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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

COURTHOUSE NEWS SERVICE,

Plaintiff,

v.

MICHAEL PLANET, in his official
capacity as Court Executive Officer of
the Ventura County Superior Court.

Defendant.

Case No. CV11-08083 SJO (FMMx)

Honorable Judge S. James Otero

**BRIEF OF *AMICI CURIAE* THE
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 12
OTHER MEDIA ORGANIZATIONS
IN SUPPORT OF PLAINTIFF**

[Motion of *amici curiae* the Reporters
Committee for Freedom of the Press and
12 other media organizations for leave to
file brief as *amici curiae* in support of
Plaintiff and [Proposed] Order Filed
Concurrently Herewith]

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5 *Only Through Their Opinions?*, 8 I/S J.L. & Pol’y for the Info. Soc’y 575 (2013)
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1 Newsmedia, Dow Jones & Company, Inc., The E.W. Scripps Company, First
2 Amendment Coalition, First Look Media Works, Inc., The McClatchy Company,
3 National Press Photographers Association, New England First Amendment Coalition,
4 News Corp, Radio Television Digital News Association
5

6 Appendix A provides a description of all *amici*.

7 **DISCLOSURE STATEMENTS**

8
9 The Reporters Committee for Freedom of the Press is an unincorporated
10 association of reporters and editors with no parent corporation and no stock.
11

12 American Society of News Editors is a private, non-stock corporation that has
13 no parent.

14 The Associated Press is a global news agency organized as a mutual news
15 cooperative under the New York Not-For-Profit Corporation law. It is not publicly
16 traded.
17

18 Association of Alternative Newsmedia has no parent corporation and does not
19 issue any stock.
20

21 Dow Jones is a Delaware corporation with its principal place of business in
22 New York. News Corporation, a publicly held company, is the indirect parent
23 corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and
24 a non-publicly held company, is the direct parent of Dow Jones. No publicly held
25 company directly owns 10% or more of the stock of Dow Jones.
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1 The E.W. Scripps Company is a publicly traded company with no parent
2 company. No individual stockholder owns more than 10% of its stock.

3
4 First Amendment Coalition is a nonprofit organization with no parent
5 company. It issues no stock and does not own any of the party's or amicus' stock.

6
7 First Look Media, Inc. is a non-profit non-stock corporation organized under
8 the laws of Delaware. No publicly-held corporation holds an interest of 10% or more
9 in First Look Media, Inc.

10
11 The McClatchy Company is publicly traded on the New York Stock Exchange
12 under the ticker symbol MNI. Contrarius Investment Management Limited owns
13 10% or more of the common stock of The McClatchy Company.

14
15 National Press Photographers Association is a 501(c)(6) nonprofit organization
16 with no parent company. It issues no stock and does not own any of the party's or
17 amicus' stock.

18
19 New England First Amendment Coalition has no parent corporation and no
20 stock.

21
22 News Corporation has no parent company and no publicly held company owns
23 10% or more of its shares.

24
25 Radio Television Digital News Association is a nonprofit organization that has
26 no parent company and issues no stock.

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SUMMARY OF THE ARGUMENT

The First Amendment affords the public and the press a right of access to civil complaints, a right that attaches immediately upon filing. *See Planet I*, 750 F.3d 776. Because the law in this area is clear, the failure to afford same-day access to unlimited civil complaints amounts to a denial of meaningful access to judicial records. This is a troubling scenario considering that the complaint is the foundational document in a lawsuit and is perhaps the most important record in a civil action.

Prompt, no later than same-day access to newly filed unlimited civil complaints for members of the news media and the public provides significant benefits. It is beyond dispute that timeliness is a hallmark of newsworthiness. The news media cannot fulfill its constitutional role of informing the public about the workings of government if it cannot provide timely information. But timeliness is more than just a competitive interest of the news media; immediate access to court documents makes reporting more accurate, fair, and complete. Same-day access to newly filed unlimited civil complaints fosters accurate news reporting by permitting journalists to review primary sources of information. It also encourages greater public understanding and more informed debate about the judicial system and the controversies adjudicated within it.

