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14 Attorneys for Plaintiff
15 COURTHOUSE NEWS SERVICE

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 Courthouse News Service,
20 Plaintiff,
21 vs.
22 Michael Planet, in his official capacity
23 as Court Executive Officer/Clerk of the
24 Ventura County Superior Court,
25 Defendant.

Case No. CV11-08083-DMG -FFM

REPLY DECLARATION OF
JONATHAN G. FETTERLY IN
SUPPORT OF COURTHOUSE
NEWS SERVICE’S MOTION FOR
AWARD OF ATTORNEYS’ FEES
AND COSTS

Date: April 2, 2021
Time: 9:30 a.m.
Courtroom: 8C
Judge: Hon. Dolly M. Gee

BRYAN CAVE LEIGHTON PAISNER LLP
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CA 94111-4070

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THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CA 94111-4070

1 I, Jonathan G. Fetterly, declare and state as follows:

2 1. I am an attorney duly licensed to practice law in the State of California
3 and am a partner with the law firm of Bryan Cave Leighton Paisner LLP, attorneys
4 for Plaintiff Courthouse News Service (“CNS”). I make this declaration of my own
5 personal knowledge, including my personal knowledge of the firm’s files relating to
6 this action.

7 2. I submit this declaration in support of CNS’s Motion for Award of
8 Attorneys’ Fees and Costs (“Motion”), and, in particular, to address and rebut
9 arguments by Defendant in his opposition to the Motion (ECF 277) (“Opposition”).

10 3. The arguments advanced by Defendant to which I respond in this
11 declaration reflect a consistent theme throughout this case whereby CNS has
12 incurred significant time and expense responding to arguments made by Defendant
13 that were either incomplete or misleading, or both. Defendant now complains about
14 the fees incurred by CNS, while refusing to acknowledge his role in forcing CNS to
15 respond to such arguments. As noted by Alberto Brandolini, who coined a principle
16 commonly known as “Brandolini’s Law”, the amount of energy needed to refute
17 such arguments is an order of magnitude greater than the energy needed to produce
18 them.

19 **Post-Remand Proceedings Before This Court**

20 4. At page 19 of the Opposition, Defendant complains about the fees he
21 forced CNS incur responding to his objections to amended judgment proposed by
22 CNS, and the fees incurred preparing this Motion. I address each complaint in turn.

23 5. With respect to the amended judgment, Defendant’s characteristic of
24 CNS’s work as merely “respond[ing] to VSC’s objections” is incredibly misleading.
25 As this Court knows, CNS submitted an amended judgment that conformed to the
26 initial judgment except for a few minor modifications necessitated by *Planet III*.
27 (*Compare* ECF 199, *with* ECF 263-1). In response, Defendant “seize(d) on what
28 should [have been] a routine procedural matter [] to relitigate [the case].” (ECF

1 269).

2 6. Defendant’s “objection” to CNS’s proposed amended judgment was
3 actually a 15 page memorandum of points and authorities supported by an attorney
4 declaration and new evidence, and included an alternative proposed amended
5 judgment that radically departed from CNS’s proposed amended judgment. (*See*
6 ECF 264, 265, 268-1). The new evidence submitted by Defendant included *yet*
7 *another* change in court policy in support of *yet another* attempt to moot the
8 injunction ordered by this Court and affirmed by the Ninth Circuit. (*Id.*) Defendant
9 also advanced new arguments supported by new authorities. (*Id.*) CNS was forced
10 to address all of Defendant’s new evidence and arguments in a reply memorandum
11 of points and authorities (ECF 268-1), which Defendant now attempts to dismiss as
12 a mere “respon[se] to objection” (ECF 277 at 18). This Court overruled all of
13 Defendant’s objections, with caveats, in an eight page minute order that addressed
14 the new evidence and arguments advanced by Defendant. (ECF 269).

