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COURTHOUSE NEWS SERVICE

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10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO/OAKLAND DIVISION**

14 **COURTHOUSE NEWS SERVICE,**

15  
16 Plaintiff,

17 vs.

18 **ALEX CALVO**, in his official capacity as  
19 Court Executive Officer/Clerk of the Santa  
20 Cruz County Superior Court; **ARLENE**  
21 **JUNIOR**, in her official capacity as Court  
Executive Officer/Clerk of the Sonoma County  
Superior Court,

22 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 Plaintiff Courthouse News Service (“Courthouse News” or “CNS”), by and through its  
2 undersigned attorneys, alleges the following in support of its Complaint for Injunctive and  
3 Declaratory Relief against Defendants Alex Calvo, in his official capacity as Court Executive  
4 Officer / Clerk of the Santa Cruz County Superior Court (“Santa Cruz”), and Arlene D. Junior, in her  
5 official capacity as Court Executive Officer / Clerk of the Sonoma County Superior Court  
6 (“Sonoma”) (collectively “Defendants”).

### 7 INTRODUCTION

8 1. Courthouse News brings this action to challenge Defendants Calvo and Junior’s  
9 shared policy and practice of withholding access to new civil unlimited complaints e-filed at Santa  
10 Cruz and Sonoma, respectively, until after processing by their court staff. This policy and practice  
11 results in regular and pervasive delays in the ability of Courthouse News and others to read and  
12 report on those complaints, including numerous weeks in which Santa Cruz withheld access to *more*  
13 *than 60%* of new e-filed civil complaints for at least one court day, and in which Sonoma withheld  
14 access to *more than 35%* of new e-filed civil complaints for at least one court day, with some  
15 complaints at both courts withheld for two or more court days. These delays are unnecessary and  
16 easily avoidable, as demonstrated by the timely access provided by federal and state courts across  
17 the country – including Superior Courts throughout California – using alternatives that are readily  
18 available to both Santa Cruz and Sonoma.

19 2. The First Amendment provides the press and public with a presumptive right of  
20 timely access to newly-filed civil complaints that attaches when the complaint is filed. *Courthouse*  
21 *News Service v. Planet*, 947 F.3d 581, 585 (9th Cir. 2020) (“*Planet III*”). In *Planet III*, the Ninth  
22 Circuit recognized that timely access to new civil complaints is essential to ensure that news of civil  
23 disputes reaches the public “while it is fresh[,]” when it is most likely to become the subject of  
24 public discussion. *Id.* It is also essential “to accurate and fair news reporting of civil disputes, and is  
25 thus vital to the public’s ability to discuss what is happening in an important branch of government.  
26 *Id.* (citations and quotations omitted). Delayed access inhibits that discussion, and is tantamount to a  
27 denial of access.

1           3.       News coverage operates in a daily cycle where news events, including newly filed  
2 complaints, occur during the day and are reported that afternoon and evening, after which  
3 newsmakers and reporters sleep, only to start the cycle again the next day. Where news is delayed  
4 until the next day or longer, it is devalued by the delay and is less likely to be reported, because it  
5 becomes “old news”.

6           4.       Traditionally, at courts across the country, new complaints were available for review  
7 by the end of the day so they could be reviewed by journalists who visited the courthouse to report  
8 on the new matters contained in that day’s new civil complaints. Complaints were filed in paper,  
9 and intake clerks would set aside the new complaints for journalist review as they came across the  
10 intake counter. This was true in major courts all around California. The press corps could thus  
11 review new civil complaints by the end of the day on which they were filed.

