

No. 14-56444

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IN THE  
**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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COURTHOUSE NEWS SERVICE, *PLAINTIFF-APPELLANT*,

V.

MICHAEL PLANET, *DEFENDANT-APPELLEE*.

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Appeal from the United States District Court  
for the Central District of California (Case No. 11-cv-8083)  
The Honorable Manuel Real

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**BRIEF OF *AMICI CURIAE*  
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS  
AND 25 OTHER NEWS MEDIA ORGANIZATIONS  
IN SUPPORT OF PLAINTIFF-APPELLANT URGING REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 29(c)(1), *amici* state that the Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

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

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

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MediaNews Group, Inc. is a privately held company. No publicly-held company owns ten percent or more of its equity interests.

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

New England Newspaper and Press Association, Inc. is a non-profit corporation. It has no parent, and no publicly held corporation owns 10% or more of its stock.

The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

The New Yorker is a national magazine published by Condé Nast, which is a division of Advance Magazine Publishers Inc. Advance Magazine Publishers Inc., a non-governmental corporate party, is a wholly-owned subsidiary of The Patriot-News Co. One hundred percent of the stock of The Patriot-News Co. is held by Advance Publications, Inc., the shares of which are not publicly traded. There is no publicly held corporation that owns 10% or more of its stock.

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

The News Guild – CWA is an unincorporated association. It has no parent and issues no stock.

North Jersey Media Group Inc. is a privately held company owned solely by Macromedia Incorporated, also a privately held company.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

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

The Seattle Times Company: The McClatchy Company owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

Stephens Media LLC is a privately owned company with no affiliates or subsidiaries that are publicly owned.

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## **STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

*Amici* file this brief in support of Plaintiff-Appellant Courthouse News Service. The news media and organizations that advocate for the free press and for the freedom of information have a strong interest in the policies governing the right of access to court documents. Complaints initiate lawsuits and are therefore particularly newsworthy at the time they are filed. Having access to complaints is an important component of reporting on the legal system and the judicial branch. It is from this perspective that *amici* write to emphasize to this Court the public interests at stake in this case.

A supplemental statement of identity and interest of *amici curiae* is included below as Appendix A. The amicus parties are: The Reporters Committee for Freedom of the Press, American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, Bloomberg L.P., Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, First Look Media, Gannett Co., Inc., Hearst Corporation, Los Angeles Times Communications LLC, The McClatchy Company, MediaNews Group, Inc., National Press Photographers Association, New England First Amendment Coalition, New England Newspaper and Press Association, Inc., The New York Times Company, The New Yorker, News Corp, The Newspaper Guild - CWA, North Jersey Media Group Inc., Online

News Association, Radio Television Digital News Association, The Seattle Times Company, and Stephens Media LLC.

**SOURCE OF AUTHORITY TO FILE**

Counsel for Plaintiff-Appellant and Defendant-Appellee consented to the filing of this brief.

**FED. R. APP. P. 29(c)(5) STATEMENT**

*Amici* state that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person — other than the *amici curiae*, its members, or its counsel — contributed money that was intended to fund preparing or submitting the brief.

## **SUMMARY OF ARGUMENT**

The First Amendment provides a right of access to civil complaints, which attaches upon filing. Civil complaints are a critical component of meaningful public access to civil proceedings, because a pleading is a foundational document that sets a lawsuit in motion and triggers instant and continuous response from the courts. The public and the news media have a right to learn about the matters occupying space on the courts' dockets and consuming judicial resources, and granting prompt access to court documents will promote more accurate reporting and more informed debate about the issues raised in civil complaints. Courts threaten that free expression when denying or delaying access to official court documents.

The district court erred by concluding that civil complaints shed no light on the administration of justice and stating that a right of access may not attach until the complaint became the subject of a hearing to which an independent First Amendment right of access attached. Complaints reveal a wealth of information about how citizens use the judicial branch, how the law exposes citizens to suit or provides paths to judicial remedies, and how conflicts arise in society. Publicity of civil actions not only informs the public about matters that have invoked the authority of the courts, but may educate the public about their own legal rights. Affirming the district court's order would potentially permit the denial of access to

civil complaints for months after filing, even as the complaints elicit responsive action from the courts.