1 **ARGUMENT**

2 **I. The First Amendment provides a right of access to civil complaints—a**
3 **right that attaches when complaints are filed.**

4 A civil complaint is one of the most important documents in the life of a
5 lawsuit. “While a complaint is not, per se, the actual pleading by which a suit may be
6 disposed of, it is the root, the foundation, the basis by which a suit arises and must be
7 disposed of.” *See In re Nvidia Corp. Derivative Litig.*, No. C 06-06110 SBA, 2008
8 U.S. Dist. LEXIS 120077, *10-11, 2008 WL 1859067, *3 (N.D. Cal. Apr. 22, 2008).
9 It is the document against which a motion to dismiss is measured, and it articulates
10 the claims that will be proved or disproved at trial or decided on summary judgment.
11
12

13 The First Amendment affords the public a right of access to civil complaints
14 because complaints are judicial records. *See Planet I*, 750 F.3d at 786 (writing that
15 “the federal courts of appeals have widely agreed that it [the First Amendment right
16 of access] extends to civil proceedings and associated records and documents”); *Doe*
17 *v. JBF RAK LLC*, No. 14-cv-00979, 2014 U.S. Dist. LEXIS 98688, *11–12 (D. Nev.
18 July 18, 2014) (writing that the Ninth Circuit recognized in *Planet I* “that there is a
19 qualified First Amendment right of public access to judicial records in civil cases,
20 including newly filed complaints”).
21
22

23 Because a complaint becomes a public document upon filing, the right of
24 access attaches immediately upon the document’s submission to the court. *See*
25 *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161–62 (3d Cir. 1993)
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1 (“Numerous other courts have . . . recognized the principle that the filing of a
2 document gives rise to a presumptive right of access” (citations omitted)); *see also*
3 *Grove Fresh Distribs. Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)
4 (“In light of the values which the presumption of access endeavors to promote, a
5 necessary corollary to the presumption is that once found to be appropriate, access
6 should be immediate and contemporaneous.”); *see also Courthouse News Serv. v.*
7 *Jackson*, No. 09-cv-01844, 2010 U.S. Dist. LEXIS 74571, at *2 (S.D. Tex. Feb. 26,
8 2010) (writing there is “a right of timely access under the First Amendment to the
9 U.S. Constitution to newly-filed petitions and other case-initiating documents . . .”).
10 A conclusion otherwise would diminish the long-recognized value of openness in the
11 judicial process. *See Co. Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014)
12 (“Because the public benefits attendant with open proceedings are compromised by
13 delayed disclosure of documents, we . . . emphasize that the public and press
14 generally have a contemporaneous right of access to court documents and
15 proceedings when the right applies.”). Indeed, the Ninth Circuit has held that even a
16 48-hour delay in unsealing judicial records is improper, because the effect of the
17 delay acts as a “total restraint on the public’s first amendment right of access” during
18 that time. *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983).
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1 **II. Prompt, no later than same-day access to civil complaints benefits the**
2 **public and the news media.**

3 Quick access to newsworthy information is an important element of the news
4 business for competitive reasons, but it also serves the interests of the public. Timely
5 access to court documents makes reporting more accurate, fair, and complete, and
6 thus should be encouraged by courts.
7

8 Delay has consequences. If a journalist receives more accurate information
9 from the delayed release of a court filing two or three days after a story has aired, the
10 public may never know. Because “old news” generally does not receive the same
11 level of attention from the public as a timelier piece of journalism, the delayed release
12 of the more accurate information may have little affect on public knowledge.
13
14

15 **A. Timeliness is an indispensable characteristic of news reporting—one**
16 **that ensures the public remains abreast of government affairs.**

17 Because the American people rely on the news media for information about the
18 workings of government, the importance of a free press in American democracy
19 cannot be understated. As the U.S. Supreme Court has stated: “[An] untrammelled
20 press [is] a vital source of public information,’ . . . and an informed public is the
21 essence of working democracy.” *Minneapolis Star & Tribune Co. v. Minnesota*
22 *Comm’r of Revenue*, 460 U.S. 575, 585 (1983) (quoting *Grosjean v. American Press*
23 *Co.*, 297 U.S. 233, 250 (1936)); see also *New York Times Co. v. United States*, 403
24 U.S. 713, 717 (1971) (Black, J., concurring) (writing that the Founding Fathers gave
25 the free press protection “so that it could bare the secrets of government and inform
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1 the people”); *Saxbe v. Washington Post Co.*, 417 U.S. 843, 863 (1974) (Powell, J.,
2 dissenting) (stating that, “[i]n seeking out the news the press . . . acts as an agent of
3 the public at large.”).