12           5.       On July 1, 2017, Santa Cruz implemented mandatory e-filing for all new civil  
13 unlimited complaints, except those filed by *pro se* litigants. On January 1, 2020, Sonoma  
14 implemented mandatory e-filing for all new civil unlimited complaints, except those filed by *pro se*  
15 litigants. Despite those technological steps forward, delays in access at both Santa Cruz and Sonoma  
16 have been regular and pervasive, including numerous weeks within the last few months in which  
17 Santa Cruz withheld access to **more than 60%** of new e-filed civil complaints for at least one court  
18 day, and in which Sonoma withheld access to **more than 35%** of new e-filed civil complaints for at  
19 least one court day, with some complaints at both courts withheld for two or more court days. These  
20 delays in access are the result of Defendants’ policy and practice of withholding access to new e-  
21 filed complaints until after they have been administratively processed by court staff. This causes  
22 delays because new complaints are filed into the courts’ e-filing systems and then sit in electronic  
23 queues, where they are withheld from public view while waiting to be processed by court staff.

24           6.       The delays in access experienced by Courthouse News at Santa Cruz and Sonoma are  
25 unnecessary and easily avoidable. Courts throughout California and across the nation provide the  
26 press and public timely access to new e-filed complaints through means readily available to both  
27 Santa Cruz and Sonoma.

28

1           7.       The vast majority of federal courts and many state courts configure their e-filing and  
2 case management systems to automatically release nonconfidential civil complaints to the public at  
3 large the moment the court receives them, both remotely online and at the courthouse through public  
4 access terminals.

5           8.       A growing number of state courts – including Los Angeles, Santa Clara, Monterey,  
6 Santa Barbara, Fresno, and Kern County Superior Courts in California – provide the same on-receipt  
7 access but take a slightly different approach. They configure their e-filing and case management  
8 systems to allow credentialed users to see new e-filed complaints that sit in the court’s electronic  
9 queue, while they await processing by court staff. By doing so, these courts continue the tradition of  
10 providing access to new complaints after they have crossed the clerk’s intake counter, and before  
11 they are docketed, enabling the press to review complaints by the end of the day on which they are  
12 filed. In addition to the California Superior Courts set out above, Orange County Superior has  
13 agreed to provide the press with an Electronic Media Inbox, which will also allow the press on-  
14 receipt access to new e-filed complaints, while they await processing. The total California  
15 population served by courts providing (or promising to provide) on-receipt access now totals 18  
16 million, necessitating the conclusion that on-receipt access is practicable.

17           9.       Notably, Santa Cruz and Sonoma both use e-filing and case management software  
18 provided and maintained by Tyler Technologies (“Tyler”). Numerous other courts in California,  
19 including Monterey and Santa Clara Superior Courts, use the same Tyler e-filing and case  
20 management systems to provide timely, pre-processing access to new civil complaints through what  
21 are commonly called “review queues.” Santa Cruz and Sonoma could likewise provide timely, pre-  
22 processing access to new civil complaints through a review queue, as demonstrated by its sister  
23 courts, or through other practicable alternatives used by other state and federal courts. Despite  
24 repeated requests, Defendants refuse to do so, and delays in access to new civil complaints at Santa  
25 Cruz and Sonoma are regular and pervasive due to Defendants’ policy and practice of withholding  
26 access to new e-filed complaints until after administrative processing.

27           10.      The analysis of a claim alleging a violation of the First Amendment right of access  
28 typically involves a two-step process. The first step is to determine whether, as a general matter,

1 there is a First Amendment right of access to civil complaints. If the answer to that question is  
2 “yes,” the court proceeds to the second step, which is to determine if the restrictions on access – in  
3 this case, Defendants’ policies and practices that lead to delays in access – satisfy “rigorous”  
4 scrutiny. *See Planet III*, 947 F.3d at 589-97 (discussing and applying two-step process established  
5 by *Press-Enterprise Co. v. Superior Court* (“*Press-Enterprise II*”), 478 U.S. 1 (1986)).

6 11. In *Planet III*, the Ninth Circuit applied this two-step process to the Ventura Superior  
7 Court clerk’s policy and practice of withholding access to new civil complaints until after  
8 administrative processing. Applying the “experience” and “logic” test of *Press-Enterprise II*, the  
9 Ninth Circuit addressed and conclusively resolved the first step by holding that the press has a  
10 qualified right of timely access to newly-filed civil complaints that attaches when the complaint is  
11 filed, *i.e.*, when the complaint is received by the court. *Id.* at 585, 588, 591.

