in California was spearheaded OCSC which  
10 was the first court to mandate e-filing in California as a “pilot project,” approved by  
11 the state Legislature in 2012 when it passed AB 2073 amending Code of Civil  
12 Procedure § 1010.6 to allow e-filing in all civil cases. Because of its lead position  
13 on e-filing in California, OCSC along with the AOC, was a driving force behind the  
14 e-filing Rules of Court.

15 75. The introduction of e-filing rules was accompanied by what I saw as a  
16 pincer movement to degrade traditional timely access. The first part of the pincer  
17 movement was a proposed rule that gave clerks a justification for withholding  
18 access until new filings were processed. Departing from any past definitions  
19 applied to court documents, the proposed e-filing rules created a new category of  
20 court records: those that have been “officially filed,” as opposed to “filed” for all  
21 other purposes.

22 76. Under the proposed rules, a document would not be “officially filed”  
23 until after “the processing and review of the document” by court staff, however long  
24 that might take.

25 77. Concerned that the “officially filed” concept would provide court clerks  
26 with an excuse for denying public records until after they were processed instead of  
27 when they were received, the press corps submitted written comments in January  
28

1 2013, objecting to the “officially filed” category. Those signing on to the comments  
2 included the Los Angeles Times Communications LLC, the Bay Area News Group,  
3 The Press Democrat Media Company, California Newspaper Publishers  
4 Association, Californians Aware, and the First Amendment Coalition (the “Press  
5 Group”) and CNS. True and correct copies of the Press Group written comments  
6 (including joinders by Los Angeles Times Communications LLC, the Bay Area  
7 News Group, and The Press Democrat Media Company) and exhibits thereto,  
8 together with the invitation to comment, are included in a report to the California  
9 Judicial Council dated June 28, 2013, a copy of which is also available on the  
10 California Courts web site at [http://www.courts.ca.gov/documents/jc-20130628-](http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf)  
11 [itemC.pdf](http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf). Relevant excerpts from that report, including the Press Group written  
12 comments, are attached hereto as **Exhibit 12**.

13 78. The response to these objections, included in pages 34-36 of the report  
14 attached as **Exhibit 12**, recommended adoption of the “officially filed” designation  
15 notwithstanding the Press Group comments. The “officially filed” concept was in  
16 fact unanimously adopted by the council as part of the California Rules of Court,  
17 with Mr. Yamasaki sitting as a non-voting member.

18 79. The second part of the effort to degrade traditional timely access was a  
19 bill proposed in the California Legislature that allowed court clerks to assess a  
20 charge of \$10 for every paper file that the press or anyone else wanted to look at.  
21 This legislation would have hampered coverage of new complaints at smaller courts,  
22 and cut off press review of the day’s new complaints in any big court, because the  
23 total daily charge to review even a day’s worth of new complaints would be  
24 prohibitive. In an article titled, “Proposed Search Fee Threatens Access to Public  
25 Court Records,” published on the CNS website March 14, 2013, and available at  
26 [https://www.courthousenews.com/proposed-search-fee-threatens-access-to-public-](https://www.courthousenews.com/proposed-search-fee-threatens-access-to-public-court-records)  
27 [court-records](https://www.courthousenews.com/proposed-search-fee-threatens-access-to-public-court-records), a true and correct copy of which is attached as **Exhibit 13**, Mr.

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1 Yamasaki acknowledged, “If you asked for 10 files and you’re a reporter, it’s  
2 probably going to be \$100 in that situation.”

3 80. As explained in the article, the idea for the \$10-per-file charge to see  
4 court records originated in the Judicial Council’s Trial Court Efficiencies Working  
5 Group, chaired by OCSC’s Judge Borris. The Working Group was actually a sub-  
6 group drawn from the Judicial Council’s Court Executives Advisory Committee,  
7 where Mr. Yamasaki was a member, and the Trial Court Presiding Judges Advisory  
8 Committee. From the Working Group, the \$10 per file proposal went to the  
9 Council’s Ad Hoc Committee on Court Efficiencies, Cost Savings and New  
10 Revenue, where Mr. Carlson and another judge from OCSC were members. The  
11 proposal was approved and passed on to the Policy Coordination and Liaison  
12 Committee, one of the big five standing committees of the Judicial Council.

13 81. From there it moved to the Judicial Council itself, where Mr. Yamasaki  
14 was a non-voting member, and passed on a unanimous vote. A legislative bill  
15 encompassing the \$10-per-file viewing fee was then drafted by the Office of  
16 Governmental Affairs, the lobbying arm of the Judicial Council. From there it was  
17 tacked onto the California budget as a trailer bill, a legislative process that lessens  
18 scrutiny and allows the bill to ride along in the frenzy of deal-making that  
19 accompanies passage of the budget.

20 82. The bill was quickly attacked by the California Newspaper Publishers  
21 Association, CNS, and open government groups, and it was defended before  
22 legislative committees by a staff member of the Judicial Council’s lobbying office.

23 83. The bill was ultimately defeated in the California Senate Judiciary  
24 Committee. As CNS reported in an article published on its web site on March 22,  
25 2013, titled, “Tide of Criticism Meets Court Admin Office Idea for New Fee,”  
26 available at [https://www.courthousenews.com/tide-of-criticism-meets-court-admin-](https://www.courthousenews.com/tide-of-criticism-meets-court-admin-office-idea-for-new-fee/)  
27 [office-idea-for-new-fee/](https://www.courthousenews.com/tide-of-criticism-meets-court-admin-office-idea-for-new-fee/), Senate Judiciary Committee Chair Noreen Evans said, “A

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1 document fee reduces transparency in government, denies access to public records  
2 and it also impacts journalists who cover the courts.” A true and correct copy of  
3 this article is attached as **Exhibit 14**.

4 84. On October 28, 2014, CNS also published on its web site an article  
5 critical of Mr. Yamasaki’s choice in 2014 to lock the doors to Santa Clara  
6 Superior’s clerk’s office early, at 3:00 p.m., cutting off access to court records while  
7 his staff continued to work until at least 5:00. In the article, entitled “Early Court  
8 Hours Bring Criticism for Bad Planning and Bad Policy,” Mr. Yamasaki defended  
9 his decision, saying. “It’s not a direct savings of money as much as it gives us a  
10 greater capacity to deal with the cases we have coming in. We have a backlog we’re  
11 trying to stave off from getting worse.” A true and correct copy of this article, also  
12 available at [https://www.courthousenews.com/early-court-hours-bring-criticismfor-](https://www.courthousenews.com/early-court-hours-bring-criticismfor-bad-planning-and-bad-policy/)  
13 [bad-planning-and-bad-policy/](https://www.courthousenews.com/early-court-hours-bring-criticismfor-bad-planning-and-bad-policy/), is attached as **Exhibit 15**.

#### 14 Recent History with OCSC

15 85. In October 2016, I directed CNS’s counsel to write to Mr. Carlson, who  
16 unbeknownst to CNS was in the waning months of his tenure, explaining that  
17 OCSC’s practice of withholding complaints until after administrative processing,  
18 and prohibiting access at the courthouse to complaints filed after 4:00 each day, was  
19 inconsistent with Judge Otero’s decision in the *CNS v. Planet* case. A true and  
20 correct copy of this October 11, 2016 letter to Mr. Carlson is attached hereto as  
21 **Exhibit 16**.

22 86. On October 20, 2016, OCSC General Counsel Jeff Wertheimer  
23 responded with a letter acknowledging Judge Otero’s May 2016 *Planet* decision but  
24 ignoring the ruling that delays of access even for a day or more violated the First  
25 Amendment unless justified under one of the two defenses the Ninth Circuit  
26 identified in its 2014 ruling in *Courthouse News Service v. Planet*, 750 F.3d 776  
27 (9th Cir. 2014). Mr. Wertheimer wrote, “the Court believes its state-of-the-art  
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1 procedures comply with all First Amendment requirements discussed in *Planet*” and  
 2 “is not inclined to alter its current procedures.” A true and correct copy of this letter  
 3 is attached hereto as **Exhibit 17**.

4 87. Late in 2016, Defendant Yamasaki took over as Clerk and Chief  
 5 Executive Officer of OCSC. At my direction, on December 1, CNS’s counsel wrote  
 6 to Mr. Wertheimer inquiring “whether Mr. Yamasaki will discontinue OCSC’s  
 7 practice of withholding access to new unlimited complaints until after processing,  
 8 and will instead adopt [an electronic queue] or some other means of ensuring timely  
 9 access to new complaints irrespective of whether they have been processed.” In this  
 10 letter, CNS also directed Mr. Wertheimer to the specific portion of the May 26  
 11 *Planet* order in which the Court found VCSC’s practice of withholding access to  
 12 complaints filed late in the day until the next court day did not satisfy constitutional  
 13 requirements. A true and correct copy of this December 1, 2016 letter is attached as  
 14 **Exhibit 18**. In a letter dated December 12, 2016, a true and correct copy of which is  
 15 attached as **Exhibit 19**, Mr. Wertheimer wrote that his court “will not be altering its  
 16 current procedures to provide CNS with same day access to newly filed  
 17 complaints.”

18 **Methods For Providing Timely Access to E-Filed Complaints**

19 88. In 37 years of journalism, including numerous in-person visits to  
 20 courthouses and clerk’s offices, as well as conversations with court officials at all  
 21 levels, from intake clerks in the clerk’s office to the court’s presiding or chief judge,  
 22 I have observed that it is entirely feasible to provide the press with contemporaneous  
 23 access to newly filed civil complaints. That is true whether the filing medium is  
 24 paper or electronic.