Even if the right of access emanates from federal common law, rather than the constitution, the same interests in promoting accurate reporting, inspecting documents consuming public resources, and having an informed debate about legal issues weigh in favor of prompt access to civil complaints. The Ventura County Superior Court does not have a legitimate, let alone compelling, justification for delaying access to the complaints. Therefore, *amici* urge the reversal of the district court's dismissal of the amended complaint.

## ARGUMENT

### **I. The First Amendment provides a right of access to civil complaints, and that right attaches when the documents are filed.**

*Amici* support the arguments made by Plaintiff-Appellant (hereinafter “Appellant”) regarding a First Amendment right of access to civil complaints. *Amici* write separately to stress the substantial public interest in such access and the implications of denying prompt access to the news media.

A civil complaint is the most important document in the life of a lawsuit. “While a complaint is not, per se, the actual pleading by which a suit may be disposed of, it is the root, the foundation, the basis by which a suit arises and must be disposed of.” *In re Nvidia Corp. Derivative Litig.*, No. C 06-06110 SBA, 2008 WL 1859067, at \*3 (N.D. Cal. Apr. 23, 2008). A complaint should not be discounted as mere allegations by a private party or “not directly relevant to the merits of the case” or “only tangentially related” to the cause of action; rather, a civil complaint “*provides* the causes of action” and “*establishes* the merits of a case, or the lack thereof.” *Id.* It is the document against which a motion to dismiss is measured, and it articulates the claims that will be proved or disproved at trial or decided on summary judgment.

Moreover, the filing of a civil complaint prompts immediate official action and, thereafter, ongoing management by the court. Indeed, the local rules of the Ventura County Superior Court expressly state that “it is the policy of the Ventura

County Superior Court to manage all civil cases *from the time of filing* of the first document invoking court jurisdiction through final disposition.” (Super. Ct. Ventura Cnty., Local Rules, rule 3.00, Civil Case Delay Reduction) (emphasis added). Upon the filing of a complaint, the case is assigned to a judge, and a mandatory appearance is scheduled. (*Id.* at rule 3.03.1(A), Notice of Case Assignment and Mandatory Appearance.) Thus, even before any motion practice or hearing on the merits, a judge may engage with a complaint to become familiar with the case, to prepare for a conference with attorneys, to verify that the case is properly before the court, or to prepare some other order.<sup>1</sup>

Access to a complaint is a critical component of meaningful access to a civil proceeding. The complaint identifies the parties involved, the claims asserted, and the alleged factual basis for those claims. Further, the filing of a complaint sets the civil justice process in motion. Accordingly, “[w]hen a plaintiff invokes the Court’s authority by filing a complaint, the public has a right to know who is invoking it, and towards what purpose, and in what manner.” *Id.* at 3; *see also McCrary v. Elations Co., LLC*, No. EDCV 13-00242 JGB, 2014 WL 1779243, at \*6 (C.D. Cal. Jan. 13, 2014) (suggesting that the centrality of the complaint to the

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<sup>1</sup> In federal court, for instance, 28 U.S.C. § 1915(e)(2) requires judges to screen complaints filed *in forma pauperis* and to dismiss them, or any portion of them, if the action is frivolous or malicious, if the complaint fails to state a claim on which relief may be granted, or if the plaintiff seeks monetary relief against an immune defendant.

lawsuit also makes the document central to “the public’s understanding of the judicial process and of significant public events”) (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

The right of access afforded by the First Amendment is a right of immediate access. See *Grove Fresh Distribs. Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 895, 897 (7th Cir. 1994) (“In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous.”); *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991). Indeed, this Court has held that even a 48-hour delay in unsealing judicial records amounts to a “total restraint on the public’s first amendment right of access.” *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983). Thus, because it is the act of filing that renders a civil complaint a public document, filing triggers an immediate right of access. See *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161–62 (3d Cir. 1993) (“Numerous other courts have also recognized the principle that the filing of a document gives rise to a presumptive right of access”).

**II. The public and the news media benefit from a prompt right of access to civil complaints.**

**A. Granting same-day access to civil complaints will encourage more accurate news reporting.**

When reporters do not have access to court documents, they are deprived of the most reliable source of information for their reporting on lawsuits. Civil complaints are most newsworthy the day they are filed, and, accordingly, the media is most likely to report on the lawsuits of public interest and concern at that time, assuming the media is aware of the existence of the lawsuit in the first place. But news reports will not be as strong or authoritative if the complaints are not available for inspection, copying, and reference.