12 12. Turning to the second step, *Planet III* determined that the clerk had failed to  
13 “demonstrate ... that there is a ‘substantial probability’ that its [asserted] interest[s]” to support  
14 withholding access to new civil complaints until after administrative processing “would be impaired  
15 by immediate access, and ... that no reasonable alternatives exist to ‘adequately protect’ that  
16 government interest.” *Id.* at 596 (citing and quoting *Press-Enterprise II*, 478 U.S. at 14). The  
17 Ventura Superior Court clerk’s policy of withholding access to new civil complaints until after  
18 administrative processing thus failed both prongs of the *Press-Enterprise II* test and violated  
19 Courthouse News’ First Amendment right of timely access to new civil complaints. *See id.* at 596-  
20 600.

21 13. Shortly after the Ninth Circuit issued *Planet III*, the Eastern District of Virginia ruled,  
22 following a bench trial, that under the First Amendment, the public and press generally have a  
23 “contemporaneous right of access” to newly-filed civil complaints, and that “contemporaneous”  
24 means “on the same day as filing, insofar as practicable.” *Courthouse News Service v. Schaefer*, 440  
25 F. Supp. 3d 532, 559 (E.D. Va. 2020).

26 14. Most recently, in January 2021, the District Court in the *Planet* case, on remand  
27 following *Planet III*, entered an Amended Judgment for Declaratory and Injunctive Relief reflecting  
28 the holding from *Planet III* that a qualified First Amended right of timely access attaches “when new

1 complaints are received by a court, rather than after they are ‘processed.’” *Courthouse News Service*  
2 *v. Planet*, 2:11-cv-08083-DGM-FFM, Dkt. No. 270 (C.D. Cal. Jan. 26, 2021). The Amended  
3 Judgment further reflects the Ninth Circuit’s holding that “[t]his qualified right of timely access  
4 attaches on receipt regardless of whether courts use paper or e-filing systems,” and permanently  
5 enjoins VSC from “refusing to make newly filed civil complaints and associated exhibits available to  
6 the public and press until after such complaints are ‘processed,’ regardless of whether such  
7 complaints are filed in paper form or e-filed.” *Id.*

8         15. Here, the existence of readily-available alternatives means that Defendants cannot  
9 justify their policy or practice of withholding access to new civil complaints until after processing.  
10 Defendants’ policy and practice of delaying access to new civil complaints despite available less  
11 restrictive alternatives violates Courthouse News’ First Amendment right of timely access, just as  
12 the policies and practices of the court clerks in *Planet* and *Schaefer* did. Courthouse News seeks  
13 declaratory relief and an injunction prohibiting that policy and practice.

14         16. The COVID-19 pandemic has brought serious challenges to the courts of  
15 California. One of the effects has been to magnify the difference between those courts, like  
16 Monterey, Fresno and Santa Clara Superior Courts, that have used readily available technology in a  
17 manner consistent with their commitment to providing timely access to court records, and Santa  
18 Cruz and Sonoma, which have not. Despite emergency orders and closures, courts that provide pre-  
19 processing or on-receipt access to new complaints, whether through generally available websites or  
20 through a review queue, saw no disruption in public access to new civil complaints and other civil  
21 filings even as the pandemic took its toll on many court operations. As Courthouse News has argued  
22 to the Ninth Circuit, technology should illuminate the halls of government, not darken them.

### 23 **JURISDICTION AND VENUE**

24         17. Courthouse News’ claims arise under the First and Fourteenth Amendments to the  
25 United States Constitution and the Civil Rights Act, Title 42 U.S.C. §§ 1983-1988. This Court has  
26 subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights) and 2201  
27 (declaratory relief). Defendants are subject to personal jurisdiction in this judicial district at the time  
28 this action is commenced.

1 18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Defendants  
2 reside in California and are employed in this district, and because a substantial part of the events or  
3 omissions giving rise to Courthouse News' claims occurred in this district.