15 7. With respect to the time spent preparing this fee motion, a significant
16 amount of the time incurred during 2020 involved my preparation of an attorney
17 declaration. (ECF 271-3). As I explained at paragraphs 3-5 of that declaration, CNS
18 submitted it in order to preemptively address and rebut Defendant’s attempts to
19 rewrite the history of this case, as he had done earlier in 2020 in briefing submitted
20 to the Ninth Circuit. (*See, e.g., id.* ¶¶ 3-5). This exercise required a significant
21 amount of time reviewing the underlying district and circuit court records in order to
22 provide this Court an accurate view of the history of this case, including the issues
23 raised by the parties at each stage of the case, and Defendant’s shifting theories and
24 defenses. (*See, e.g., id.* at 6-89). The declaration apparently served its intended
25 purpose – Defendant’s Opposition did not renew the misleading arguments that he
26 previously made to the Ninth Circuit. (*Compare id.* at 3-5, 87-89, with ECF 277,
27 generally).

28

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1 8. The time spent by CNS responding to Defendant’s “objection” to the
2 amended judgment, and the time spent by CNS preparing this Motion, demonstrate
3 the consistent theme throughout the case whereby Defendant forced CNS to incur
4 significant time responding to misleading arguments. Consistent with the principle
5 discussed at paragraph 3, above, this typically involved CNS combing through the
6 lengthy record in this case in order to correct it.

7 **Stipulation to Defer Proceedings**

8 9. At footnote 7 of the Opposition, also on page 19, Defendant criticizes
9 CNS for spending 7 hours drafting a stipulation to defer further proceedings, citing
10 to the final version of the stipulation filed by the Parties (ECF 246). Defendant does
11 not, however, attach a copy of the initial draft of the stipulation prepared by CNS or
12 explain why the version ultimately filed by the parties did not resemble that initial
13 draft. As discussed below, the initial draft prepared by CNS included a detailed
14 factual and procedural history of this case, which Defendant rejected.

15 10. The parties discussed this stipulation in April 2020 – after the Ninth
16 Circuit remanded this case to the District Court following *Planet III*, and after
17 reassignment to this Court following Judge Otero’s retirement. Understanding that
18 this Court was new to this case, and given Defendant’s proclivity to rewriting
19 history, CNS prepared a draft stipulation that included a detailed procedural history
20 of this case in order to help familiarize the Court with the lengthy historical record.
21 The time spent preparing this draft stipulation reflects the time reasonably required
22 to review the extensive history and record, and frame it in a way that was both
23 accurate and relevant to this Court. Attached as **Exhibit 1** is a true and correct copy
24 of the draft stipulation and the transmittal email I sent to Defendant’s counsel on
25 April 10, 2020.

26 11. Defendant responded to CNS’s draft declaration by eliminating nearly
27 all of the procedural history, and adding additional language to which CNS objected.
28 Attached as **Exhibit 2** is a true and correct copy of Defendant’s initial revisions to

1 CNS’s draft stipulation and the transmittal email I received from counsel on April
2 13, 2020.

3 12. After several additional rounds of exchanges, the final version of the
4 stipulation to which the parties agreed (ECF 246) did not resemble the initial draft
5 prepared by CNS (Exhibit 1). Naturally, the final version of the stipulation filed
6 with the Court (cited by Defendant in his Opposition) would not have required the
7 same amount of time to prepare as the initial draft prepared by CNS. By not being
8 more candid with the Court, Defendant has now forced CNS to incur additional time
9 responding to his argument in footnote 7 of the Opposition. The time required to
10 respond to that argument is yet another example of the principle discussed in
11 paragraph 3, above.

12 ***Planet III Record on Appeal***

13 13. At page 17 of the Opposition, Defendant complains about the time
14 incurred by CNS preparing the record on appeal for *Planet III*. The record on
15 appeal submitted by Defendant, as the appellant, was incredibly thin and
16 incomplete. This required CNS, as respondent and cross-appellant, to review the
17 entirety of the record to identify all of the relevant portions omitted by Defendant,
18 and prepare them as part of the complete record on appeal that CNS ultimately
19 submitted.

20 I declare under penalty of perjury under the laws of the United States that the
21 foregoing is true and correct. Executed at Oakland, California this 19th day of
22 March 2021.

24 /s/ Jonathan G. Fetterly
Jonathan G. Fetterly

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THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CA 94111-4070

Exhibit 1
to
Declaration
of
Jonathan G. Fetterly

Fetterly, Jon

From: Fetterly, Jon
Sent: Friday, April 10, 2020 11:08 AM
To: 'Reilley, Erica L.'
Cc: Sullivan, Cary D.; Amberg, John
Subject: RE: CNS v. Planet -- Call to Discuss Case Status
Attachments: CNS v. Planet - Stipulation re Status Conference (601896163v4 USA).DOCX; CNS v. Planet - PO re Stipulation re Status Conference (601904809v1 USA).DOCX

Erica,

We are all safe and well, and hope that the same is true for you and yours.