Reporters and their readers benefit tremendously from being able to reference and quote from actual court documents in the course of reporting. Tony Loci, who spent 25 years covering courts and law enforcement for *The Washington Post*, *The Boston Globe*, *USA TODAY* and *The Associated Press*, and who now is a professor at Washington & Lee University, stresses this point in her textbook on legal reporting. *See generally* Toni Locy, *Covering America's Courts* (2013) (highlighting the recurring theme that “reading is fundamental”). Locy advises reporters not to rely solely on press releases and statements given by attorneys, and to be aware of the ulterior motives the lawyer-advocates may have when they speak with the press. *Id.* at 3–4. “When you gather a piece of information, you

need to verify it and assess its importance,” Locy writes, instructing reporters to “review[] court filings or other public records,” among other things, to determine whether a fact or allegation should be reported. *Id.* at 9. She points out that, in cases involving multiple defendants and claims, it is important for a reporter to be precise about which defendants are named in each count, or else the reporter may misstate the alleged wrongdoing of a particular defendant. “You don’t want to say John Doe was accused of violating three contracts when he is named in only one count of the lawsuit that deals with an entirely separate issue.” *Id.* Prompt access to complaints will increase a reporter’s ability to get the facts straight about a lawsuit and the conduct alleged therein. The public benefits when reporters have timely access to the primary documents and, consequently, communicate more reliable information.

Immediate access has always been essential to news reporting, but it is even more vital in the digital era. “The peculiar value of news is in the spreading of it while it is fresh . . . .” *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918); *see also Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 561 (1976) (“the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly”). As technology advances, the definition of “fresh” news continues to contract. Websites for the *Los Angeles Times* and *The New York Times*, for example, or Google News, measure the

freshness of news updates in minutes. Other news services, such as Dow Jones Newswires, or social media platforms, such as Twitter, mark new posts by the second. Social media has altered the way the press covers the judiciary, and the most obvious change has been the pace at which information is disseminated. *See* Laura Click, *From Sketch Pads to Smart Phones: How Social Media has Changed Coverage of the Judiciary* (2011), available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctmedia/id/30> (commenting on the expansion of social-media coverage of trials). “In the Internet age, a deadline passes every second,” Locy, *supra*, at 13, and news consumers disseminate stories and clips throughout social networks just as quickly. *See* David Carr, *Facebook Offers Life Raft, but Publishers Are Wary*, *New York Times*, at B1, Oct. 27, 2014, <http://www.nytimes.com/2014/10/27/business/media/facebook-offers-life-raft-but-publishers-are-wary.html> (describing how Facebook and mobile devices are driving traffic to news sites and describing a proposal to deliver the stories at greater speed). Today, news breaks, public debate begins, and the public forms first impressions instantaneously.

In this environment, it is imperative that the first news stories be as accurate and as complete as possible. To delay access to complaints is to deny meaningful access. *See Associated Press*, 705 F.2d at 1147 (“The effect of the order is a total restraint on the public’s first amendment right of access even though the restraint is

limited in time.”); *see also Elrod v. Burns*, 427 U.S. 347, 374–75 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)); *Grove Fresh*, 24 F.3d at 897 (“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.”). Immediate access to complaints monumentally advances the strength of reporting. Unnecessary delays hinder the ability of the press to report on matters of public interest and harm the quality of public debate.

**B. Prompt access to civil complaints will contribute to the public’s understanding of matters occupying space on the court’s docket.**

The public has a right to know what matters are pending before state courts and may be demanding court resources for years to come. *See In re Nvidia Corp. Sec. Litig.*, 2008 WL 1859067, at \*3. As this Court recognized, the “news media’s right of access to judicial proceedings is essential not only to its free expression, but also the public’s.” *Courthouse News Serv. v. Planet*, 750 F.3d 776, 786 (9th Cir. 2014). The right of access is “an essential part of the First Amendment’s purpose to ‘ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.’” *Id.* at 785 (quoting *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 604 (1982)).

Civil filings represent a significant portion of the docket for California courts. In fiscal year 2012–13, the most recent year for which data is available, the state courts received 922,458 new civil filings, of which 199,537 were new unlimited civil complaints. Judicial Council of California, *2014 Court Statistics Report* at xv (2014), available at <http://www.courts.ca.gov/documents/2014-Court-Statistics-Report.pdf>. According to the court, one-third of the unlimited civil complaints remain open on the court’s docket for more than a year, and 13 percent stay on the active docket for more than two years. *Id.* Therefore, of the unlimited civil complaints filed in 2012–13, approximately 26,000 of the actions will occupy the courts and their personnel for at least two years. In aggregate, the complaints allege billions of dollars in damages.