4 **PARTIES**

5 19. Courthouse News is a nationwide news service founded almost 30 years ago out of a  
6 belief that a great deal of news about civil litigation went unreported by traditional news media, a  
7 trend that has only increased in the last decade. Courthouse News now employs approximately 240  
8 people, most of them editors and reporters, covering state and federal trial and appellate courts in all  
9 50 states in the United States.

10 20. Defendant Calvo is the Court Executive Officer/Clerk of Santa Cruz and is sued in  
11 that official capacity. The Court Executive Officer/Clerk at Santa Cruz is responsible for, among  
12 other things, the administration of court records at Santa Cruz.

13 21. Defendant Junior is the Court Executive Officer/Clerk of Sonoma and is sued in that  
14 official capacity. The Court Executive Officer/Clerk at Sonoma is responsible for, among other  
15 things, the administration of court records at Sonoma.

16 22. Acting in their official capacities, Defendants, and those acting under their direction  
17 and supervision, are directly involved with and/or responsible for the delays in access to new  
18 complaints experienced by Courthouse News and other members of the press, which acts reflect the  
19 official policies and practices of the clerks' offices at Santa Cruz and Sonoma as a whole.

20 23. Defendants' actions, as alleged in this Complaint, are under the color of California  
21 law and constitute state action within the meaning of the Fourteenth Amendment to the United States  
22 Constitution and 42 U.S.C. § 1983. On information and belief, Defendant Calvo's primary place of  
23 employment is in Santa Cruz County, California. On information and belief, Defendant Junior's  
24 primary place of employment is in Sonoma County, California.

25 24. Defendants are sued in their official capacities only. Courthouse News seeks relief  
26 against Defendant as well as their agents, assistants, successors, employees, and all persons acting  
27 in concert or cooperation with them or at their direction or under their control.

28

**FACTUAL ALLEGATIONS**

1  
2 25. After the Ninth Circuit's decision in *Planet III*, Courthouse News notified Defendants  
3 that practices and policies at Santa Cruz and Sonoma denied timely access to many new civil  
4 unlimited complaints, for at least one day and sometimes for several days. Despite the existence of a  
5 highly practicable alternative, Defendants refused to change their policy and practice of withholding  
6 access to new e-filed civil complaint until after processing, and the denial of timely access continues  
7 to this day.

**A. Courthouse News' News Reporting Activities**

8  
9 26. Courthouse News offers its readers a variety of publications. Its New Litigation  
10 Reports contain original, staff-written summaries of significant new civil petitions or complaints,  
11 and are sent to subscribers via e-mail each evening. In California, Courthouse News publishes 15  
12 civil litigation reports, including the *Silicon Valley Report*, which includes coverage of new litigation  
13 in Santa Cruz and Santa Clara Superior Courts, and the *North and East Bay Report*, which includes  
14 coverage of new litigation in Sonoma, Alameda, Contra Costa, Marin and Napa Superior Courts.

15 27. Among Courthouse News' other publications is a monthly newsletter, the  
16 *Entertainment Law Digest*, as well as the *Daily Brief*, which covers published, nationwide appellate  
17 rulings, including all U.S. Supreme Court and federal circuit decisions, as well as significant rulings  
18 from the federal district courts. Courthouse News also publishes a freely-available website,  
19 [www.courthousenews.com](http://www.courthousenews.com), featuring news reports and commentary, which is read by roughly  
20 30,000 people every weekday. The website functions much like a print daily newspaper, featuring  
21 staff-written articles from across the nation that are posted throughout each day, and rotated on and  
22 off the page on a 24-hour news cycle.

