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COURTHOUSE NEWS SERVICE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

COURTHOUSE NEWS SERVICE,

Plaintiff,

v.

NANCY COZINE, in her official capacity as
Oregon State Court Administrator,

Defendant.

Case No: 3:21-cv-00680-YY

**DECLARATION OF KARINA BROWN
IN SUPPORT OF PLAINTIFF
COURTHOUSE NEWS SERVICE'S
MOTION FOR SUMMARY JUDGMENT**

I, Karina Brown, declare and state as follows:

1. Until June 2022, I worked as the Oregon reporter for Courthouse News Service, reporting on the courts and general news. I started working for Courthouse News in 2006, covering the Clark County Superior Court in Vancouver, Washington, and then took over the Oregon report in 2008 when the previous reporter moved away. I am based in Portland, and I was based in Portland during the sixteen years I worked for Courthouse News.

2. During the time I worked for Courthouse News, my job included writing a daily report on civil litigation filed in the federal and state courts of Oregon. The name of that publication is the *Oregon Report*. A true and correct of the *Oregon Report* dated October 19, 2020, is attached as **Exhibit 1** and provided as an example of this publication. I also wrote many articles for Courthouse News' web site, www.courthousenews.com – in fact, I was one of the first of Courthouse News' reporters to write for the web site. One example is my March 16, 2021 story about a March 16, 2021 order issued by Chief U.S. District Judge Marco Hernández sanctioning the City of Portland for its protest policing, a true and correct copy of which is attached as **Exhibit 2**.

3. When I was first hired, I covered the courts in the tri-county area around Portland, visiting the Multnomah County Circuit Court every court day, and going to the Washington and Clackamas County Circuit Courts once a week. Additionally, I traveled to the Lane and Marion County Circuit Courts once a week to report on the new civil litigation filed in those courts. Courthouse News later hired reporters in 2011 and 2013 to cover the Circuit Courts in Lane and Marion counties every court day. I supervised the work of those additional reporters and included their reporting in the *Oregon Report*.

4. The new civil actions, as set forth in the complaints we reviewed, were—and are—a traditional check point on the court beat. At the Multnomah County Circuit Court, I was joined by reporters from *The Oregonian*, *Willamette Week* and the *Portland Mercury*, who, like me, were reviewing the new civil complaints. Unless I was sick or on vacation, I would arrive at the Multnomah County Courthouse on 4th Avenue each court day at around 3:30 p.m., proceed to the clerk’s office, and walk to a door that opened into the office space of the clerk’s office. I pressed a button below a sign that said “court personnel only,” which unlocked the door so I could let myself in. I and the other reporters were allowed into the office area specifically to review the newly filed civil complaints.

5. I and the other journalists worked in an empty cubicle next to the docketing clerk. When any of the journalists arrived, we were recognized by the civil operations supervisor, Brandon Logan, who then brought a stack of newly filed complaints from the intake counter to the cubicle where we worked. Between 4:30 and 5:00 p.m., Mr. Logan would bring another batch of complaints, and any additional complaints filed shortly before the office closed at 5:00 p.m. were also brought over individually. As a result, we saw all or nearly all the new civil complaints filed that day. The new complaints that we reviewed had just been received by the court at the adjacent intake counter. The complaints had been stamped “filed” and assigned a case number by the intake clerk, but they were not yet docketed.

6. Prior to the Multnomah County court’s implementation of eCourt, the new complaints remained available for press review in the reporters’ cubicle on the day they were received by the court and the day afterward. After the second day, the new complaints would be docketed and taken to the records room. After the implementation of eCourt, a docketing clerk began docketing new complaints into the courts’ case management system before they were

taken to the records room. The docketing clerk worked in the cubicle next to the reporters' cubicle, with the reporters' cubicle situated between the intake counter and the docketing desk. The new complaints were still delivered from the intake counter to the reporters' cubicle on the day the court received them, as described above. However, on the next day the complaints moved to the docketing desk, where the docketing clerk would enter the new cases into the court's case management system. The docketing clerk would permit me to check her stack to make sure I had not missed any late filings from the previous day. After her docketing work was completed, docket information appeared on computer terminals at the courthouse. The new complaints were taken to the records room on the third day.