The people of California allocate a tremendous amount of resources to the courts to administer justice in these cases. In the current fiscal year, the California judicial branch received \$3.3 billion, or 2.1 percent of the state’s overall budget. *Id.* at xvii. The public has a strong interest in knowing what matters occupy space on the court’s docket and consume these resources. *See Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998) (reasoning that because “[l]itigation is a public exercise” and “consumes public resources,” in “all but the most extraordinary cases—perhaps those involving weighty matters of national security—complaints must be public”).

In this case, the district court concluded that civil complaints shed no light on the administration of justice. (See Appellant’s Excerpts of Record (“E.R.”), Vol. 1, at 0008.). However, the district court took too restrictive a view of what constitutes a court record for the purpose of public access. Complaints reveal a wealth of information about how citizens use the judicial branch, how the law exposes citizens to suit or provides paths to judicial remedies, and how conflicts arise in society.

Researchers, for example, benefit from studying civil complaints to identify trends in litigation and methods to improve the court system.<sup>2</sup> Law reform movements analyze civil filings and dispositions to advocate for changes to the law.<sup>3</sup> The general public keeps up with new filings to understand the conflicts, large and small, in the world around them that consume the time and resources of

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<sup>2</sup> See, e.g., Christina L. Boyd, et al., *Building a Taxonomy of Litigation: Clusters of Causes of Action in Federal Complaints* (2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2045733](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045733) (reviewing complaints to “shed light not only on the networks of legal theories in civil litigation but also on how lawsuits are classified and the strategies that plaintiffs and their attorneys employ when commencing litigation”).

<sup>3</sup> See, e.g., Douglas C. Rennie, *Rule 82 & Tort Reform: An Empirical Study of the Impact of Alaska’s English Rule on Federal Civil Case Filings*, 29 Alaska L. Rev. 1 (2012) (analyzing civil filings); Dr. Renzo Comolli & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review* (2014), available at [http://www.nera.com/content/dam/nera/publications/archive2/PUB\\_2013\\_Year\\_End\\_Trends\\_1.2014.pdf](http://www.nera.com/content/dam/nera/publications/archive2/PUB_2013_Year_End_Trends_1.2014.pdf) (analyzing securities filings).

the courts. Contrary to the district court’s ruling, much can be learned about the role the justice system plays in public life by looking at civil complaints.

In federal court, complaints are public instantaneously. In the rare special circumstances where congress has deemed it necessary to delay this immediate public access, such as in a *qui tam* whistleblower lawsuit, where a private plaintiff seeks a government prosecution that needs to be independently vetted, courts consistently reject requests to permanently seal those complaints. This is true even if the government declines to intervene and the relator moves for voluntary dismissal before the complaint is served on the defendants. *See United States ex rel. Littlewood v. King Pharm., Inc.*, 806 F. Supp. 2d 833, 841–42 (D. Md. 2011) (collecting cases and denying a motion to seal). In those circumstances, courts do not hold any proceedings related to the merits of the case — defendants do not even see the pleadings — and yet courts recognize a strong public interest in access to the complaints. Allegations of fraud, even if not yet substantiated, “fall well within the bounds of that which citizens may wish to observe.” *Id.* at 836–37. The policy of making allegations public, and of forcing plaintiffs to identify themselves openly, serves as a deterrent to those committing or those who would commit wrongs, and to those who would bring baseless suits anonymously for improper purposes. So, too, does responsible reporting about civil lawsuits.

The treatment of civil complaints generally reflects the same policy choice. Our judicial system does not have any automatic mechanism to seal complaints, even those that are settled or withdrawn shortly after filing and before any motion practice or hearings conducted before a judge. *See Levenstein*, 164 F.3d at 348. Rather, the system recognizes the value of the public being able to learn about the matters pending before the courts. Anyone may initiate a lawsuit and seek justice from the courts. The consequence of invoking that right is that the public may inspect those court documents.