4
5 To fulfill its constitutional role of informing the people, the news media must
6 report on events with the best information available to it in a timely manner.

7
8 According to Janet Kolodzy, a professor in the Department of Journalism at Emerson
9 College, timeliness affects whether a story constitutes news in the first instance. *See*
10 Janet Kolodzy, *Convergence Journalism: Writing and Reporting Across the News*
11 *Media* 59 (2006) (stating that “[i]t is, after all, called the ‘news’ business and not the
12 ‘olds’ business”). She writes that “if a man is shot at a drugstore in the morning and
13 police are searching for a suspect, then that’s news in the morning. But if by late
14 afternoon, police have arrested a woman suspected in the shooting, then the arrest is
15 more timely than the shooting in the 6:00 p.m. newscast.” *Id.*; *see also* Fred Fedler et
16 al., *Reporting for the Media* 123 (8th ed. 2005) (describing timeliness as one of the
17 characteristics of news, and writing that “[j]ournalists stress current information—
18 stories occurring today or yesterday, not several days or weeks ago—and try to report
19 it ahead of their competitors”).

20
21 That timeliness constitutes a fundamental element of newsworthiness has not
22 been lost on the nation’s highest courts. *See Int’l News Serv. v. AP*, 248 U.S. 215,
23 235 (1918) (“The peculiar value of news is in the spreading of it while it is fresh . . .
24 .”); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 561 (1976) (“As a practical matter . . .
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1 the element of time is not unimportant if press coverage is to fulfill its traditional
2 function of bringing news to the public promptly.”). As the Seventh Circuit wrote of
3 the right of access to judicial records: “The newsworthiness of a particular story is
4 often fleeting. To delay or postpone disclosure undermines the benefit of public
5 scrutiny and may have the same result as complete suppression.” *Grove Fresh*, 24
6 F.3d at 897; *see also Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) (“The loss of First
7 Amendment freedoms, for even minimal periods of time, unquestionably constitutes
8 irreparable injury.” (citing *New York Times Co.*, 403 U.S. 713)).
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12 Timeliness is even more vital in the digital era. As technology advances, the
13 definition of timely news continues to contract. Websites for the *Los Angeles Times*
14 and *The New York Times*, for example, measure the timeliness of news updates in
15 minutes. Other news services, such as Dow Jones Newswires, or social media
16 platforms, such as Twitter, mark new posts by the second. As Toni Locy—who spent
17 25 years covering courts and law enforcement for *The Washington Post*, *The Boston*
18 *Globe*, *USA Today*, and the *Associated Press*, and who now is a professor at
19 Washington & Lee University—recently wrote: “In the Internet age, a deadline
20 passes every second.” Toni Locy, *Covering America’s Courts* 13 (2013).
21
22

23
24 In a news environment that places a premium on timeliness, court policies that
25 delay access to important judicial records amount to a denial of meaningful access.
26 There is little point in the news media publishing an untimely report on a complaint
27 that no longer constitutes news and, consequently, will not interest the public. *See*
28

1 *generally* Krolak Decl. at 14, 21, Mar. 14, 2016, ECF No. 128 (writing that delays in
2 access have prevented her, a reporter for Courthouse News Service, “from timely
3 reporting on new civil litigation filed at Ventura Superior that would seem to be of
4 great interest to the public”).