25 89. With paper filing, the time frame to commence an action, and obtain a  
 26 “filed” stamp for that day, was limited to the public hours of the courthouse and the  
 27 time during which the physical filing window at the intake counter was open. But  
 28

1 over the last decade, the federal courts and many state courts mandated e-filing, and  
 2 many, including all four district courts in California, provide the filing party with  
 3 the benefit of a “filed” stamp for statute of limitations and other deadline purposes  
 4 even after the clerk’s office has closed for the day. In that process, they created a  
 5 virtual filing window that had no time frame and was open 24 hours a day, seven  
 6 days a week. This gave rise to the question of how to provide timely access to  
 7 electronic filings, not conditioned on a complaint having first been processed,  
 8 equivalent to the pre-docketing access previously provided to paper filings.

9 90. The solution was clear and simple: set up access to an electronic queue  
 10 – what I think of and often refer to as an electronic in-box – where new e-filed  
 11 complaints can be reviewed in a timely manner upon receipt, prior to administrative  
 12 processing. This electronic in-box is the functional equivalent of the traditional  
 13 press box, bin or stack I have discussed above, from which the press could review  
 14 the day’s new paper complaints as they came across the counter. With the  
 15 electronic in-box, the press has timely access to new civil complaints just as they  
 16 had in the paper-filing world, without that access being conditioned on whether busy  
 17 court clerks been able to turn to the administrative tasks associated with the intake  
 18 of that complaint.

19 91. Through my role as editor of CNS and my oversight of CNS’s coverage  
 20 of state and federal courts on a nationwide basis, I have observed that the  
 21 overwhelming majority of federal district courts provide access to court records,  
 22 including civil complaints, through some iteration of the electronic in-box. Within  
 23 these courts, there are three main variations. The largest group of federal courts,  
 24 including the Central and Northern Districts of California, provide access by  
 25 automatically assigning a permanent case number upon receipt of a new civil action  
 26 and immediately providing access to all new civil complaints, at any time of day or  
 27 night, on weekdays and weekends. Other federal courts, including the Eastern  
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1 District of California, automatically assign a temporary number and allow press  
2 review of the new complaints with those temporary numbers upon receipt, at any  
3 time of day or night. The handful of federal district courts that do not use the  
4 electronic in-box method nevertheless have found ways to provide timely access to  
5 e-filed complaints, even before processing. For example, the District of Alabama  
6 prints out complaints upon electronic receipt and, before processing, puts them in an  
7 old-fashioned, wooden press box.

8 92. Similarly, state courts in Alabama, Connecticut, Georgia, Nevada, New  
9 York, Utah, and most recently, in Fresno County, California, also provide electronic  
10 access to new e-filed civil complaints upon receipt, before processing. As with  
11 federal district courts, there are variations in how the state courts provide that  
12 access. Such access can be provided online over the Internet, locally through  
13 terminals at the courthouse, or through both methods. In some courts, new e-filed  
14 actions are automatically accepted, while in others complaints bear only temporary  
15 numbers when they first appear in the electronic in-box and receive a permanent  
16 case number only after administrative tasks are completed. Some jurisdictions limit  
17 electronic in-box access to credentialed press, while others open the in-box to any  
18 interested member of the public. In some jurisdictions, the press can review late-  
19 filed e-filed complaints at the courthouse, as they are received, in press rooms even  
20 after the clerk’s office has shut for the night. In all instances, the method used  
21 provides timely access to new civil complaints as soon as they are filed, upon  
22 receipt, before they are processed, akin to the pre-docketing access traditionally  
23 provided to paper-filed complaints.

24 93. Implementing an electronic in-box is a matter of fairly basic  
25 programming by court IT staff or e-filing vendors. I understand from the clerk for  
26 Georgia’s Fulton County Superior Court that when that court decided to set up its  
27 electronic in-box, its e-filing vendor was able to do so quickly and at no cost to the  
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1 court. New York County’s Supreme Court recently implemented an electronic in-  
2 box, accessible remotely over the Internet, to comply with a preliminary injunction  
3 in a case captioned *Courthouse News Service v. Tingling*, United States District  
4 Court for the Southern District of New York Case No. 1:16-cv-08742-ER, requiring  
5 the court to provide timely access to newly filed complaints without delaying access  
6 until after the completion of administrative processing. The injunction was issued  
7 on December 16, 2016, and the electronic in-box was available less than 6 weeks  
8 later, on January 27. The ease with which courts have been able to set up electronic  
9 in-boxes is consistent with my own experience based on supervising CNS’s  
10 programmers who configure our subscribers’ means of accessing CNS content  
11 electronically.

12 94. Contrary to declarant Sara Ochoa’s statement that “OCSC cannot  
13 simply publish all new civil unlimited complaints to an electronic in-box,” I have  
14 observed that courts, in California and in other states, can do just that. As for  
15 protecting the small percentage of complaints made confidential by statute or filed  
16 with a motion or request for seal, I have observed that other courts address this by  
17 (1) requiring confidential documents be filed in paper form; and/or (2) through an  
18 electronic interface that allows the filer to designate a confidential filing through a  
19 button, checkoff box, or drop-down menu.

20 95. Both means are used by the Fresno County Superior Court, which  
21 maintains an electronic in-box that provides the press with contemporaneous access  
22 to 100% of the newly filed civil documents within moments of their filing, before  
23 staff review or other administrative processing, like all four United States District  
24 Courts in California and like the old paper access in Fresno.

25 96. The road to the electronic in-box in Fresno Superior Court started when  
26 I observed that access to new civil unlimited complaints became delayed after that  
27 court mandated e-filing began in July 2016. The delay stood in contrast to the  
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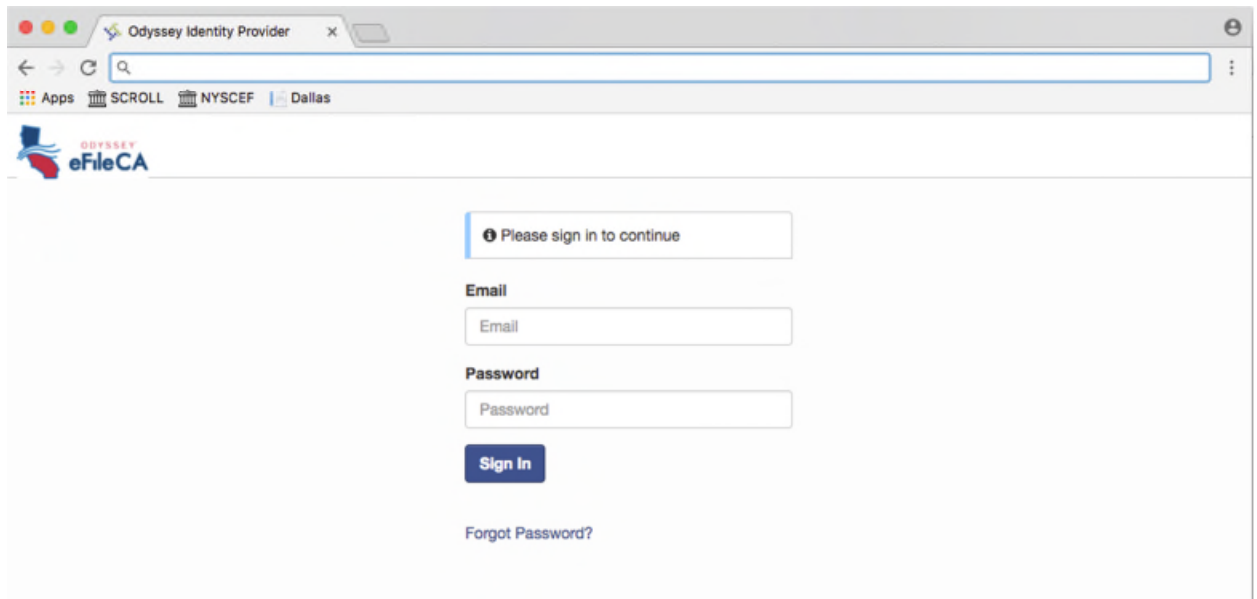
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1 timeliness of access when Fresno Superior Court relied on paper filing, with news  
2 reporters reviewing the new paper-filed cases in a room next to the intake counter on  
3 the day they were filed, often before processing. Reporters could stay in the room  
4 as long as there was somebody in line to file a complaint, ensuring the reporter  
5 could see all complaints filed that day.

6 97. As a result, I asked the Fresno Superior clerk’s office for an electronic  
7 press review site, or in-box, that would allow the press to review new civil unlimited  
8 cases as soon as they were received. In November 2017, the clerk’s office opened  
9 an electronic in-box that provides contemporaneous access to new civil filings,  
10 including case-initiating civil complaints, right after they are received for filing and  
11 before administrative processing.