We are available for a call Monday between 12:30 pm and 4:00 pm, and Tuesday between 10:00 am and 4:00 pm.

As for next steps, we intend to ask the court to reset the status conference, and to continue the hearing on CNS's renewed motion for district court fees until after the Ninth Circuit rules on the pending motion for appellate fees. To that end, attached are a draft stipulation and a proposed order for your consideration.

Please let us know if your client will agree to this stipulation.

Thank you.



JONATHAN G. FETTERLY
Partner
BRYAN CAVE LEIGHTON PAISNER LLP - San Francisco, CA USA
jon.fetterly@bcplaw.com
T: +1 415 675 3451

From: Reilley, Erica L. [mailto:elreilley@jonesday.com]
Sent: Wednesday, April 08, 2020 11:00 AM
To: Fetterly, Jon
Cc: Sullivan, Cary D.
Subject: CNS v. Planet -- Call to Discuss Case Status

Jon:

We hope you and yours are staying safe and healthy.

We are reaching out to set up a time to discuss Judge Gee's recent order, the status of the case, and next steps.

Please let us know your availability for a call this week.

Thank you –

Erica L. Reilley ([bio](#))
Partner
[JONES DAY® - One Firm WorldwideSM](#)
555 South Flower Street, Fiftieth Floor

Los Angeles, California 90071
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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Case No. CV11-08083-DMG -FFM
**STIPULATION RE: RESETTING
STATUS CONFERENCE AND
CONTINUING HEARING ON
RENEWED MOTION FOR
ATTORNEYS' FEES**

BRYAN CAVE LEIGHTON PAISNER LLP
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CA 94111-4070

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1 The parties in this action, Plaintiff Courthouse News Service (“CNS”) and
2 Defendant Michael Planet, in his official capacity as Court Executive Officer/Clerk
3 of the Superior Court of California, County of Ventura (“VSC”), jointly request a
4 status conference to address the status of this case following the Ninth Circuit Court
5 of Appeals’ recent decision in *CNS v. Planet*, 947 F.3d 581 (9th Cir. 2020) (“*Planet*
6 *III*”), and that the hearing on CNS’ renewed motion for district court attorneys’ fees
7 be continued in light of the application for appellate attorneys’ fees on appeal
8 currently pending in the Ninth Circuit.

9 The parties reach this stipulation based on the following recitals:

10 1. CNS commenced this action in 2011 by filing a complaint asserting its
11 claim against VSC under 42 U.S.C. § 1983 based on the violation of CNS’s First
12 Amendment right of access to new civil unlimited complaints.

13 2. This case has produced four separate appeals, resulting in three rulings
14 from the Ninth Circuit Court of Appeals: *CNS v. Planet*, 750 F.3d 776 (9th Cir.
15 2014) (“*Planet I*”); *CNS v. Planet*, 614 Fed. App’x 912 (9th Cir. 2015) (“*Planet II*”);
16 and, earlier this year, *Planet III*.

17 3. This case was initially assigned to Judge Manuel L. Real. On
18 November 30, 2011, Judge Real issued an order dismissing CNS’s complaint based
19 on federal abstention grounds. (ECF 38).

20 4. On April 7, 2014, the Ninth Circuit reversed and remanded. *Planet I*,
21 750 F.3d at 779, 793.

22 5. Upon remand, Judge Real issued an order on August 18, 2014,
23 dismissing CNS’s amended complaint pursuant to Federal Rule of Civil Procedure
24 12(b)(6). (ECF 78).

25 6. On June 23, 2015, the Ninth Circuit again reversed and remanded.
26 *Planet II*, 614 Fed. App’x at 915. The Ninth Circuit also instructed the clerk to
27 assign this case to a different district court judge. *Id.*

28

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1 7. Upon remand, the clerk, on July 23, 2015, reassigned this case to Judge
2 S. James Otero for all further proceedings. (ECF 91)

3 8. The parties filed cross-motions for summary judgment, and on May 26,
4 2016, Judge Otero issued an order granting in part and denying in part CNS’ motion
5 for summary judgment, and denying VSC’s motion. (ECF 195).