6 **B. Timely access to civil complaints fosters more accurate news reporting.**

7
8 Civil complaints are most newsworthy the day they are filed, and, accordingly,
9 the media is most likely to report on a lawsuit that is of public interest or concern at
10 that time. News reports, however, will not be as strong or authoritative if the
11 complaints themselves are unavailable for inspection, copying, and reference.
12

13 Reporters and their readers benefit tremendously when news reports reference
14 and quote from actual court documents. Locy, the veteran journalist referenced
15 above, advises reporters not to rely solely on press releases and statements given by
16 attorneys, and to be aware of the ulterior motives lawyer-advocates may have when
17 they speak with the press. Locy, *supra*, at 3–4. “When you gather a piece of
18 information, you need to verify it and assess its importance,” Locy writes, instructing
19 reporters to “review[] court filings or other public records,” among other things, to
20 determine whether a fact or allegation should be reported. *Id.* at 9.
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24 Clearly, prompt access to complaints will increase a reporter’s ability to get the
25 facts straight about a lawsuit and the conduct alleged therein. The public thus
26 benefits when reporters have timely access to primary documents and, consequently,
27 communicate more reliable information.
28

1 **C. Timely access to civil complaints will contribute to the public’s**
2 **understanding of matters on the court’s docket.**

3 The public has a right to know what matters are pending before state courts
4 and may be demanding court resources for years to come. *See In re Nvidia Corp.*,
5 2008 U.S. Dist. LEXIS 120077, at *11, 2008 WL 1859067, at * 3 (“[W]hen a
6 plaintiff invokes the Court’s authority by filing a complaint, the public has a right to
7 know who is invoking it, and towards what purpose, and in what manner.”). The
8 First Amendment right of access, as the Ninth Circuit has recognized, furthers this
9 right to know. *See Planet I*, 750 F.3d at 785 (“The right of access is . . . an essential
10 part of the First Amendment’s purpose to ‘ensure that the individual citizen can
11 effectively participate in and contribute to our republican system of self-
12 government.’” (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604
13 (1982))).

14 This right to know is especially prominent in the context of complaints, which
15 reveal a wealth of information about how citizens use the judicial branch, how the
16 law exposes citizens to suit or provides paths to judicial remedies, and how conflicts
17 arise in society. *See Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998)
18 (reasoning that because “[l]itigation is a public exercise” and “consumes public
19 resources,” in “all but the most extraordinary cases—perhaps those involving weighty
20 matters of national security—complaints must be public”).
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1 When the public is informed about pending lawsuits, it is able to engage in
2 meaningful debate. *See* Change.org, <https://www.change.org/search?q=lawsuit> (last
3 visited Mar. 5, 2016) (displaying petitions created by individuals or groups
4 demanding that plaintiffs withdraw lawsuits or requesting other actions related to
5 pending lawsuits). Denying reporters access to civil complaints on the day they are
6 filed threatens to stifle free speech and public debate at the moment complaints are
7 most newsworthy.
8

10 CONCLUSION

11
12 As the volume of regular news coverage of lower courts shrinks, *see*
13 Christopher J. Davey, *The Future of Online Legal Journalism: The Courts Speak*
14 *Only Through Their Opinions?*, 8 I/S J.L. & Pol’y for the Info. Soc’y 575, 585
15 (2013), Plaintiff and other media organizations like it provide an increasingly
16 valuable service to the public. Unnecessary delays in releasing complaints imperil
17 that service.
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20 For the reasons mentioned above, *amici* respectfully urge the Court to grant
21 Plaintiff’s motion for summary judgment.
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1 Dated: March 21, 2016

/s/ Katie Townsend

Katie Townsend

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1 **APPENDIX A**

2 The Reporters Committee for Freedom of the Press is a voluntary,
3 unincorporated association of reporters and editors that works to defend the First
4 Amendment rights and freedom of information interests of the news media. The
5 Reporters Committee has provided assistance and research in First Amendment and
6 Freedom of Information Act litigation since 1970.
7