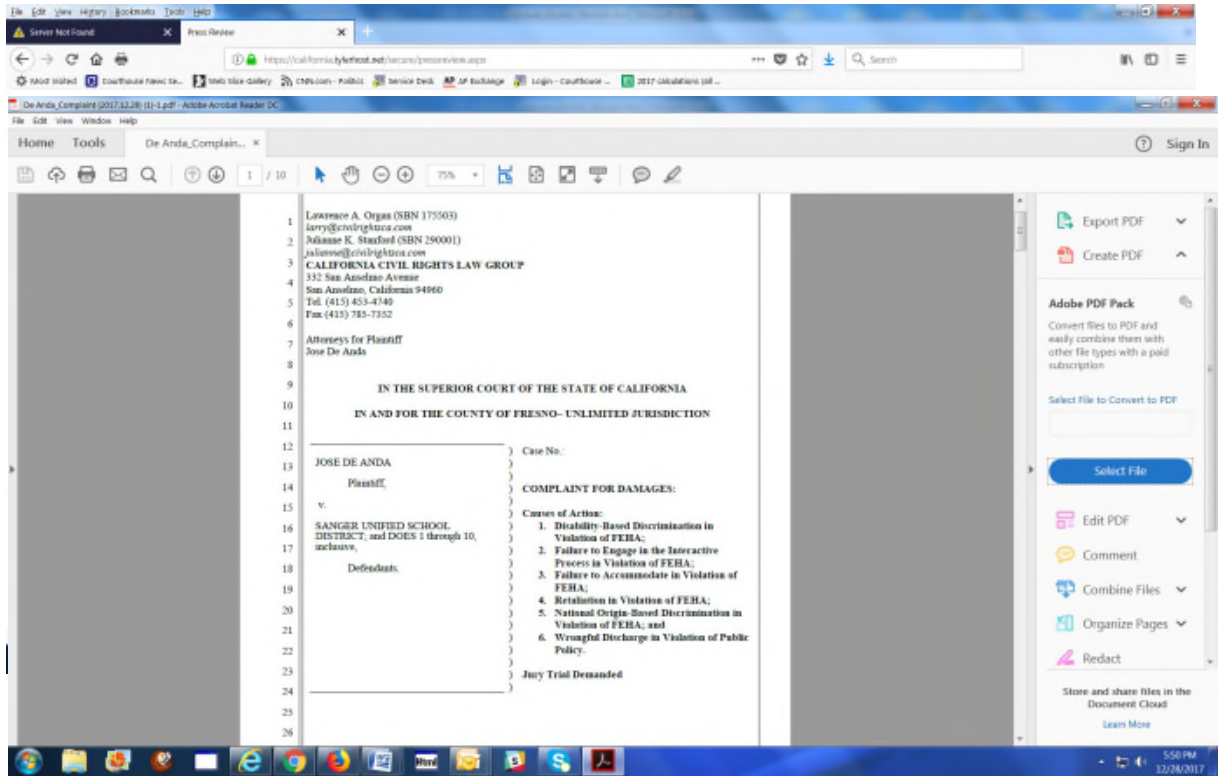
12 98. With a user name and password, I am able to sign in and see a list of  
13 just-filed documents received by the court but not yet processed. The screen shots  
14 depicted below were captured on January 3, 2018, by CNS staff working with me  
15 and under my direction, and illustrate how the access worked through the Fresno  
16 electronic in-box on that date:

17 a. Sign in:





b. Journalists can sort by case number. Note the “New Case - ID” designation, which is assigned before the case is processed and assigned a permanent case number, and the electronic transaction number associated with it:



c. The cases have not yet been processed, as shown by the lack of a permanent case number and the lack of any stamps:

d. Below is a contrasting example of a processed complaint displaying a permanent case number and a file stamp in blue:

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<p><b>PANISH SHEA &amp; BOYLE LLP</b>  1111 Santa Monica Boulevard, Suite 700  Los Angeles, California 90025  310.477.1700 phone • 310.477.1699 fax</p>	<p>1 <b>PANISH SHEA &amp; BOYLE LLP</b>  <b>RAHUL KAVIPUDI</b>, State Bar No. 204519  <i>r.kavipudi@psblaw.com</i>  <b>ROBERT S. GLASSMAN</b>, State Bar No. 269816  <i>rglassman@psblaw.com</i>  1111 Santa Monica Boulevard, Suite 700  Los Angeles, California 90025  Telephone: 310.477.1700  Facsimile: 310.477.1699</p> <p>6 Attorneys for Plaintiffs</p>	<p><b>E-FILED</b>  11/15/2017 3:48 PM  <b>FRESNO COUNTY SUPERIOR COURT</b>  By: E. Medina, Deputy</p>
<p>8 <b>SUPERIOR COURT OF THE STATE OF CALIFORNIA</b>  9 <b>COUNTY OF FRESNO</b></p>		
<p>11 <b>MARIANO AGUILAR</b>, a minor, by and  12 through his guardian ad litem, <b>NATALIE</b>  13 <b>CRUZ</b>; and <b>SAUL AGUILAR</b>, a minor, by  14 and through his guardian ad litem, <b>NATALIE</b>  15 <b>CRUZ</b>,</p> <p style="text-align: center;">14 Plaintiffs,</p> <p style="text-align: center;">15 v.</p> <p>16 <b>UNITED AG PERSONNEL</b>  17 <b>MANAGEMENT, INC.</b>, a business entity;  18 <b>ERROTABERE RANCHES</b>, a business entity,  19 and <b>ALEXANDER PACHECO MEJIA</b>, an  individual,</p> <p style="text-align: center;">Defendants.</p>		<p>Case No. <b>17CECG03865</b></p> <p><b>PLAINTIFFS' COMPLAINT FOR DAMAGES</b></p> <p><b>1. NEGLIGENCE</b></p> <p><b>DEMAND FOR JURY TRIAL</b></p>

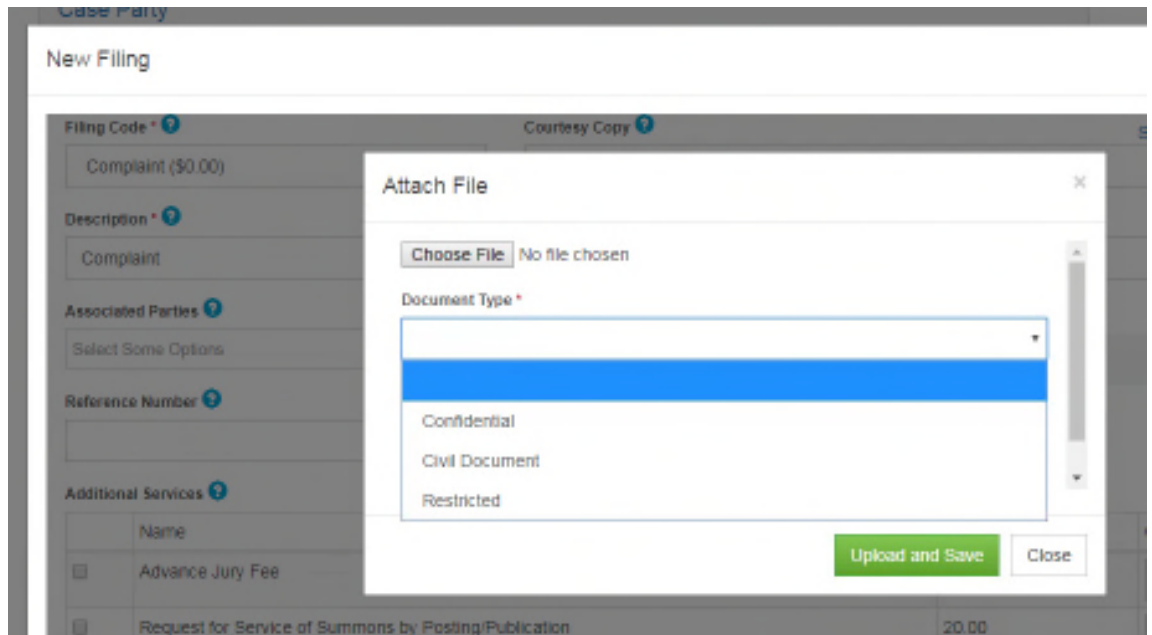
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Fresno clerk’s office requires that most confidential cases be filed in paper form. It also provides e-filers, when they sign in to file a document, with a simple menu of three choices: “Confidential,” “Civil Document,” and “Restricted.” Only filings that are not designated as “Confidential” or “Restricted” flow into the in-box. The screen capture below, which was taken on January 5, 2018, demonstrates the three choices provided:

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1 99. After the document has been uploaded, the designated security level for  
 2 the document is reflected on the e-filing screen, as shown below:

The screenshot shows a 'New Filing' window with the following fields and sections:

- Filing Code:** Complaint (\$0.00)
- Courtesy Copy:** abc@example.com,xyz@example.com
- Description:** Complaint
- Comments:** (empty)
- Associated Parties:** Select Some Options
- Reference Number:** (empty)
- Upload Document(s):**

Category	File Name	Document Security	
Lead Document	document.pdf	Confidential	Delete
- Additional Services:**

Name	Rate (\$)	Qty.
Advance Jury Fee	150.00	0
Request for Service of Summons by Posting/Publication	20.00	0

Buttons: Done, Close

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19 100. On December 11, 2017, I communicated via email with Fresno  
 20 Superior Court’s manager in charge of its Case Management System, Kevin  
 21 Anderson. In this e-mail exchange, Mr. Anderson explained how Fresno County  
 22 Superior Court designed and successfully implemental a technological security  
 23 option that safeguarded confidential filings from public view in the press review  
 24 site. A true and correct copy of this email string is attached at **Exhibit 20**.

25 101. Since Fresno implemented the press review site, CNS has experienced  
 26 contemporaneous access to new civil unlimited complaints, which has in turn  
 27 allowed CNS to provide timely reporting on new complaints filed in that Court. A  
 28

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1 true and correct copy of the CNS *Central Valley Report* for January 4, 2018, which  
2 covers the Fresno Superior Court, is attached as **Exhibit 21**.