6 9. On June 14, 2016, the Court entered a Judgment For Declaratory Relief
7 and Permanent Injunction In Favor of Plaintiff Courthouse News Service and
8 Against Defendant Michael Planet (the “Judgment”). (ECF 199).

9 10. On July 8, 2016, VSC filed its notice of appeal from the Judgment.
10 (ECF 201) (the “Merits Appeal”)

11 11. On August 12, 2016, the Ninth Circuit granted CNS’s motion
12 requesting assignment of the Merits Appeal to the same panel that decided *Planet I*
13 and *Planet II*. (*Planet III*, Dkt. No. 9).

14 12. On September 12, 2016, CNS filed in the district court its motion to set
15 amount of attorneys’ fees and costs pursuant to 42 U.S.C. § 1988 (the “District
16 Court Fees Motion”). (ECF 206-208).

17 13. On October 17, 2016, Judge Otero granted in part, and denied in part,
18 the District Court Fees Motion (the “District Court Fee Award”). (ECF 212; *see*
19 *also* ECF 219 and 223 (correcting and amending order)).

20 14. On November 15, 2016, CNS filed its notice of appeal from the District
21 Court Fee Award. (ECF 218; *see also* ECF 224 (amending notice)) (the “Fees
22 Appeal”).

23 15. On January 18, 2017, the Ninth Circuit granted CNS’s motion to
24 consolidate the Merits and Fees Appeals. (*Planet III*, Dkt. No. 17).

25 16. On January 17, 2020, the Ninth Circuit issued its opinion in *Planet III*,
26 affirming in part, and reversing in part, the Judgment. 947 F.3d at 600. Because the
27 Ninth Circuit reversed part of the Judgment, it vacated the injunction and award of
28 fees, and remanded for further consideration consistent with its opinion. *Id.*

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1 17. Upon remand, Judge Otero issued an order setting a Status Conference
2 on Monday, May 18, 2020, and ordering the parties to file a joint status report on or
3 before May 4, 2020. (ECF 233).

4 18. On January 31, 2020, CNS filed in the district court a notice renewing
5 its District Court Fee Motion, in which it stated, in part:

6 “Under these circumstances, CNS need not file a new motion for attorneys’
7 fees in the district court. However, in order to preserve all rights and avoid
8 any potential uncertainty on the matter, CNS files this Notice to alert
9 Defendant and the Court that, following *Planet III*, it intends to renew and
pursue its claim for attorneys’ fees and costs, and hereby does so.

10 [...]

11 CNS anticipates the parties and the Court will confer on the nature and scope
12 of additional or supplemental materials addressing CNS’ Motion in light of
13 *Planet III*, and that this will be among the subjects addressed in the parties
14 joint status report to be filed on May 4, and at the status conference on May
18. (ECF No. 223).

15 CNS reserves all rights to supplement or amend this Notice and the materials
16 previously submitted in support of the Motion. CNS currently anticipates
17 seeking appellate fees in the Ninth Circuit Court of Appeals (See Ninth Cir.
18 R. 39-1.6), and reserves all rights to amend or supplement this Notice and the
Motion accordingly.”

19 (ECF 234).

20 19. On February 14, 2020, CNS filed in the Ninth Circuit its application for
21 appellate attorneys’ fees pursuant to 42 U.S.C. § 1988 and Ninth Circuit Rule 39-
22 1.6(a). (*Planet III*, Dkt. Nos. 100-1 to 100-7) (the “Appellate Fees Motion”).

23 20. On March 5, 2020, CNS filed in the district court its amended notice of
24 renewal of its District Court Fee Motion, in which it clarified that it was not seeking
25 in the district court any of the appellate fees it was seeking in the Ninth Circuit.

26 (ECF 242).

27 21. On April 2, 2020, the Chief Judge of this Court issued an order
28 reassigning this case to Judge Dolly M. Gee for all further proceedings. (ECF 243).

1 22. On April 6, 2020, this Court issued an order continuing CNS’ renewed
2 motion to set the amount of attorneys’ fees and cost to May 22, 2020, and vacated
3 the Status Conference previously set for May 18, 2020. (ECF 244).