23 28. Courthouse News has been credited as the original source of reporting on various  
24 topics by a wide range of publications, including: *The Mercury News*, *ABA Journal*, ABC News, *The*  
25 *Atlantic*, *Austin American Statesman*, Black Christian News Network, *California Bar Journal*, CBS  
26 News, the *Chinook Observer*, *The Christian Science Monitor*, The Daily Beast, *The Dallas Morning*  
27 *News*, Forbes, Fox News, *The Guardian*, The Hill, *Houston Chronicle*, The Huffington Post, *Long*  
28 *Island Press*, *Los Angeles Times*, *Mother Jones*, National Public Radio (NPR); NBC News, *New*

1 *York Daily News, New York Magazine, The New York Times, The Orange County Register, Politico,*  
2 *Rolling Stone, Salt Lake City Tribune, San Antonio Express-News, Slate, The Telegraph (UK), The*  
3 *Wall Street Journal, The Washington Post, The Washington Times, Women’s Health Policy Report,*  
4 *United Press International (UPI), USA Today, U.S. News and World Report* and the YouTube news  
5 channel. The Rachel Maddow Show and American, Canadian, and New Zealand radio shows have  
6 also interviewed Courthouse News reporters.

7 29. Courthouse News has more than 2,200 subscribers nationwide, including law firms,  
8 law schools, government offices and news outlets such as: The Associated Press, *Austin American-*  
9 *Statesman The Atlanta Journal Constitution, The Boston Globe, BuzzFeed, CNN, The Dallas*  
10 *Morning News, Detroit Free Press, International Consortium of Investigative Journalists, Fox*  
11 *Entertainment Group, Honolulu Civil Beat, Las Vegas Review Journal, Los Angeles Business*  
12 *Journal, Los Angeles Times, North Jersey Media Group, Pacific Coast Business Times, Portland*  
13 *Business Journal, St. Paul Business Journal, The Salt Lake Tribune, The San Jose Mercury News,*  
14 *San Antonio Express News, Tampa Bay Business Journal, The Wall Street Journal, Variety, Walt*  
15 *Disney Company and Warner Bros.*

16 30. In California, the Courthouse News litigation reports cover unlimited jurisdiction  
17 civil complaints, focusing on those against business institutions and public entities. Courthouse  
18 News reporters do not cover family law matters, name changes, probate filings, most mortgage  
19 foreclosures, or collection actions against individuals unless the individual is famous or notorious.  
20 For larger courts, such as Santa Cruz and Sonoma, reports are emailed to subscribers each evening.

21 31. Courthouse News does not seek to review or report on the tiny fraction of new civil  
22 complaints that are statutorily confidential or accompanied by a motion to seal for a judicial  
23 determination of whether the complaint should be confidential. Through its Tyler “Odyssey” case  
24 management and e-filing systems, both Santa Cruz and Sonoma can automatically segregate  
25 confidential e-filings at intake so they are not publicly available.

26 32. Courthouse News publishes 16 New Litigation Reports on California courts, which  
27 cover civil actions filed in all four federal district courts as well as superior courts in Alameda,  
28 Contra Costa, Fresno, Kern, Los Angeles, Monterey, Orange, Placer, Riverside, Sacramento, San

1 Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Cruz, San t, Santa  
 2 Barbara, Santa Clara, Solano, Sonoma, Stanislaus and Ventura Counties. Courthouse News covers  
 3 Santa Cruz in its *Silicon Valley Report*. Courthouse News covers Sonoma in its *North and East Bay*  
 4 *Report*.

5 33. To prepare the New Litigation Reports and identify new cases that may warrant a  
 6 website article, Courthouse News' reporters review complaints filed with the court that day to  
 7 determine which are of interest to Courthouse News' readers. Given the nature of the coverage in  
 8 the New Litigation Reports and its other news publications, including its website, any delay in the  
 9 ability of a reporter to obtain and review new complaints necessarily holds up the reporting on  
 10 factual and legal controversies for subscribers and readers.

11 **B. A First Amendment Right of Access Attaches To Civil Complaints When the Court**  
 12 **Receives Them.**

13 34. In *Planet III*, the Ninth Circuit held there is a qualified First Amendment right of  
 14 timely access to newly-filed civil complaints that arises when the complaints are "filed with the  
 15 court." 947 F.3d at 594.