3 102. As I noted in my January 30, 2017 declaration in support of CNS’s  
4 motion for a preliminary injunction in this action (“January 30 Declaration”), and as  
5 referenced in paragraph 93 above, CNS brought a 42 U.S.C. § 1983 action in the  
6 Southern District of New York against the County Clerk of New York County in  
7 late 2016, alleging that the Clerk’s practice of withholding roughly 33% of new  
8 complaints filed with the New York State Supreme Court, County of New York  
9 (“New York Supreme”) from press review until after processing violated the First  
10 Amendment (*Courthouse News Service v. Tingling*, Case No. 1:16-cv-08742-ER).  
11 On December 16, 2017, the Southern District of New York granted CNS’s motion  
12 for a preliminary injunction enjoining the Clerk from denying access to newly filed  
13 civil complaints until after clerical processing and requiring him to provide timely  
14 access to those documents upon receipt.

15 103. The New York Clerk has complied with the injunction by making  
16 complaints available through the New York State Courts Electronic Filing  
17 (“NYSCEF”) web site immediately after the complaints are e-filed and before any  
18 clerk review or administrative processing. This new functionality was up and  
19 running within six weeks of the injunction being issued and has worked very well.  
20 Since then, all [number] other New York State Court Clerks that have adopted e-  
21 filing have begun using the same system of access.

22 104. On January 27, 2017, a notice on the NYSCEF web site stated that  
23 effective as of that date, “e-filed documents in newly initiated cases in New York  
24 County shall be available immediately for online public viewing” through the  
25 NYSCEF site and that “[s]uch filings will be available for immediate online public  
26 viewing PRIOR to any examination of the document or assignment of an index  
27 number to the matter by the Office of the New York County Clerk.” Attached as  
28

1 **Exhibit 22** is a true and correct copy of a screen capture of a notice that appeared on  
2 the NYSCEF site on January 27, 2017.

3 105. Users can now search for cases e-filed on a selected date:

4

5 **Case Search** [Help](#)

6 Case Identifier Name Tax Cert/SCAR **New Cases**

7 *This search will show new cases electronically filed on the selected date.*

8 **Court**

9 New York County Supreme Court ▼

10 **Date** (mm/dd/yyyy)

11 01/05/2018

12

13 and the results will include any documents filed in that case, including complaints,  
14 that have not yet been examined or otherwise processed by the court. This includes  
15 new complaints that are e-filed after the court has closed for the day or that are filed  
16 on weekends (at New York Supreme, new complaints and other documents e-filed  
17 at night or on weekends are given a “filed” date as of the date of receipt, no matter  
18 what the time of day or day of week). These cases are listed with the notation “Not  
19 Assigned” in place of a case number, as shown on the following page:

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**New York State Unified Court System**  
 NYSCEF - Supreme & Court of Claims (Live System)

**Home**  
NYSCEF

**Home**  
Unrepresented Litigants

**Supreme and Court of Claims**

Start a New Case

File to Existing Case

**Cases**

My Cases

Case Search

**My Account**

View / Edit

Logout

### Case Search Results

**You Searched On**

Filing Date: **01/05/2018 - 01/05/2018**  
 Court: **New York County Supreme Court**

[Modify Search](#) | [New Search](#)

Sort By:  Sort

Page: << 1 2 3 >> Last

Case #	eFiling Status	Caption	Court	Case Type	Add Filings
<a href="#">650053/2018</a> 01/05/2018	Partial Participation Recorded Pre-RJE	Alpine Enterprises NY Ltd. - v. - Three Park Avenue Building Co., L.P., et al	New York County Supreme Court	Commercial - Contract	<a href="#">File</a> <a href="#">Documents</a>
<a href="#">650054/2018</a> 01/05/2018	Partial Participation Recorded Pre-RJE	Lovell Safety Management Co., L.L.C. - v. - SCRMAL PLASTERING & CONSTRUCTION CORP.	New York County Supreme Court	Commercial - Other	<a href="#">File</a> <a href="#">Documents</a>
<a href="#">650055/2018</a> 01/05/2018	Partial Participation Recorded Pre-RJE	Thomas Mcquire - v. - Mutual Redevelopment Houses, Inc. et al	New York County Supreme Court	Torts - Other	<a href="#">File</a> <a href="#">Documents</a>
<a href="#">650056/2018</a> 01/05/2018	Partial Participation Recorded Pre-RJE	AMERICAN EXPRESS BANK, FSB - v. - MARR LLC	New York County Supreme Court	Commercial - Contract	<a href="#">File</a> <a href="#">Documents</a>

Page: << 1 2 3 >> Last

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1 106. A “Not Assigned” link in a search results page leads to a case  
2 information screen that includes a link to the complaint, which can be viewed and  
3 downloaded without any charge:.

New York State Unified Court System  
NYSCEF - Supreme & Court of Claims (Live System)

<< Return to [Search Results](#)

**Index not Assigned - New York County Supreme Court** [Help](#)

Short Caption: **Thomas McGuire - v. - Mutual Redevelopment Houses, Inc. et al**  
Case Type: **Torts - Other (Premises)**  
Case Status: **Pre-RJI**  
eFiling Status: **Waiting for Index Number**

[E-mail Participating Parties](#)

Document List Case Detail Comments

[Print Document List](#)

**Narrow By Options**

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:  [Display Document List with Motion Folders](#)

Sort By:

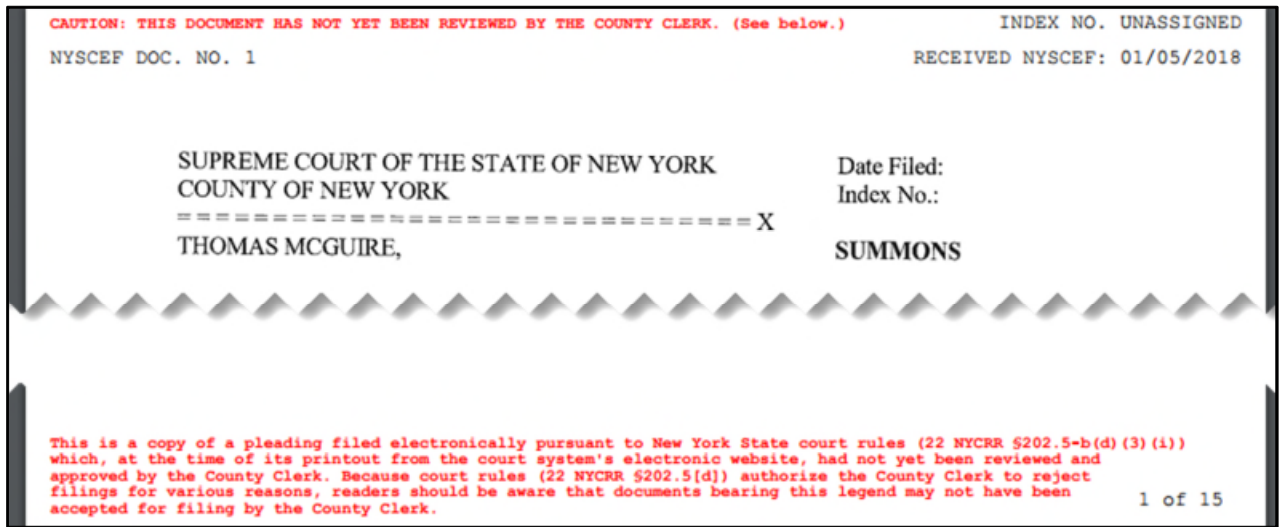
*To view details, click on the Doc # link*

Doc #	Document Type Information	Status	Received Date Filing User	View
<a href="#">1</a>	<a href="#">SUMMONS + COMPLAINT</a>	Pending	01/05/2018 Elefterakis, N.	<a href="#">Confirmation Notice</a>

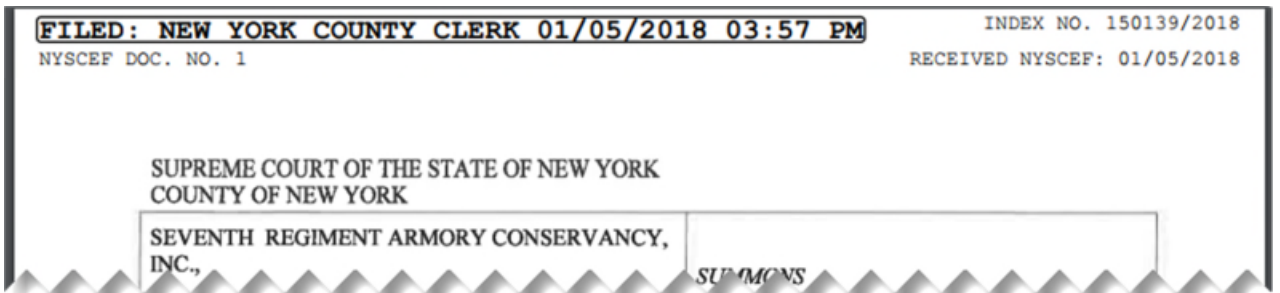
20 107. Complaints that have not yet been processed include a header that  
21 reads: “CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY  
22 THE COUNTY CLERK,” and a footer that reads:

23 This is a copy of a pleading filed electronically pursuant to New  
24 York State court rules ... which, at the time of its printout from the  
25 court system’s electronic website, had not yet been reviewed and  
26 approved by the County Clerk. Because court rules... authorize the  
27 County Clerk to reject filings for various reasons, readers should be  
28 aware that documents bearing this legend may not have been  
accepted for filing by the County Clerk.