4 23. The Appellate Fees Motion is fully briefed and pending in Ninth
5 Circuit. The issues raised by the Appellate Fees Motion include issues also
6 pertinent to CNS’s fee motion in this Court, including CNS’s status as a prevailing
7 party under 42 U.S.C. § 1988, and CNS’s degree of success following *Planet III*.
8 (*See Planet III*, Dkt. Nos. 100-108).

9 In light of the foregoing, the Parties hereby stipulate and request that:

10 (i) the Court set a Status Conference to address the issues that remain for
11 further proceedings in the District Court following *Planet III*; and

12 (ii) the Court continue the hearing on CNS’ renewed motion for attorneys’
13 fees to a future date to be determined after the Ninth Circuit rules on the Appellate
14 Fees Motion.

15 **STIPULATED AND AGREED TO:**

16 BRYAN CAVE LEIGHTON PAISNER LLP

17 Dated: April 10, 2020

18 By: _____
19 Jonathan Fetterly
20 Attorneys for Plaintiff
21 Courthouse News Service

22 JONES DAY

23 Dated: April 10, 2020

24 By: _____
25 Erica Reilley
26 Attorney for Defendant
27 Michael Planet, in his official capacity
28 as Court Executive Officer/Clerk of
Court of the Ventura County Superior
Court

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
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Courthouse News Service,
Plaintiff,

vs.

Michael Planet, in his official capacity
as Court Executive Officer/Clerk of the
Ventura County Superior Court,
Defendant.

Case No. CV11-08083-DMG -FFM

**[PROPOSED] ORDER GRANTING
STIPULATION RE: RESETTING
STATUS CONFERENCE AND
CONTINUING HEARING ON
RENEWED MOTION FOR
ATTORNEYS' FEES**

1 The Court, having considered the Parties’ Stipulation Re: Resetting Status
2 Conference and Continuing Hearing on Renewed Motion for Attorneys’ Fees, and
3 for good cause shown, hereby grants the parties’ stipulated request as follows:

- 4 1. A Status Conference is set for _____, 2020, at ____ a.m. / p.m.
- 5 2. The hearing on CNS’ renewed motion for attorneys’ fees is continued
6 to a future date to be determined after the Ninth Circuit rules on CNS’s application
7 for attorneys’ fees on appeal.

8
9 **IT IS SO ORDERED.**

10
11 Dated: _____

12 The Honorable Dolly M. Gee
13 U.S. District Court Judge
14
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Exhibit 2
to
Declaration
of
Jonathan G. Fetterly

From: Reilley, Erica L. [mailto:elreilley@jonesday.com]
Sent: Monday, April 13, 2020 3:20 PM
To: Fetterly, Jon
Cc: Sullivan, Cary D.; Amberg, John
Subject: RE: CNS v. Planet -- Call to Discuss Case Status

Jon:

We've streamlined the stipulation and made a few other revisions, all of which is reflected in the attached.

Please let us know if this meets with CNS's approval or if you have any questions.

Thank you –

Erica L. Reilley ([bio](#))
Partner
[JONES DAY® - One Firm WorldwideSM](#)
555 South Flower Street, Fiftieth Floor

Los Angeles, California 90071
Office +1.213.243.2394

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Sent: Friday, April 10, 2020 11:08 AM
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Cc: Sullivan, Cary D. ; Amberg, John
Subject: RE: CNS v. Planet -- Call to Discuss Case Status

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Please let us know if your client will agree to this stipulation.

Thank you.



JONATHAN G. FETTERLY
Partner
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jon.fetterly@bcplaw.com
T: +1 415 675 3451

From: Reilley, Erica L. [<mailto:elreilley@jonesday.com>]
Sent: Wednesday, April 08, 2020 11:00 AM
To: Fetterly, Jon
Cc: Sullivan, Cary D.
Subject: CNS v. Planet -- Call to Discuss Case Status

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Thank you –

Erica L. Reilley ([bio](#))
Partner
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555 South Flower Street, Fiftieth Floor

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1 The parties in this action, Plaintiff Courthouse News Service (“CNS”) and
2 Defendant Michael Planet, in his official capacity as Court Executive Officer/Clerk
3 of the Superior Court of California, County of Ventura (“VSC”), jointly request that
4 (1) a status conference be set to address the status of this case following the Ninth
5 Circuit Court of Appeals’ recent decision in *CNS v. Planet*, 947 F.3d 581 (9th Cir.
6 2020) (“*Planet III*”), and ~~that~~ (2) the hearing on CNS’ renewed motion for district
7 court attorneys’ fees be continued in light of the pending the outcome of CNS’s
8 application for appellate attorneys’ fees ~~on appeal currently pending in before~~ the
9 Ninth Circuit, filed on February 14, 2020.