7. The Multnomah County Circuit Court clerk's office began the transition to e-filing on May 6, 2014. They started by scanning paper filings into electronic form and attaching them to docket entries on the court's case management system, after the new complaints were docketed. The terminology for the administrative work tied to clerk entry of a new filing into the docket evolved somewhere around that time to the current commonly used term, "processing." The scanning program disrupted the routine of reviewing the paper complaints and delayed access until after the new complaints were both scanned and processed. As a result of a conversation with then-Trial Court Administrator Doug Bray, I was permitted to ask the scanning clerks for the new complaints as they were received and prior to processing. With that adjustment, I was able to continue reporting on most of the new civil complaints on the day they were received prior to docketing. But it was not to last.

8. When Multnomah County Circuit Court switched over to mandatory e-filing on Dec. 1, 2014, I and the other reporters could no longer see the new complaints as they were received, before processing. Instead we were required to wait until after processing, at the point

when a docket entry appeared on computer terminals at the courthouse, and to review electronic versions of the complaints on the computer terminals in the clerk's office. To review an e-filed complaint, I clicked on the complaint's case number and the case register of actions, or docket, opened up. I then clicked on the docket entry labeled "complaint" to see the complaint itself.

9. The Oregon Circuit Courts were converting to e-filing in groups, and as each group converted, I could see the dockets and the processed complaints from those courts through the terminals in Multnomah County. The docket system appeared to be unified for all Oregon courts. On July 16, 2014, I began reporting the same information on new litigation via the courts.oregon.gov website, through a paid online subscription with the Oregon Judicial Department. Using a page from the website called Oregon e-Court Case Information, I sign in with a user name and a password to arrive at a landing page, where I search for civil actions by "all locations," and after making that choice, search for civil actions filed in the Oregon Circuit Courts by date range.

10. From that point in time, until my departure from Courthouse News, I reviewed new civil complaints filed in all of Oregon's Circuit Courts on a daily basis, and reported on the newsworthy ones for the *Oregon Report*. However, my only two options for reviewing complaints in the Circuit Courts of Oregon are to review them at the courthouse on public terminals or online via Courthouse News' paid subscription. In both cases, they are only made available after they are processed.

11. As discussed above, prior to e-filing I was able to see newly filed complaints, shortly after they were received by the court at the intake counter. However, there currently is no way to see all new civil complaints in Oregon as I once did, *i.e.*, shortly after they are received by the court, and by the end of the day on which the court receives them. As of the date

of my departure from Courthouse News I was able to see new e-filed complaints only after they have been processed and “accepted” by court staff, which results in regular and ongoing delays in access. These delays in access result from the lapse in time between when new e-filed complaints are received by the Oregon Circuit Courts and when they are reviewed and “accepted,” and then made available for press review. In my experience covering the Oregon courts, this delay did not exist with paper filings, prior to the adoption of scanning and e-filing, because clerks received complaints at the intake window, and the press could then see the complaints without delays. Now, however, new e-filed complaints are received by the court’s e-filing system, and there are delays between when the court receives new e-filed complaints and when court clerks log onto the system, “accept” them, and make them available to the press or public. These delays are often at least one day, and can be several days or longer.

12. The following cases provide an illustration of the delays created by Oregon’s current access policies and practices:

a. ***James v. PacifiCorp*, Case No. 20CV33885, filed 9/30/2020.** This class action complaint was filed against PacifiCorp and Pacific Power arising from the catastrophic Oregon wildfires in the summer of 2020. I believe it was the first class action lawsuits filed in connection with the wildfires. It was filed in Multnomah County on September 30, 2020. But the complaint was not “accepted,” and thus not made available to the press, until October 5, 2020 – five calendar days later. Attached as **Exhibit 3** is a true and correct copy of the complaint showing the filing date of September 30, 2020. Attached as **Exhibit 4** is the Court’s Register of Action for this case, which also shows the filing date of September 30, 2020.