1 Below is an excerpt from a complaint filed in New York Supreme on January  
2 5, 2018, that was viewable on January 5 with the pre-review language on the  
3 header and footer and with the index number listed as “unassigned”:



13 108. Once a new complaint is docketed and formally “accepted” by the  
14 clerk’s office, the disclaimers are removed and replaced with a date and time stamp,  
15 and the assigned case number is displayed:



22 109. All 27 New York counties have implemented electronic filing now, and  
23 they post e-filed complaints to the New York State Courts Electronic Filing website  
24 (<https://iapps.courts.state.ny.us/nyscef/HomePage>) immediately upon receipt, prior  
25 to a case number assignment or any manual review by the clerk’s office, in the  
26 manner described above. At the top and bottom of each new complaint is a

1 disclaimer notifying the public and press that the document has not yet been  
2 reviewed by the clerk’s office, and the index number is displayed as “Unassigned.”

3 110. I have reviewed the civil e-filing process for New York Supreme using  
4 the e-filing platform at https://iapps.courts.state.ny.us/nyscef. The e-filing interface  
5 requires the filer to select the case type. Certain case types, including uncontested  
6 matrimonial proceedings and special proceedings involving election law and mental  
7 hygiene, are listed but are “greyed out” and cannot be selected by the user, as shown  
8 in the screen capture on the following page of the interface as it appeared on January  
9 5, 2018:

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**Add Documents**

For detailed instructions on how to file your documents, refer to our [Filing Help](#) page.

Document Type \*

File Name (Max size 100 MB) \*  
 No file chosen

Additional Document Information  Special Instructions (Court Part, Judge, etc)

**Document Security**

This document **DOES NOT** contain a Social Security Number or other Confidential Personal Information as defined in [22 NYCRR §202.5\(e\)](#)

This document contains the following (check any that apply):

- Confidential Personal Information (CPI) that is **Redacted**, per [22 NYCRR §202.5\(e\)](#)
- Confidential Personal Information (CPI) that is **Un-Redacted** and seeks a remedy under [22 NYCRR §202.5\(e\)\(2\) or \(3\)](#)
- Confidential Personal Information (CPI) that is **Un-Redacted** as required or permitted by a specific rule or law. **Specify Rule or Law:**

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**e-File: Select Case Type**

◀ Previous [Help](#)

**Case Summary**

Court: **New York County Supreme Court**

**Instructions**

1. Choose the Case Type below that most accurately describes the case you are about to commence.
2. Where "other" is permitted under a category you must specify the Nature of Action in the Specify field.
3. If you are not able to select a Case Type below, that Case Type is currently not open in this court. Contact [NYSCEF](#) for more information.

**Matrimonial**

- Contested
- Uncontested

Does this case involve children under 18 years of age?  
 Yes  No

**Commercial**

- Business Entity (corporations, partnerships, LLCs, etc)
- Contract
- Insurance (where insurer is a party, except arbitration)
- UCC (sales, negotiable instruments)
- Other Commercial (Select an option)

**Torts**

- Asbestos
- Breast Implant
- Environmental (specify)
- Medical, Dental, or Podiatric Malpractice
- Motor Vehicle
- Product Liability (Select an option)
- Other Negligence (Select an option)
- Other Professional Malpractice (specify)
- Other Tort (specify)

**Real Property**

- Condemnation
- Mortgage Foreclosure - Residential
- Mortgage Foreclosure - Commercial
- Tax Certiorari
- Tax Foreclosure
- Other Real Property (Select an option)

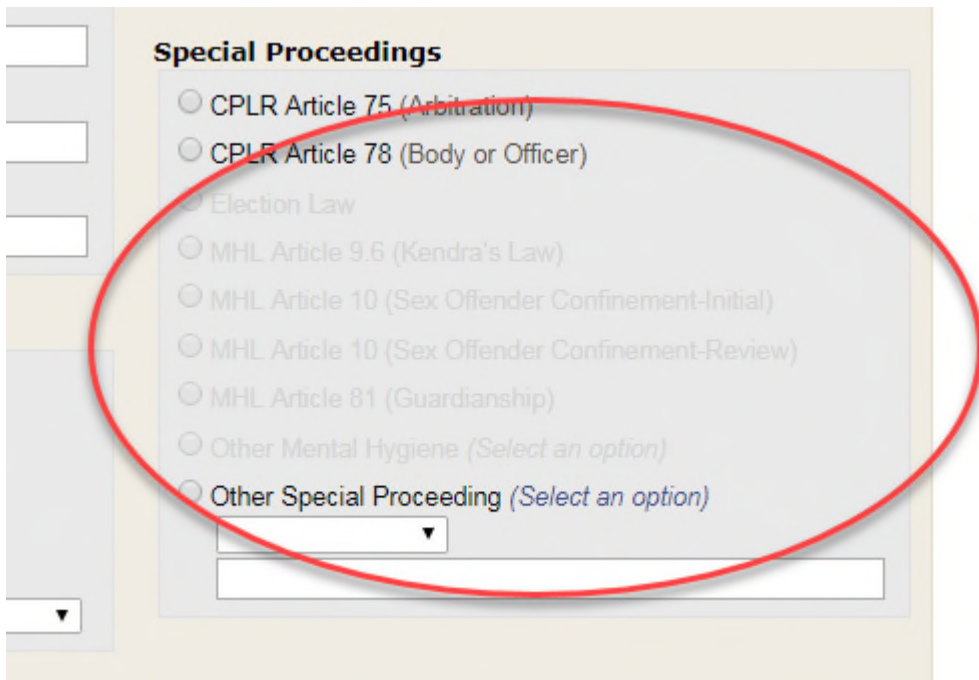
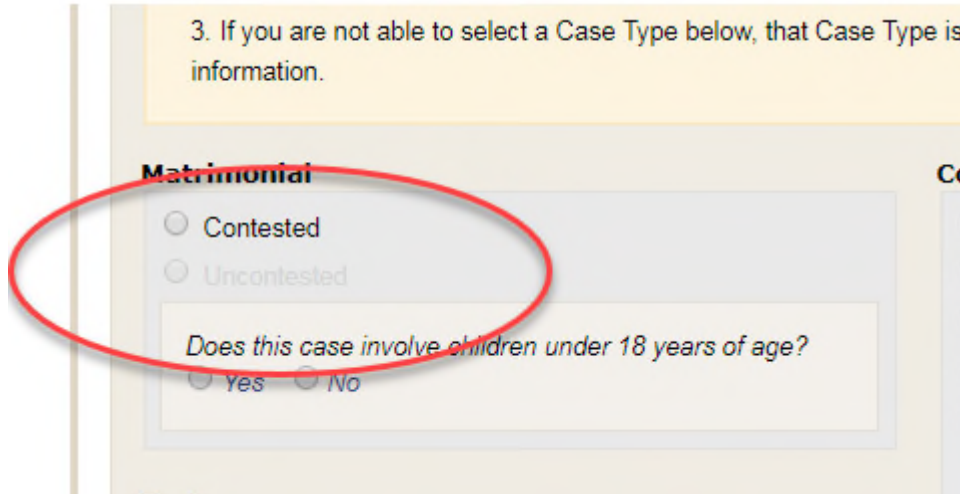
**Other Matters**

- Emergency Medical Treatment
- Habeas Corpus
- Name Change
- Sale or Finance of Religious/Not for Profit Property
- Other (Select an option)

**Special Proceedings**

- CPLR Article 75 (Arbitration)
- CPLR Article 78 (Body or Officer)
- Election Law
- MHL Article 96 (Kendra's Law)
- MHL Article 10 (Sex Offender Confinement-Initial)
- MHL Article 10 (Sex Offender Confinement-Review)
- MHL Article 81 (Guardianship)
- Other Mental Hygiene (Select an option)
- Other Special Proceeding (Select an option)

1 Following are portions of the preceding screen capture enlarged for legibility:



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21 111. Other state courts that provide electronic access to new e-filed civil  
 22 complaints upon receipt, before clerk review or processing, include Fresno Superior  
 23 Court in California, four courts in Georgia (the State Court of Fulton County, the  
 24 Superior Court of Fulton County, the State Court of DeKalb County, and the  
 25 Superior Court of DeKalb County), Hartford County Superior Court in Connecticut,  
 26 Jefferson County Circuit Court in Alabama, Salt Lake County Court (Third Judicial  
 27 District) in Utah, and the Eighth Judicial District Court of Nevada. In addition,



1 virtually every federal District Court provides timely access to new civil complaints  
 2 upon receipt through some variation of an electronic in-box, before clerk review or  
 3 processing.