16 35. In reaching this holding, the Ninth Circuit observed that it had "long presumed a First  
 17 Amendment 'right of access to court proceedings and documents'" and that this right:

18 exists...to enable free and informed discussion about important issues of the day and  
 19 governmental affairs. Thus, '[t]he news media's right of access to judicial  
 20 proceedings is essential not only to its own free expression, but also to the public's.'  
 21 ... 'The free press is the guardian of the public interest, and the independent judiciary  
 22 is the guardian of the free press.' These values hold especially true where, as here,  
 23 the impetus for CNS's efforts to obtain newly filed complaints is its interest in timely  
 24 reporting on their contents.

25 *Planet III*, 947 F.3d at 589-90 (internal citation and quotations omitted).

26 36. In rejecting Planet's argument that the First Amendment right of access does not  
 27 attach until after judicial action, the Ninth Circuit recognized:

28 CNS's reporting on complaints must be timely to be newsworthy and to allow for  
 ample and meaningful public discussion regarding the functioning of our nation's  
 court systems. ... [A] ban on reporting news 'just at the time [the] audience would be  
 most receptive' would be effectively equivalent to 'a deliberate statutory scheme of  
 censorship.' In other words, the public interest in obtaining news is an interest in  
 obtaining contemporaneous news. ... 'The newsworthiness of a particular story is  
 often fleeting. To delay or postpone disclosure undermines the benefit of public  
 scrutiny and may have the same result as complete suppression.' ... [T]hat 'old' news

1 is not worthy of, and does not receive, much public attention has been widely  
2 recognized. ...[T]he need for immediacy of reporting news is ‘even more vital in the  
3 digital age,’ where timeliness is measured in terms of minutes or seconds.

*Id.* at 594 (citations and quotations omitted).

4 37. As *Planet III* also recognized, limitations on access to newly-filed civil complaint are  
5 subject to rigorous scrutiny. *Id.* at 595-96. That is, access “may be restricted only if closure is  
6 essential to preserve higher values and is narrowly tailored to serve those interests.” *Id.* at 595  
7 (quotations omitted). While “[s]ome reasonable restrictions resembling time, place, and manner  
8 regulations that result in incidental delays in access are constitutionally permitted,” such delay-  
9 causing restrictions are *only* permitted “where they are content-neutral, narrowly tailored and  
10 necessary to preserve the court’s important interests in the fair and orderly administration of justice.”  
11 *Id.* at 585 (emphasis added).

12 **C. Delays in Access to New Civil Complaints at Santa Cruz and Sonoma Infringe Upon**  
13 **Courthouse News’ First Amendment Right of Access.**

14 38. As Courthouse News began covering California Superior Courts beginning in  
15 the late 1990s – in the paper era before scanning machines and e-filing software – the courts  
16 provided members of the press with access to newly-filed civil complaints on the day of filing at the  
17 end of the day, when the news held in those complaints was fresh. New complaints were thus  
18 consistently and reliably available for review by reporters in a timely fashion. This was also the  
19 practice in many other counties in California and in federal and state courts across America,  
20 including, for example, the U.S. District Court for the Northern District of California.

21 39. Contrary to that tradition, since their adoption of mandatory e-filing, access delays at  
22 Santa Cruz and Sonoma have become pervasive. Unlike most federal district courts and many state  
23 courts, Santa Cruz and Sonoma do not make newly-filed complaints available upon receipt by the  
24 court. Instead, Santa Cruz and Sonoma withhold the complaints until after court staff have  
25 processed them. As a direct result, there are significant delays between when a new complaint is e-  
26 filed and when it can be seen by the press and public.

27 40. The Courthouse News editor has written and emailed Defendants repeatedly in recent  
28 months in an attempt to resolve the denials of timely access and Santa Cruz and Sonoma, but those

1 efforts have been unsuccessful. Defendants' policy and practice of withholding complaints until  
2 after processing remains in effect to this day, with resulting delays that both Santa Cruz and Sonoma  
3 could easily avoid.

4 41. Prior to commencing this action, Courthouse News tracked and compiled access data  
5 for civil unlimited complaints e-filed at both Santa Cruz and Sonoma, noting delays between when  
6 each complaint was received by the court for filing and when the court first made each complaint  
7 available to the public.