b. ***State of Oregon v. Rabern*, Case No. 21CV06391, filed 2/19/2021.** This case was filed by the Oregon State Forester to enforce repair orders seeking removal of a culvert

causing unnecessary sediment to enter state waters. It was filed in Marion County on February 19, 2021. But the complaint was not “accepted,” and thus not made available to the press, until February 22, 2021 – three calendar days later. Attached as **Exhibit 5** is a true and correct copy of the complaint showing the filing date of February 19, 2021. Attached as **Exhibit 6** is the Court’s Register of Action for this case, which also shows the filing date of February 19, 2021 and the creation date of February 22, 2021.

c. ***State of Oregon v. Carpenter, Case No. 21CV20025, filed 5/12/2021.***

This case was filed by the Oregon Department of Human Services to void the transfer of real property as a voidable fraudulent transfer. It was filed in Lane County on May 12, 2021. But the complaint was not “accepted,” and thus not made available to the press, until May 18, 2021 – six calendar days later. Attached as **Exhibit 7** is a true and correct copy of the complaint showing the filing date of May 12, 2021. Attached as **Exhibit 8** is the Court’s Register of Action for this case, which also shows the filing date of May 12, 2021 and the creation date of May 18, 2021.

13. I reviewed each of the complaints discussed above on the dates on which the court first made them available to the press. I am confident of the dates on which they were first made available to me, and on which I first able to review them, because I maintained a daily log in which I tracked, in real time, the dates on which new complaints were first made available to the public, and when I first sawed them. I also tracked the filing date so Courthouse News can tracked delays in access. My tracking for these three cases confirmed the dates on which I first saw them, which, based on my daily tracking, was also the date on which the courts first made them available to the press and public.

14. Although the delayed access to new e-filed civil complaints at the Oregon Circuit Courts is not consistent with the traditional, undelayed access I previously received to paper

complaints filed in Oregon, this does not mean e-filing courts are not capable of providing access to e-filed complaints without the delays that result from withholding access until after the completion of processing.

15. When I began covering the Oregon state courts in 2008, I also began reporting on the U.S. District Court for the District of Oregon each court day, and I covered that court until my departure from Courthouse News. I included a review of that court's new civil complaints in every day's edition of the *Oregon Report*. In 2008, and continuing until the court moved to mandatory e-filing in 2012, the District of Oregon clerk's office provided journalists with the access to the new complaints as they were received, before docketing. New complaints were placed in a shallow rectangular wooden box, with half-moon shapes cut out of the short ends, as soon as they crossed the intake counter – i.e., when they were received. I looked at complaints directly from that box, and I did not have to wait for them to be entered into the docket or otherwise processed by court staff.

16. When the District Court moved to mandatory e-filing in 2012, I saw the e-filed complaints upon receipt either on terminals in the clerk's office or online through the PACER system. The new complaints became public automatically, with a permanent case number, no matter when they were submitted to the court, including after hours during the work week and all hours on holidays and weekends. Before and after the switch to e-filing, up to and until my departure from Courthouse News, I reported on the new civil complaints in the U.S. District of Oregon when they are received. The access did not vary. It was steady.

17. Beginning in late 2019 and continuing into 2021, through an in-person meeting and then a series of phone calls and emails, I asked Oregon Deputy State Court Administrator Phillip Lemman for pre-processing access to new complaints through a press review queue,

similar to that used in other courts, where new e-filed complaints can be seen as they are received prior to processing. I asked Mr. Lemman for this access because it would have eliminated the delays in access I had been experiencing in the Oregon circuit courts.

18. The first of those communications was a conversation I had with Mr. Lemman Nov. 14, 2019 at the Governor’s Cup, a coffee shop near the State Capitol building in Salem. At the time, he had just been promoted from Public Information Officer to Deputy State Court Administrator. He was accompanied in that meeting by the new public information officer, Todd Sprague. I requested the installation of a press queue to help reporters cover the Oregon Circuit Courts. The conversation was cordial and the request appeared to be well received.