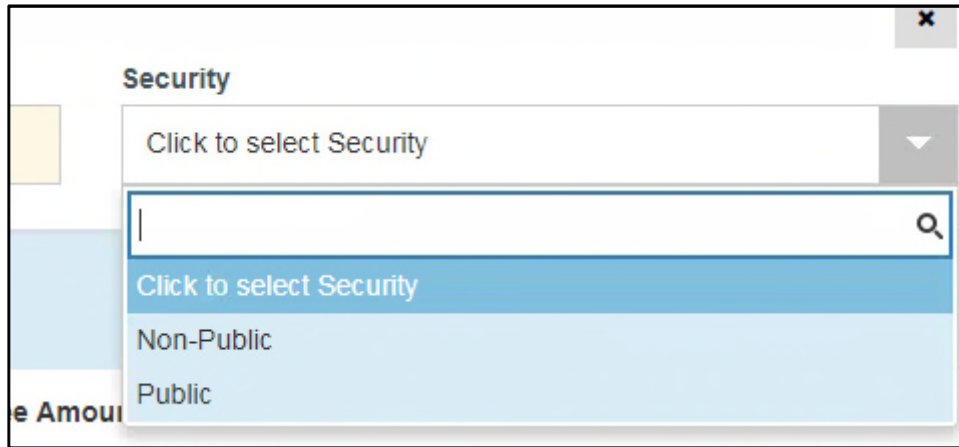
4 112. I have reviewed the e-filing process for the Superior Court of Fulton  
 5 County, Georgia through the eFileGA platform (www.odysseyfilega.com). For  
 6 each document the user uploads for e-filing, he or she must select either “Public” or  
 7 “Non-Public” from a “Security” drop-down menu as reflected in the screen capture  
 8 showing the interface as it appeared on January 5, 2018:

The screenshot displays the eFileGA interface for entering filing details. At the top left is the 'eFileGA' logo, and at the top right is a link for 'Efile Guidance & Resources'. The main section is titled 'Enter the details for this filing' and contains several input fields:

- Filing Type:** A dropdown menu with 'EFile' selected.
- Filing Code:** A dropdown menu with 'COMPLAINT' selected.
- Filing Description:** A text input field containing 'complaint'.
- Client Reference Number:** An empty text input field.
- Comments to Court:** An empty text input field.
- Courtesy Copies:** An empty text input field.
- Lead Document (Required):** A section containing a file named 'document.pdf' (322.95 KB). Below the file name is a 'Description' field with 'COMPLAINT' and a 'Security' dropdown menu. The dropdown menu is open, showing options for 'Non-Public' and 'Public', with 'Public' selected.
- Optional Services and Fees:** A section with a table header 'Optional Services and Fees' and 'Fee Amount'.

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1 113. The following is a portion of the preceding screen capture enlarged for  
2 legibility:



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11 114. I have reviewed the e-filing process through the Central District of  
12 California’s CM/ECF platform (<https://ecf.cacd.uscourts.gov>). Although the Central  
13 District does not permit the e-filing of case-initiating documents under seal, its e-  
14 filing platform has a mechanism for e-filing documents under seal in ongoing cases,  
15 as reflected in the screen capture below showing the “Civil Events” page of the  
16 Central District’s CM/ECF platform ([https://ecf.cacd.uscourts.gov/cgi-  
17 bin/DisplayMenu.pl?CivilEvents](https://ecf.cacd.uscourts.gov/cgi-bin/DisplayMenu.pl?CivilEvents)) as it appeared on January 5, 2018:

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**ECF** Civil Criminal Query Reports Utilities Search Logout ?

**Civil Events**

- Open a Case**
  - Open Civil Case
  - Open Miscellaneous Case
- Initial Pleadings and Service Documents**
  - Complaints and Other Initiating Documents
  - Other Complaint Filings
  - Answers to Complaints
  - Other Answers
- Service Documents**
  - Service/Waivers of Summons and Complaints
  - Service of Subsequent Document Filings
- Motions and Related Filings**
  - Applications/Ex Parte
  - Applications/Motions/Petitions/Requests
  - DISCOVERY Applications
  - DISCOVERY Exparte Applications
  - DISCOVERY Motions
  - DISCOVERY Requests
  - Motions in Limine
- Motions and Related Filings (cont.)**
  - Responses/Replies/Other Motion Related Documents
- Other Filings**
  - ADR/Mediation Documents
  - Appeal Documents
  - Bankruptcy Documents
  - Bonds
  - Case Referrals/Consents to Proceed
  - Attorney Certificates
  - Credit Card Payments
  - Miscellaneous Filings
  - Notices
  - Pretrial and Trial Documents
  - Report and Recommendation
- Proposed Orders to Chambers**
  - Proposed Orders
- UNDER SEAL FILINGS**
  - Under Seal Filing Events

115. I have reviewed the e-filing process through the Northern District of California’s CM/ECF platform (https://ecf.cand.uscourts.gov). Beginning the process of opening a new civil case causes a window to appear that warns the e-filer that “[s]ealed cases are not accepted for electronic filing”:

**Open a Civil Case**

**ATTENTION! CASE OPENING REQUIREMENTS**

To open a new civil case you will be required to provide the following:

- ✓ INITIATING DOCUMENT. Complaint or Notice of Removal containing an electronic signature (i.e. /s/ John Smith) or a scanned image of your signature
- ✓ CIVIL COVER SHEET. Form JS-44 located on the court web site.
- ✓ SUMMONS, if applicable.
- ✓ CREDIT CARD, for payment of filing fee.

**DO NOT E-FILE NEW CASES WHICH INCLUDE:**

- SEALED CASES. Sealed cases are not accepted for electronic filing.
- PERSONAL IDENTIFIERS. Documents e-filed should be redacted as per Federal Rules of Civil Procedure.
- MISCELLANEOUS ACTIONS. Miscellaneous cases should be manually filed with the Clerk’s Office, along with the appropriate fee.

For ECF assistance, contact the **Help Desk** at 866-638-7829 or ECFhelpdesk@cand.uscourts.gov.

Click the SUBMIT button to continue, or your browser BACK button to return to the previous screen.

SUBMIT Clear

**The OCSC E-Filing System**

116. I have personally reviewed the e-filing process for OCSC, using the OneLegal e-filing platform (<https://platform.onelegal.com>). After logging into the system, the e-filer indicates whether he or she is initiating a new case or filing into a case that is already open, as shown in the screen capture below, which was taken on January 5, 2018:

**Subsequent Filing**  
 Select to file on an active case with a court-assigned case number.

**Case Initiation**  
 Select to initiate a new case. The clerk will assign a case number once documents are accepted.

117. The filer must select a “Case Category” from a drop-down menu with four options: civil limited, civil unlimited, mental health, and probate, as shown in the screen capture below, which was taken on January 5, 2018:

**Case Information**

**\* Case Category:**  
 Select case category...

**\* Case Type:**  
 Select case type...

! Case Category is required.

- Select case category...
- Civil - Limited
- Civil - Unlimited
- Mental Health
- Probate

CANCEL NEXT

118. The “Case Category” selection dictates the options that will appear in the “Case Type” drop-down menu. For example, selecting the probate category enables the filer to select from probate-specific case types, as shown in the screen capture below, which was taken on January 5, 2018:

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## Case Information

\* Case Category: Probate

\* Case Type: Select case type...  
 Select case type...  
 Capacity Determination And Health Care Decision For Adult Without Conservator  
 Compromise Of Minor's Claim (No Civil Case Filed)  
 Conservatorship Of Estate Only  
 Conservatorship Of Person And Estate  
 Conservatorship Of Person Only  
 Determine Succession To Real Property

Selecting the civil unlimited category triggers a different selection of case types:

## Case Information

\* Case Category: Civil - Unlimited

\* Case Type: Select case type...  
 Select case type...  
 Antitrust/Trade Regulation  
 Asbestos  
 Asset forfeiture  
 Breach of Contract/Warranty  
 Business Tort  
 Civil Rights  
 Construction Defect

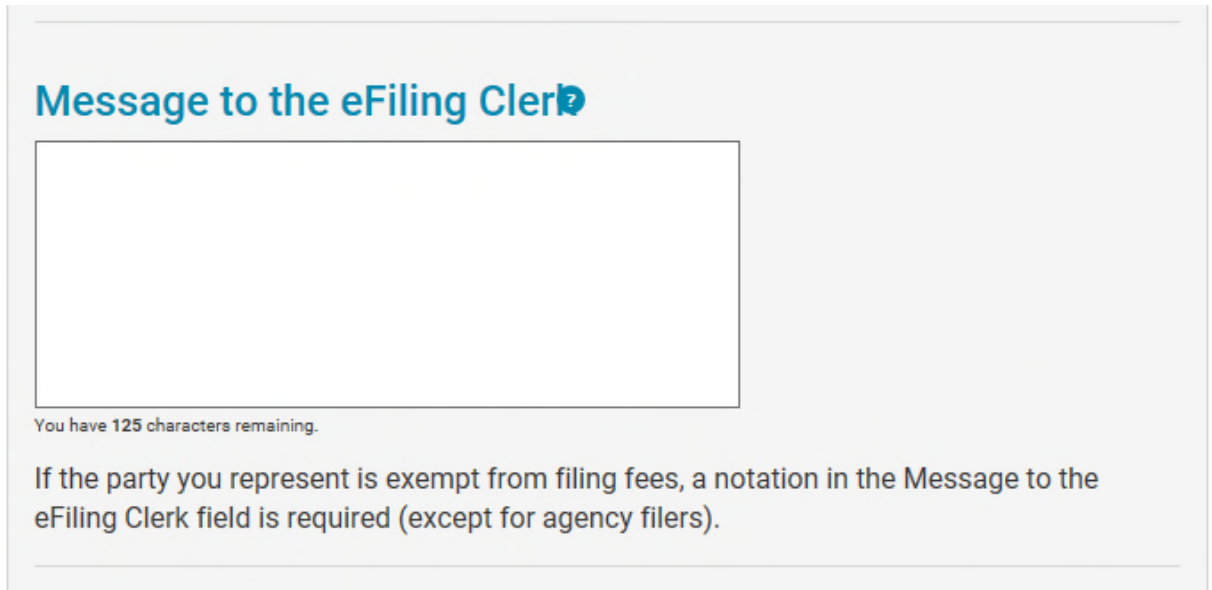
It would therefore be extremely difficult for a filer to accidentally file, for example, a document meant for a probate conservatorship case in a civil unlimited business tort case.