8
9 With some 500 members, American Society of News Editors (“ASNE”) is an
10 organization that includes directing editors of daily newspapers throughout the
11 Americas. ASNE changed its name in April 2009 to American Society of News
12 Editors and approved broadening its membership to editors of online news providers
13 and academic leaders. Founded in 1922 as American Society of Newspaper Editors,
14 ASNE is active in a number of areas of interest to top editors with priorities on
15 improving freedom of information, diversity, readership and the credibility of
16 newspapers.
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19
20 The Associated Press (“AP”) is a news cooperative organized under the Not-
21 for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper
22 members. The AP’s members and subscribers include the nation’s newspapers,
23 magazines, broadcasters, cable news services and Internet content providers. The AP
24 operates from 300 locations in more than 100 countries. On any given day, AP’s
25 content can reach more than half of the world’s population.
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1 Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade
2 association for 130 alternative newspapers in North America, including weekly
3 papers like The Village Voice and Washington City Paper. AAN newspapers and
4 their websites provide an editorial alternative to the mainstream press. AAN
5 members have a total weekly circulation of seven million and a reach of over 25
6 million readers.
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9 Dow Jones & Company, Inc., a global provider of news and business
10 information, is the publisher of The Wall Street Journal, Barron’s, MarketWatch,
11 Dow Jones Newswires, and other publications. Dow Jones maintains one of the
12 world’s largest newsgathering operations, with more than 1,800 journalists in nearly
13 fifty countries publishing news in several different languages. Dow Jones also
14 provides information services, including Dow Jones Factiva, Dow Jones Risk &
15 Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation
16 company.
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20 The E.W. Scripps Company serves audiences and businesses through
21 television, radio and digital media brands, with 33 television stations in 24 markets.
22 Scripps also owns 34 radio stations in eight markets, as well as local and national
23 digital journalism and information businesses, including mobile video news service
24 Newsy and weather app developer WeatherSphere. Scripps owns and operates an
25 award-winning investigative reporting newsroom in Washington, D.C. and serves as
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1 the long-time steward of the nation’s largest, most successful and longest-running
2 educational program, the Scripps National Spelling Bee.

3
4 First Amendment Coalition is a nonprofit public interest organization dedicated
5 to defending free speech, free press and open government rights in order to make
6 government, at all levels, more accountable to the people. The Coalition’s mission
7 assumes that government transparency and an informed electorate are essential to a
8 self-governing democracy. To that end, we resist excessive government secrecy
9 (while recognizing the need to protect legitimate state secrets) and censorship of all
10 kinds.
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13 First Look Media, Inc. is a new non-profit digital media venture that produces
14 The Intercept, a digital magazine focused on national security reporting.

15
16 The McClatchy Company, through its affiliates, is the third-largest newspaper
17 publisher in the United States with 29 daily newspapers and related websites as well
18 as numerous community newspapers and niche publications.

19
20 The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-
21 profit organization dedicated to the advancement of visual journalism in its creation,
22 editing and distribution. NPPA’s approximately 7,000 members include television
23 and still photographers, editors, students and representatives of businesses that serve
24 the visual journalism industry. Since its founding in 1946, the NPPA has vigorously
25 promoted the constitutional rights of journalists as well as freedom of the press in all
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1 its forms, especially as it relates to visual journalism. The submission of this brief
2 was duly authorized by Mickey H. Osterreicher, its General Counsel.

3
4 New England First Amendment Coalition is a non-profit organization working
5 in the six New England states to defend, promote and expand public access to
6 government and the work it does. The coalition is a broad-based organization of
7 people who believe in the power of transparency in a democratic society. Its
8 members include lawyers, journalists, historians and academicians, as well as private
9 citizens and organizations whose core beliefs include the principles of the First
10 Amendment. The coalition aspires to advance and protect the five freedoms of the
11 First Amendment, and the principle of the public's right to know in our region. In
12 collaboration with other like-minded advocacy organizations, NEFAC also seeks to
13 advance understanding of the First Amendment across the nation and freedom of
14 speech and press issues around the world.

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18 News Corporation is a global, diversified media and information services
19 company focused on creating and distributing authoritative and engaging content to
20 consumers throughout the world. The company comprises leading businesses across
21 a range of media, including: news and information services, digital real estate
22 services, book publishing, digital education, and sports programming and pay-TV
23 distribution.

24
25
26 Radio Television Digital News Association ("RTDNA") is the world's largest
27 and only professional organization devoted exclusively to electronic journalism.
28

1 RTDNA is made up of news directors, news associates, educators and students in
2 radio, television, cable and electronic media in more than 30 countries. RTDNA is
3 committed to encouraging excellence in the electronic journalism industry and
4 upholding First Amendment freedoms.
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2016, the foregoing document was filed electronically with the Clerk of the Court through the Court’s CM/ECF system, which will automatically serve all counsel of record.

Dated: March 21, 2016

/s/ Katie Townsend
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