10 The parties reach this stipulation based on the following recitals:

- 11 ~~1. — CNS commenced this action in 2011 by filing a complaint asserting its~~
12 ~~claim against VSC under 42 U.S.C. § 1983 based on the violation of CNS’s First~~
13 ~~Amendment right of access to new civil unlimited complaints.~~
- 14 ~~2. — This case has produced four separate appeals, resulting in three rulings~~
15 ~~from the Ninth Circuit Court of Appeals: *CNS v. Planet*, 750 F.3d 776 (9th Cir.~~
16 ~~2014) (“*Planet I*”); *CNS v. Planet*, 614 Fed. App’x 912 (9th Cir. 2015) (“*Planet II*”);~~
17 ~~and, earlier this year, *Planet III*.~~
- 18 ~~3. — This case was initially assigned to Judge Manuel L. Real. — On~~
19 ~~November 30, 2011, Judge Real issued an order dismissing CNS’s complaint based~~
20 ~~on federal abstention grounds. (ECF 38).~~
- 21 ~~4. — On April 7, 2014, the Ninth Circuit reversed and remanded. *Planet I*,~~
22 ~~750 F.3d at 779, 793.~~
- 23 ~~5. — Upon remand, Judge Real issued an order on August 18, 2014,~~
24 ~~dismissing CNS’s amended complaint pursuant to Federal Rule of Civil Procedure~~
25 ~~12(b)(6). (ECF 78).~~
- 26 ~~6. — On June 23, 2015, the Ninth Circuit again reversed and remanded.~~
27 ~~*Planet II*, 614 Fed. App’x at 915. The Ninth Circuit also instructed the clerk to~~
28 ~~assign this case to a different district court judge. *Id.*~~

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1 7. — Upon remand, the clerk, on July 23, 2015, reassigned this case to Judge
2 ~~S. James Otero for all further proceedings. (ECF 91)~~

3 8. — The parties filed cross motions for summary judgment, and on May 26,
4 2016, Judge Otero issued an order granting in part and denying in part CNS' motion
5 for summary judgment, and denying VSC's motion. (ECF 195).

6 9. — On June 14, 2016, the Court entered a Judgment For Declaratory Relief
7 and Permanent Injunction In Favor of Plaintiff Courthouse News Service and
8 Against Defendant Michael Planet (the "Judgment"). (ECF 199).

9 10. — On July 8, 2016, VSC filed its notice of appeal from the Judgment.
10 (ECF 201) (the "Merits Appeal")

11 11. — On August 12, 2016, the Ninth Circuit granted CNS's motion
12 requesting assignment of the Merits Appeal to the same panel that decided *Planet I*
13 and *Planet II*. (*Planet III*, Dkt. No. 9).

14 12. — On September 12, 2016, CNS filed in the district court its motion to set
15 amount of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 (the "District
16 Court Fees Motion"). (ECF 206-208).

17 13. — On October 17, 2016, Judge Otero granted in part, and denied in part,
18 the District Court Fees Motion (the "District Court Fee Award"). (ECF 212; *see*
19 *also* ECF 219 and 223 (correcting and amending order)).

20 14. — On November 15, 2016, CNS filed its notice of appeal from the District
21 Court Fee Award. (ECF 218; *see also* ECF 224 (amending notice)) (the "Fees
22 Appeal").

23 15. — On January 18, 2017, the Ninth Circuit granted CNS's motion to
24 consolidate the Merits and Fees Appeals. (*Planet III*, Dkt. No. 17).