119. On the following “Order Information” screen, the e-filer enters information about the attorney of record, if any, and service options. On this screen



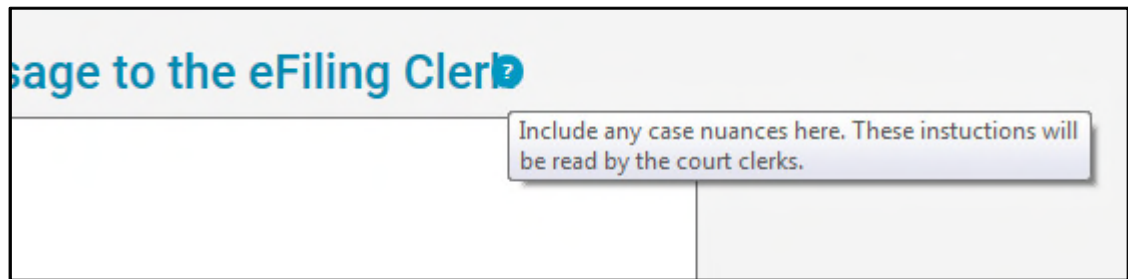
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1 also appears a free-form text box with the heading “Message to the eFiling Clerk,”  
2 as shown in the screen capture below, which was taken on January 5, 2018:



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10 I understand that this is the field that Defendant and his agents, including Ms. Ochoa  
11 and Ms. Kruse in their declarations and deposition testimony, have referred to in this  
12 litigation as the “Comments” section or box in OCSC’s e-filing interface.

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16 120. Positioning the mouse over the question mark symbol on this screen  
17 causes the following text to appear: “Include any case nuances here. These  
18 instructions will be read by the court clerks,” as shown in the screen capture below,  
19 which was taken on January 5, 2018:



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24 Neither in this mouse-over text nor anywhere else in the e-filing instructions is the  
25 filer instructed to use this “Comments” box to inform court clerks that the filing  
26 requires confidential handling.  
27

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1 121. The next screen is a “Case Participants” screen, in which the e-filer  
2 enters information about attorneys and parties. The e-filer uses a checkbox on this  
3 screen to indicate that he or she is filing as a pro se litigant, as shown in the screen  
4 capture below, which was taken on January 5, 2018:

5

6 **ADD ATTORNEY** **ADD PARTY**

7

8 **Add a Party**

9 **i** The court requests you add names exactly as, and in the same sequence as they appear on  
10 documents. Do not include punctuation. Do not enter Does and Roes as parties.

11  **Add a Person**  **Add an Organization**

12  **Are you representing yourself in this matter?**

13 **\* Role:** **\* First Name:** **Middle Name:**

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1 122. Next, the e-filer reaches a “Case Documents” screen, which allows him  
2 or her to upload documents for e-filing. The user selects the “Document Type” for  
3 each uploaded document. Options for “Document Type” include “Request to Waive  
4 Court Fees,” “Confidential Cover Sheet False Claims Action,” and “Sealed  
5 Document,” as shown in the screen captures below, which were taken on January 5,  
6 2018:

7

8 **Search for the Court Approved Document Type**

9 The court has determined a generic list of accepted document types. Please enter a search value that describes your document (i.e., Complaint, Summons, Answer, etc.) and select the closest match.

10 Document Type: Cover Sheets CANCEL

	Document Type	Document Category
Select	Civil Case Cover Sheet	Cover Sheets
Select	Confidential Cover Sheet False Claims Action	Cover Sheets
Select	Document	Cover Sheets
Select	Proposed Order (Cover Sheet) (Electronic Filing)	Cover Sheets
Select	Sealed Document	Cover Sheets

16

17 **Search for the Court Approved Document Type**

18 The court has determined a generic list of accepted document types. Please enter a search value that de  
(i.e., Complaint, Summons, Answer, etc.) and select the closest match.

19 Document Type:  SEARCH

	Document Type	Document Category
Select	Request to Waive Court Fees	Initial Fee Waiver

25 Selecting a document type that implicates confidentiality (e.g., Request to Waive  
26 Court Fees) provides a simple way for the court to filter out documents that should  
27 be examined for confidentiality while releasing the others for public access.

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**What OCSC’s “Nominal” Fees to View Complaints Remotely Would Cost**

123. OCSC Local Rule 352 provides that e-filed complaints filed prior to midnight on a court day will be deemed filed as of that day. However, as noted in the declaration of Joanna Mendoza (the “Mendoza Declaration”), e-filed complaints are not released for viewing on either the public access terminals or on the OCSC web site until after court staff have completed administrative processing of the complaint. This means that under current OCSC procedures, even if CNS were to use the web site to review new complaints after the Records Area closes at 4 p.m. each day, it would only be able to see those complaints administratively reviewed and processed, and made available for electronic viewing by the Clerk’s office staff before they leave for the day. Thus, the OCSC web site does not provide access to the remainder of each day’s complaints until, at the earliest, the following court day.

124. OCSC produced data in connection with this lawsuit showing the number of complaints received and processed during the period January 1, 2017 to October 18, 2017. This data is attached to the accompanying declaration of Jonathan G. Fetterly, and discussed in more detail in the accompanying declaration of Joanna Mendoza. The data shows that OCSC processed **1,473** complaints between 4 p.m. and 5 p.m. during that period. OCSC charges between \$7.50 and \$40.00 to view a court document on its web site (even if no download is sought) – a fee that OCSC Deputy Operations Manager for Civil E-Filing Sara Ochoa describes as “nominal” in her declaration. Using OCSC’s web site, it would have cost CNS between **\$10,775** and **\$57,480** to see the complaints OCSC processed between 4 p.m. and 5 p.m. during the period January 1, 2017 and October 18, 2017 (even if no download was sought).

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**Attempts to Mask Delays Caused By A Process-First Policy**

125. In the course of CNS’s requests for better access to new civil complaints before and during this litigation, the Clerk’s Office of OCSC has fallen back on a common tactic of attempting to mask delays caused by the process-first policy. That tactic takes two forms at OCSC: the first is to measure the delay in a way that makes it seem less; the second is to speed up processing temporarily.

126. In his summary judgment papers, Mr. Yamasaki seeks to diminish processing delays by measuring them in “business hours,” which he defines as the hours the clerk chooses to open his doors to the public. Those hours represent an arbitrary amount of time entirely within the discretion of the clerk to alter and shorten as he wishes. The OCSC’s office has shortened its public hours from a 5:00 p.m. closing time in the past to the current 4:00 p.m. closing time. When he was in Santa Clara Superior, Mr. Yamasaki also shortened his office’s public hours from 5:00 p.m. to 3:00 p.m. In San Francisco, Clerk Michael Yuen last year shortened his public hours from 4:00 p.m. to 12:30 p.m. The clerk in San Diego, Michael Roddy, shortened his hours from 5:00 p.m. to 3:30 p.m. Monday through Thursday, and to noon on Friday. Then last year he extended his hours to 4:00 p.m. Monday through Friday, still short of the original 5:00 p.m. closing time. Clerk Michael Planet in Ventura Superior also closed his office early to the public, at 3:00 p.m., while his staff continued to work until 5:00 p.m. The “business hours” of the clerk’s office can be changed by the clerk’s decree, and they regularly are. That malleable set of hours is not related to the work hours of the clerk’s office, with clerk’s office employees continuing to work until 5:00 p.m. or later, long after the public has been locked out. And the “business hours” are not related to the actual passage of time where events of one day are overtaken by events of the following day.

127. Additionally, the business hours have no relevance to the amount of time it takes to process complaints because the staff continues to work long past the

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1 clerk’s business hours. And business hours are unrelated to press access in other  
2 courts. For example, press access to new complaints filed at the United States  
3 District Court for the Central District of California and Fresno County Superior  
4 Court has no relation to when the clerks in those courts open and close their doors to  
5 the public.

6 128. For most people, time is a more stable concept. The minutes and hours  
7 pass in a steady flow. Events take place at given time on a given day and then time  
8 moves on, all the while eating away at the importance and interest in news about  
9 those events. A newsworthy public complaint filed on Friday and withheld until  
10 Monday is in fact withheld for three actual days. News about the complaint is old  
11 by that time, and not made less so by a measure of hours and days based on the  
12 business hours a court clerk chooses to offer. A traditional morning newspaper,  
13 delivered to one’s doorstep, covers the news of the previous day, while an afternoon  
14 tabloid covers news from earlier the same day. But with the advent of nearly  
15 instantaneous publishing on the Internet, the importance of, and interest in, news  
16 events fades almost entirely after a day, and all the more so after many days.

17 129. The more common permutation of the delay masking tactic is to speed  
18 up processing, a temporary measure that is inevitably followed by a slide back, as  
19 processing time returns to a base point consistent with the common human tendency  
20 to let work stack up.

21 130. For example, at VCSC, CNS brought access delays to Mr. Planet’s  
22 attention in June 2009, and access improved sharply enough to prompt a thank you  
23 letter to the court’s deputy clerk in July 2009. That improvement was followed by a  
24 slow regression to the original delay. Shortly after CNS filed its 2011 lawsuit  
25 against the clerk, Judge Real dismissed it on abstention grounds, and the delays in  
26 access due to VCSC’s practice of delaying access until after processing continued  
27 unabated. However, shortly after the Ninth Circuit reversed that dismissal in  
28

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1 *Courthouse News Service v. Planet*, 750 F.3d 776 (2014), CNS began to see a slight  
2 improvement, with a somewhat greater percentage of new complaints being made  
3 available in a timely manner on the day of filing. *See* Declaration of J. Krolak, ¶¶  
4 33, 34 (ECF 12, ¶ 14, Ex. 14; ECF 12-1).