8 42. Since October 1, 2020, Courthouse News tracking shows that delays in access at  
9 Santa Cruz have been regular and pervasive, including numerous weeks in which Santa Cruz  
10 withheld access to *more than 60%* of new e-filed civil complaints for at least one court day..

11 43. Since October 1, 2020, Courthouse News tracking shows that delays in access at  
12 Sonoma have been regular and pervasive, including numerous weeks in which Sonoma withheld  
13 access to *more than 35%* of new e-filed civil complaints for at least one court day.

14 44. In some weeks, both Santa Cruz and Sonoma withheld more than 10% of new civil  
15 unlimited complaints for two or more court days.

16 **D. Santa Cruz and Sonoma's Policies and Practices Causing Delays Are Not Narrowly**  
17 **Tailored.**

18 45. Courthouse News' experiences at many state and federal courts across the nation  
19 demonstrate the ease with which courts can provide timely access to new e-filed civil complaints.

20 46. Historically, before e-filing, reporters covering the courts could review and report on  
21 newly filed, paper civil complaints on the day of filing by looking at them at the courthouse,  
22 typically at the end of each court day. This access generally occurred via a media bin or box where  
23 new complaints were reviewed on the day of filing, generally at the end of the day.

24 47. E-filing makes it even easier for courts to provide timely access to new complaints.  
25 Instead of basic intake work being done by clerks at an intake window, that work is now done by e-  
26 filing software, which filers use to enter case information and whatever minimum submission  
27 requirements the court specifies before submitting their e-filings to the court. Based on the case  
28 designation supplied by the filer, the e-filing software can then sort the new, nonconfidential

1 complaints into a review queue that serves the same function as the physical bin where the intake  
2 clerk used to put new paper complaints for review by the press. However, instead of sitting in a  
3 physical bin next to an intake window, new e-filed complaints sit in an electronic queue. In Tyler  
4 courts, the electronic bin is called a “Press Review Queue,” in the Journal Technologies court of Los  
5 Angeles Superior it is called a “Media Access Portal,” in the CCMS court of Orange County  
6 Superior the promised queue is called an “Electronic Media Inbox,” and in the federal courts of  
7 California it is called “Public Access to Court Electronic Records.” With those various names, the  
8 result is the same: the press can report on new complaints shortly after they are filed, with busy  
9 clerks attending to their clerical tasks as their schedules allow.

10 48. Federal district courts were among the first to move to e-filing, and they have taken  
11 the tradition of timely access that existed in paper into the electronic world and carried it forward  
12 into the electronic world. The largest group of federal courts, including the Northern District of  
13 California, provide access by automatically assigning a permanent case number upon receipt of new  
14 civil complaints, which become public immediately, at all hours of the day and on all days of the  
15 week. Other federal courts, including the Eastern District of California, automatically assign a  
16 temporary case number which allows the press and public to review the new complaints on receipt.  
17 Still others, such as the districts of Delaware and West Virginia, send new cases into an electronic  
18 queue with only a common, generic number assigned, and they can then be reviewed by the press.  
19 Under all of these systems, new complaints are available contemporaneously to the public and the  
20 press, without a clerk first reviewing them or completing other post-filing clerical tasks.

21 49. Many state courts have also moved to e-filing, using a variety of electronic filing and  
22 case management platforms – some developed in-house, and others supplied by vendors. The states  
23 of Alabama, Connecticut, Hawaii and Utah have set up their e-filing and public access systems  
24 following the federal district court model. That is, new e-filed complaints flow automatically onto  
25 public access terminals and remotely online as they are filed with the courts.

26 50. Other state courts provide pre-processing access to the court’s queue of for new e-  
27 filed, nonconfidential civil complaints. These review queue courts allow credentialed members of  
28 the press to access new e-filed complaints as soon as they are received by the court, and without the

1 delays caused by withholding them for administrative processing. These courts include state courts  
 2 in Georgia, Nevada, and the California Superior Courts of Fresno, Kern, Los Angeles, Monterey,  
 3 Santa Barbara and Santa Clara.