25 16.1. On January 17, 2020, the Ninth Circuit issued its opinion in *Planet III*,
26 affirming in part, and reversing in part, thise Court's Judgment. 947 F.3d at 600.
27 Because the Ninth Circuit reversed part of the Judgment, it also vacated the entire
28

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1 injunction and award of fees, and remanded [the case](#) for further consideration
2 consistent with its opinion. *Id.*

3 [17.2.](#) Upon remand, Judge Otero issued an order setting a Status Conference
4 on Monday, May 18, 2020, and ordering the parties to file a joint status report on or
5 before May 4, 2020. (ECF 233).

6 [18.3.](#) On January 31, 2020, CNS filed in the district court a notice renewing
7 its District Court Fee Motion, in which it stated, in part:

8 “Under these circumstances, CNS need not file a new motion for attorneys’
9 fees in the district court. However, in order to preserve all rights and avoid
10 any potential uncertainty on the matter, CNS files this Notice to alert
11 Defendant and the Court that, following *Planet III*, it intends to renew and
12 pursue its claim for attorneys’ fees and costs, and hereby does so.

12 [...]

13 CNS anticipates the parties and the Court will confer on the nature and scope
14 of additional or supplemental materials addressing CNS’ Motion in light of
15 *Planet III*, and that this will be among the subjects addressed in the parties
16 joint status report to be filed on May 4, and at the status conference on May
17 18. (ECF No. 223).

18 CNS reserves all rights to supplement or amend this Notice and the materials
19 previously submitted in support of the Motion. CNS currently anticipates
20 seeking appellate fees in the Ninth Circuit Court of Appeals (See Ninth Cir.
21 R. 39-1.6), and reserves all rights to amend or supplement this Notice and the
22 Motion accordingly.”

21 (ECF 234).

22 [19.4.](#) On February 14, 2020, CNS filed in the Ninth Circuit its application for
23 appellate attorneys’ fees pursuant to 42 U.S.C. § 1988 and Ninth Circuit Rule 39-
24 1.6(a). (*Planet III*, Dkt. Nos. 100-1 to 100-7) (the “Appellate Fees Motion”). [VSC](#)
25 [thereafter filed its response to CNS’s application for appellate attorneys’ fees, which](#)
26 [addressed whether CNS is a prevailing party at all before the Ninth Circuit and, if](#)
27 [so, the degree to which CNS’s limited success warrants a reduction in any fee](#)
28 [award. \(*Planet III*, Dkt. No. 105\).](#)

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1 20-5. On March 5, 2020, CNS filed in the district court its amended notice of
2 renewal of its District Court Fee Motion, in which it clarified that it was not seeking
3 in the district court any of the appellate fees it was seeking in the Ninth Circuit.
4 (ECF 242).

5 21-6. On April 2, 2020, the Chief Judge of this Court issued an order
6 reassigning this case to Judge Dolly M. Gee for all further proceedings. (ECF 243).

7 22-7. On April 6, 2020, this Court issued an order continuing CNS' renewed
8 motion to set the amount of attorneys' fees and cost to May 22, 2020, and vacated
9 the Status Conference previously set for May 18, 2020. (ECF 244).

10 23-8. The Appellate Fees Motion is fully briefed and pending in the Ninth
11 Circuit. (See Planet III, Dkt. Nos. 100-108). The issues raised by the Appellate
12 Fees Motion include issues also pertinent to, if not potentially controlling over,
13 CNS's fee motion in this Court, ~~including CNS's status as a prevailing party under~~
14 ~~42 U.S.C. § 1988, and CNS's degree of success following Planet III. (See Planet~~
15 ~~III, Dkt. Nos. 100-108).~~

16 In light of the foregoing, the Parties hereby stipulate and request that:

17 (i) the Court set a Status Conference in June 2020 or after to address the
18 issues that remain for further proceedings in the District Court following *Planet III*;
19 and

20 (ii) the Court continue the hearing on CNS' renewed motion for attorneys'
21 fees to a future date to be determined after the Ninth Circuit rules on the Appellate
22 Fees Motion.

23 **STIPULATED AND AGREED TO:**

24 BRYAN CAVE LEIGHTON PAISNER LLP

25 Dated: April 10, 2020

26 By: _____
27 Jonathan Fetterly
28 Attorneys for Plaintiff
Courthouse News Service

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JONES DAY

Dated: April 10, 2020

By: _____
Erica Reilley
Attorney for Defendant
Michael Planet, in his official capacity
as Court Executive Officer/Clerk of
Court of the Ventura County Superior
Court

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