5 131. The Clerk’s Office at OCSC has followed a similar roller coaster when  
6 it comes to processing. Measured over five days just before May 29, 2016, when  
7 Judge James Otero handed down his motion for summary judgment ruling in the  
8 *Planet* case, the OCSC Clerk’s Office was taking two days to process, providing  
9 access to only 6% of the new unlimited complaints on the day of filing, and  
10 withholding 82% for two days or more. After the ruling, the Clerk’s Office sped up  
11 processing and by mid-August 2016, nearly half of the unlimited complaints, 51.5%,  
12 could be seen on the day of filing with a lesser 9.4% withheld for two days or more.  
13 But by early October 2016 the Clerk’s office had dropped down low again and was  
14 processing only 12.9% on the day of filing while withholding 59.5% for two days or  
15 more.

16 132. In the next year, 2017, the Clerk’s Office followed the same pattern.  
17 The week before the complaint in *CNS v. Yamasaki* was filed on January 24, 2017,  
18 the Clerk’s Office was processing, and providing access to, only 21% of new  
19 unlimited complaints on the day of filing and 19.8% were withheld two days or  
20 more. In early February, the percentage of cases processed and able to be seen on  
21 the day of filing jumped up to 44.1% with 13.3% withheld two days or more. Then  
22 began a series of ups and downs, dropping to 22.1% of complaints processed and  
23 provided on the day of filing in early April, rising to 62.4% in mid-May, dropping to  
24 8.4% in mid-July then jumping to 55.1% in mid-September, before dropping down  
25 to 39.8% being processed and provided to the press and public on the day of filing  
26 in mid-October 2017, with 11.8% withheld two days or more. Those extreme  
27 variations in the week-to-week rate of timely access are symptomatic of a procedure  
28



1 that puts the work of court employees -- subject to sick days, holidays, family leave,  
 2 vacations and re-assignments -- between the filing of a new civil complaint and the  
 3 time when it can be reviewed by the press.

4 **Delayed and Inconsistent Access for the Most Newsworthy Cases**

5 133. But the roller coaster is most pronounced in the Complex Division of  
 6 OCSC, where the most important and newsworthy litigation is filed. In January of  
 7 2017, prior to CNS's filing of its complaint in this action, the complex unit provided  
 8 access to only 3.2% of the newly filed complex complaints on the day of filing. In  
 9 the month of February 2017, that percentage jumped modestly to 29.2%. The pace  
 10 continued to ramp up to a peak of 42.1% in August 2017. In other words, timely  
 11 access was provided to less than half the cases when the unit was working at its  
 12 fastest pace. The processing rate then began to slide, dramatically. In October, only  
 13 13.5% of the new complex cases could be reviewed on the day they were filed, and  
 14 by the end of December 2017, the monthly rate of access on the day of filing had  
 15 dropped to 9.8%, back to the bottom where the roller coaster started out in late  
 16 January.

17 134. Statistics for OCSC filings are based on the information supplied by  
 18 Mr. Yamasaki in his summary judgment papers for the period Jan 1, 2017 until  
 19 October 18, 2017, and, for the remaining part of 2017, gathered from the OCSC  
 20 website by Ms. Mendoza. As noted above, Ms. Mendoza works under my  
 21 supervision, and I have closely monitored the coverage and access issues in the  
 22 court and become familiar with many of the court's administrative processes. In  
 23 sum, the statistics show that for the 488 complex complaints filed in 2017, about one  
 24 fifth (21.9%) were made available without delay. The bulk of the complex  
 25 complaints (78%) were withheld for one to seven days while they were processed.  
 26 That set of withheld complex cases was about evenly split between two fifths  
 27 (39.5%) that were withheld one day and two fifths (38.5%) that were withheld for  
 28

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1 two days up to seven days. By even the most elastic interpretation of the word  
2 “timely,” such access cannot be considered timely access.

3 135. The complex cases are by nature the most substantive cases filed in the  
4 court involving the thorniest issues and affecting the most people. They include  
5 complaints alleging antitrust injury, business torts, securities law violations, product  
6 liability and employment law offenses on a class basis.

7 136. As one example, the Orange County District Attorney on Tuesday  
8 April 11, 2017 filed an action against two pharmaceutical companies over a deal to  
9 suppress the generic version of a popular drug, allowing the drug maker an  
10 additional profit of an estimated \$400 million. That case, No. 30-2017-914577-CU-  
11 BT-CXC, was not processed until Friday April 14, 2017, three days later. The case  
12 is clearly newsworthy and yet it was withheld for three days.

13 137. As another example, a group of local residents filed an environmental  
14 action against Orange County on December 7, 2017 over its approval of a private  
15 development in the 100-acre Great Park in Irvine, formerly part of the El Toro  
16 Marine Base. Represented by Gibson Dunn & Crutcher, the residents said the  
17 project was approved without consideration by any planning commission and  
18 without a single noticed public hearing. The action, No. 30-2017-00960230-CU-  
19 TT-CXC was filed on Thursday December 7, 2017, and withheld until the following  
20 Monday December 11, 2017. The action is clearly of substantial news interest but  
21 press access to the new complaint was delayed by four days.

22 **Press Access Does Not Require Additional or Faster Work by Court Staff**

23 138. I understand that Mr. Yamasaki distinguishes the Judge Otero’s ruling  
24 in the *Planet* case by saying Ventura sees a much lower volume of complaints than  
25 does OCSC. Press access has nothing to do with the volume of a court’s filings, a  
26 truth illustrated by Los Angeles Superior, the most high-volume court in the nation.  
27 Los Angeles Superior provides timely access to all the new cases that cross the  
28

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1 counter at the Stanley Mosk courthouse in downtown Los Angeles, on the day of  
2 filing, prior to processing. The effort to distinguish Orange County from Ventura is  
3 based on the false premise that better access requires more work or faster work by  
4 the clerk’s staff. It does not. In fact, timely access is the result of placing press  
5 access *ahead of* the work of the clerk’s staff, a simple proposition.

6 139. When I have asked for press access to new civil complaints over the  
7 28-year history of CNS, I have on occasion been met in the paper-filing context with  
8 the response that providing same-day access would require the clerk to spend a great  
9 deal of money on extra personnel. I have answered that journalists are not asking  
10 for more work from the clerk’s staff, we ask for nothing more than an open door.

11 140. Based on experience in courts throughout the nation, that include in-  
12 person visits to clerk offices, and a great number of discussions with court personnel  
13 in federal and state courts, as well as reporting extensively for our website on the  
14 conversion from paper to electronic filing, I have observed that nearly every  
15 operation in the paper-filing context is mirrored by an equal operation in the e-filing  
16 context. Translated from the simple terms of paper to the parlance of e-filing, an  
17 attorney service that physically delivers a paper document to the courthouse  
18 becomes an Electronic Filing Service Provider (“EFSP”). The intake clerk for a  
19 paper complaint becomes the automated E-file Manager (“EFM”) for an electronic  
20 complaint. Docketing of paper complaints becomes processing of e-filed  
21 complaints, and the docketing clerk becomes the Legal Processing Specialist  
22 (“LPS”).

23 141. The equivalency carries over into press access. In either filing medium,  
24 whether it applies to Mr. Planet in the paper-filing VCSC or Mr. Yamasaki in the e-  
25 filing OCSC, I am not asking for more work or faster work from the clerk or his or  
26 her staff. I am asking the Clerk for nothing more than to stop preventing the press  
27

28

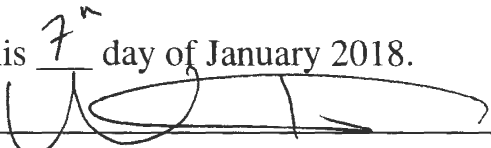
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1 from seeing documents that the clerk’s office has received and that the clerk’s staff  
2 members themselves can see.

3 142. Based on my long experience covering courts in America, I have  
4 concluded that clerks generally see the courts they work for as central gears in the  
5 machinery of our democratic government, institutions that benefit from the window  
6 the press puts on them to let the public see inside. But a small coterie of clerks  
7 primarily in Southern California does not see it that way. Operating under the flag  
8 of new technology, they have blocked timely access by news reporters. Their  
9 determination to withhold press access has persisted in the face of two Ninth Circuit  
10 opinions and three district court opinions, one from a California district court, in  
11 large part because they are protected from any consequence by the financial backing  
12 of an opaque central bureaucracy which, in a demonstration of power and insularity,  
13 is using public funds to fight against public access. I have appealed to tradition and  
14 the nation’s founding principles in trying to maintain traditional press access. I have  
15 argued that their new technology could be used to shed more light on the courts, to  
16 further the open and public nature of the courthouse. These pleas have been  
17 answered with what I would call rope-a-dope, to use fighter Muhammad Ali’s  
18 famous phrase, where meetings take place, vague promises to consider a solution are  
19 expressed, and absolutely nothing changes. As a result, and as a last resort, I have  
20 turned to the federal courts to overcome an entrenched bureaucratic resistance to the  
21 principles of the First Amendment.

22 I declare under penalty of perjury under the laws of the United States and that  
23 the foregoing is true and correct.

24 Executed in Pasadena, California on this 7<sup>th</sup> day of January 2018.

25   
26 \_\_\_\_\_  
27 William Girdner