4 51. In California, the Superior Courts in Fresno, Kern, Monterey, Santa Barbara and  
 5 Santa Clara counties all use the same e-filing and case management platform as Santa Cruz and  
 6 Sonoma: Odyssey eFileCA by Tyler Technologies. However, unlike Santa Cruz and Sonoma, these  
 7 other California courts provide timely access through a review queue feature in the Odyssey system,  
 8 allowing new e-filed public complaints to be viewed while they wait for court staff to process them.

9 52. Courthouse News has repeatedly asked Santa Cruz and Sonoma to take advantage of  
 10 Odyssey's review queue functionality, and to cease the practice of denying access to new e-filed  
 11 complaints until after they have been processed by court staff. To date, Defendants have refused  
 12 Courthouse News' request, and Santa Cruz and Sonoma both continue to withhold access to new e-  
 13 filed complaints until after processing.

14 53. As a result, Courthouse News continues to experience significant delays in access to  
 15 new civil unlimited complaints at Santa Cruz and Sonoma.

### 16 **COUNT ONE**

#### 17 **Violation of U.S. Const. Amend. I and 42 U.S.C. § 1983**

18 54. Courthouse News incorporates the allegations of Paragraphs 1-53 herein.

19 55. Defendants' actions under color of state law, including without limitation their policy  
 20 and practice of withholding newly filed civil unlimited complaints from press and public view until  
 21 after administrative processing, and the resulting denial of timely access to new civil unlimited  
 22 complaints upon receipt for filing, deprive Courthouse News, and by extension its subscribers, of  
 23 their right of access to public court records secured by the First Amendment to the U.S. Constitution.

24 56. The presumption of access to new civil complaints at Santa Cruz and Sonoma arises  
 25 when those complaints are filed and may be restricted only if closure is essential to preserve higher  
 26 values and is narrowly tailored to serve those interests. *Planet III*, 947 F.3d at 594-95 (citing *Press-*  
 27 *Enterprise II*). For Defendants' no-access-before-process-and-review policy to "survive *Press-*  
 28 *Enterprise II*'s two-prong balancing test" (*i.e.*, "rigorous" scrutiny), Defendants "must demonstrate

1 that there is a ‘substantial probability’ that its [asserted] interest[s]... would be impaired by  
2 immediate access, and second, that no reasonable alternatives exist to ‘adequately protect’ that  
3 government interest.” *Planet III*, 947 F.3d at 596. Defendants cannot satisfy this test.

4 57. Courthouse News has no adequate and speedy remedy at law to prevent or redress  
5 Defendants’ unconstitutional actions, and will suffer irreparable harm as a result of Defendants’  
6 violation of its First Amendment rights. Courthouse News is therefore entitled to a declaratory  
7 judgment and a permanent injunction to prevent further deprivation of the First Amendment rights  
8 guaranteed to it and its subscribers.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Courthouse News prays for judgment against Defendants as follows:

11 1. A declaratory judgment pursuant to 28 U.S.C. § 2201 declaring Defendants’ policies  
12 and practices that knowingly affect delays in access to newly filed civil unlimited complaints,  
13 including, *inter alia*, their policy and practice of denying access to complaints until after  
14 administrative processing, are unconstitutional under the First and Fourteenth Amendments to the  
15 United States Constitution because these policies and practices constitute an effective denial of  
16 timely public access to new civil complaints, which are public court records to which the First  
17 Amendment right of access applies.

18 2. A permanent injunction against Defendants, including their agents, assistants,  
19 successors, employees, and all persons acting in concert or cooperation with him, or at their direction  
20 or under their control, prohibiting them from continuing their policies and practices that deny  
21 Courthouse News timely access to new civil unlimited jurisdiction complaints, including, *inter alia*,  
22 their policy and practice of denying access to complaints until after administrative processing.

23 3. An award of costs and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and

24 4. All other relief the Court deems just and proper.

25 Dated: February 2, 2021

BRYAN CAVE LEIGHTON PAISNER LLP

27 By: /s Jonathan G. Fetterly  
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Attorneys for Plaintiff  
28 COURTHOUSE NEWS SERVICE