19. I followed up with an email the following day to both Mr. Lemman and Mr. Sprague, giving them information about press queues in place in other states. I wrote, “You asked about state-wide press queues. Oregon would be the first with a Tyler system, but under different systems, the same access is available state-wide in New York, Hawaii, Utah and Alabama. Las Vegas and Atlanta provide press review queues through Tyler, in addition to the four California courts I mentioned yesterday: San Jose, Fresno, Bakersfield and Monterey. Los Angeles provides the same on-receipt access through a media access portal.” I added in that email: “Under the current system in Oregon, we are at about 50% – 60% same day access.” A true and correct copy of this email is attached as **Exhibit 9**.

20. I also gave Mr. Lemman and Mr. Sprague a phone number and email address for a court clerk and former presiding judge in California who had each installed a press review in their respective courts in Monterey and Fresno, both of which pay for the same Tyler Technologies software used by the Oregon courts. In the same message, I noted that favorable effect on access that comes from a Press Review Queue: “In courts with these press queues, we

get virtually 100% same day access. Under the current system in Oregon, we are at about 50% - 60% same day access.” A true and correct copy of my November 15, 2019 e-mail is attached as

Exhibit 9.

21. I followed up a number of times on that conversation during the following months, by phone and by email, but little progress was made on my request, which had been referred to the new public information officer, Mr. Sprague. For instance, on April 30, 2020, I sent an email to Mr. Sprague “re-upping” my email from November 15, 2019, and providing contact information for two court clerks that had implemented a Tyler press queue. A true and correct copy of my April 30, 2020 email is attached as **Exhibit 10.**

22. On May 28, 2020, I sent another email to Mr. Sprague passing along some additional information on the increasing trend of courts providing press queues with on-receipt, pre-processing access. I identified the statewide press queues in New York, Hawaii, Utah, Connecticut and Alabama. I also identified the courts in Las Vegas, Atlanta and numerous California courts providing pre-processing press queues using Tyler’s e-filing systems. A true and correct copy of this email is attached as **Exhibit 11.**

23. After not hearing back from Mr. Sprague, I returned to Mr. Lemman. During a telephone conversation I had with Mr. Lemman on August 7, 2020, he showed an interest in installing the press queue internally in a test mode to see if it correctly sorted out confidential filings. He also referred to information Mr. Sprague had received from court officials in Las Vegas concerning their Tyler press queue, and I understood that the feedback had been positive. He added that Tyler had encouraged Oregon to speak with other Tyler courts about their press queues and use those dialogues to figure out the details of the kind of press queue Oregon wanted to install.

24. Two months after that August 2020 conversation, on October 20, 2020, I wrote Mr. Lemman to say that processing had fallen behind in Multnomah County Circuit Court by five days in some cases and that we had, as a result, missed a highly newsworthy case. “Just wanted to check in on the press queue,” I wrote in the October 20 email. “A substantial delay remains for cases out of Multnomah County, as well as in other courts. For example, this highly newsworthy case [I provided a link to the coverage] was filed last Wednesday [October 14, 2020], but wasn't made available until yesterday [Oct. 19, 2020]. In the suit, a black man claims a local service station refused to sell him gas, claiming he would only use it to set fires at a protest. A couple of news outlets got it before the court made it public because the lawyers shared it with select reporters. ... Today, the most recent cases available in Multnomah County are from 10/15.” The case referenced in my email, *Deweese v. M. Dewhitt, LLC*, Case No. **20CV36226**, was filed Oct. 14, 2020, but held back for processing and from the press for four calendar days, until Oct. 19, 2020.

25. I added in my email that the press queue would make the court virtually open regardless of pandemics and courthouse moves: “I know things are crazy right now, between the pandemic and the transition to the new courthouse. Of course, if we had an automatic press queue, none of that would affect public access.”

26. On that same day, Oct. 20, 2020, I received an answering e-mail from Mr. Lemman, saying, “Tyler has provided the queue, and staff is looking at it.” A true and correct copy of my October 20 email to Mr. Lemman, and his response, is attached as **Exhibit 12**.

27. Two months later, on Wednesday, December 16, 2020, I emailed Mr. Lemman to tell him that a court in the Atlanta area had just installed a Press Review Queue and to inform him of the latest delays in access at the Multnomah County Circuit Court – specifically, that

“last night the most recently available lawsuits were filed last Thursday” – *i.e.*, on December 10, five calendar days earlier. I added, “[a]re there any updates on the process here in Oregon? When we spoke in October, you mentioned that staff was working on the software provided by Tyler. I’m wondering where we’re at: tweaking software, or more of a political phase?” Mr. Lemman emailed me back the same day to say that the review of the press queue had been halted because the staff person handling that task had gone on parental leave. A true and correct copy of my December 16 email to Mr. Lemman, and his response, is attached as **Exhibit 13**.

28. After the turn of the New Year, on January 26, 2021, I sent an email to Mr. Lemman “to check in on the press queue review.” I acknowledge that the court’s e-filing specialist was out on parental leave, and asked if he was back yet and if the review had begun. A true and correct copy of this email is attached as **Exhibit 14**.

29. On January 28, 2021, after I had reached out to him again, Mr. Lemman emailed to say, “I’ll check back in w/ our status and get you an update.” In addition, Mr. Lemman’s email responded to an inquiry I had made as to whether I could give his contact information to officials in Arizona who were considering a statewide press review queue through their software vendor, Granicus, a deliberation that ultimately resulted in a statewide press review queue. Mr. Lemman consented to that request to give out his contact information. A true and correct copy of this January 28, 2021 email from Mr. Lemman is attached as **Exhibit 15**.

30. At around this time, the pace of processing appeared to pick up significantly in Multnomah County. I emailed Mr. Lemman twice and called twice in the following weeks asking for an update. True and correct copies of my emails to Mr. Lemman dated February 11, 2021 and February 23, 2021 emails are attached as **Exhibits 16** and **17**, respectively. In my February 23 email, I informed Mr. Lemman that the Arizona courts were “moving to a state-

wide, pre-processing press queue.” I once again referred Mr. Lemman to Aaron Nash, communications director for the Arizona Supreme Court, in case Mr. Lemman was interested in discussing the project with him.

31. Based on the lack of an answer from Mr. Lemman, my editor and Courthouse News’ publisher, Bill Girdner, wrote a letter to Mr. Lemman on March 9, 2021. A true and correct copy of that letter is attaches as **Exhibit 18**.

32. That letter was not answered, so I followed up by email on March 15 and asked Mr. Lemman if he had been asked to halt communication regarding the press queue. At the same time, I asked for any update on our request. He answered the same day, asking in his turn if we were only interested in civil cases. I replied right away, “A queue for civil cases only is exactly what we are requesting.” A true and correct copy of that March 15, 2021 email string is attached as **Exhibit 19**.

33. Three days later, March 18, Mr. Lemman replied by email to both Mr. Girdner and me, in which he raised “the possibility of documents that are intended to be filed confidentially inadvertently be[ing] made available to the public” and claimed Oregon “rejects between 5-10% of filings.” He added: “[t]hese are not insurmountable barriers, but they do require analysis and thought.” A true and correct copy of that March 18, 2021 string is attached as **Exhibit 20**.

34. Four days after that email, on March 22, 2021, Mr. Girdner wrote a second letter to Mr. Lemman, explaining that the Tyler Press Review Queue automatically sorts out confidential cases based on case designation, and referred to many courts in which Tyler currently provides on-receipt access to new e-filed complaints through a Press Review Queue that automatically filters out confidential documents. Mr. Girdner’s letter also explained that

whether a complaint is “accepted” or “rejected” is immaterial because the First Amendment right of access to new complaints attaches upon receipt by the court. The letter concluded by asking for a “yea or nay within two weeks” on our longstanding request for a Press Review Queue. A true and correct copy of Mr. Girdner’s March 22 letter is attached as **Exhibit 21**.

35. One week later, on March 29, 2021, Mr. Lemman sent an email to both Mr. Girdner and me saying he would give us a status report and “keep this on the front burner.” A true and correct copy of this email is attached as **Exhibit 22**. I heard nothing further from Mr. Lemman or anyone else on Courthouse News’ request for a Press Review Queue after that date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 28th day of July 2022.



Karina Brown