Timely reporting on newly filed complaints also permits individuals to learn about pending suits and, in some cases, their own legal rights. News consumers may realize that they have been victimized and want to seek a civil remedy, or that they may be able to join an existing civil lawsuit to vindicate their rights. *See* Noreen O'Donnell & Chris Francescani, *Macy's joins Barneys in brewing NYC 'shop-and-frisk' scandal*, Reuters, Oct. 26, 2013, <http://www.reuters.com/article/2013/10/26/us-usa-newyork-barneys-macys-idUSBRE99P08420131026> (reporting that one plaintiff, who alleged that retailers engaged in racial profiling of customers, decided to file his lawsuit after reading news accounts of another plaintiff's similar experience). Timely reporting on new civil complaints could facilitate joinder or interpleader situations, which conserve judicial resources, without undue delay. Moreover, members of the public may discover that they

have personal knowledge of the controversy in the news, and could come forward as a witness for or against the complainant.

Short of getting involved in litigation, the public enjoys a right to comment on matters of public importance. When the public is informed about pending lawsuits, it is able to conduct meaningful debate. *See* Change.org, <https://www.change.org/search?q=lawsuit> (last visited Nov. 6, 2014) (displaying petitions created by individuals or groups demanding that plaintiffs withdraw lawsuits or requesting other actions related to pending lawsuits). Because the news media act as “surrogates for the public,” *Courthouse News Service*, 750 F.3d at 786, denying reporters access to civil complaints on the day they are filed threatens to stifle free speech and public debate at the moment that the complaints are most newsworthy. “[A]ccess to public proceedings and records is an indispensable predicate to free expression about the workings of government.” *Id.* at 785.

As the volume of regular news coverage of lower courts shrinks, *see* Christopher J. Davey, *The Future of Online Legal Journalism: The Courts Speak Only Through Their Opinions?*, 8 I/S J.L. & Pol’y for the Info. Soc’y 575, 585 (2013), the approach taken by Appellant provides an increasingly valuable service to the public and its subscribers. Unnecessary delays in releasing complaints imperil that service.

**C. A ruling against a prompt right of access will harm the press and the public.**

The district court's order, while recognizing that a First Amendment right of access to a civil complaint "could arise under the *Press-Enterprise* test at some point during the course of civil proceedings," stated that such a right might not attach until the complaint was the subject of a hearing to which the First Amendment right of access independently attached. (E.R. at 0009.) The district court favorably cited court rules from various U.S. states permitting courts to provide access to court case files weeks or months after filing. (*Id.* at 0007.) If affirmed, the district court's order threatens the public's right to be informed about the operations of its government in a timely fashion.

One obvious concern of a system in which access is delayed is that certain civil complaints could be withheld from the public for any number of illegitimate reasons, including political or personal motivations. If access were arbitrarily or systemically denied until the complaint became subject to a hearing to which a First Amendment right of access attached independently, the courts could prevent the press and public from discovering the very existence of a lawsuit for months after it was filed, depriving the public of the benefits described above. Without access to complaints, the public exchange of ideas may be restricted or silenced.

**III. Even if the right of access is based on the common law, the news media should be able to review civil complaints promptly.**

Even if the Court determines that federal common law, and not the First Amendment, provides a right of access to civil complaints, the interests outlined above still weigh in favor of immediate access.

In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978), the U.S. Supreme Court “recognized a federal common law right to ‘inspect and copy public records and documents.’” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). In the Ninth Circuit, the common-law analysis begins “with a strong presumption in favor of access to court records,” and the right of access cannot be overridden without “sufficiently compelling reasons for doing so.” *Id.* at 1135. In conducting the analysis, a court must consider “all relevant factors,” including “the public interest in understanding the judicial process,” and must “base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.* (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). District courts in the Ninth Circuit “treat a complaint as a dispositive motion” when making sealing determinations, and apply this “compelling reasons” standard. *Rieckborn v. Velti PLC*, No. 13-cv-3889-WHO, 2014 WL 4964313, at \*2 (N.D. Cal. Oct. 3, 2014).

Here, the presumption of access attaches, and no compelling interest exists to override the public interest in immediate access to civil complaints. As outlined

above, the public has a strong interest in inspecting civil complaints occupying court dockets and consuming public resources. The press has a powerful interest in producing the most accurate reporting possible, to inform the public debate about legal issues and public controversies. At the same time, the Ventura County Superior Court has no legitimate justification for delaying access. *See Courthouse News Service*, 750 F.3d at 791 (describing “a variety of simple measures” that the Ventura County Superior Court could adopt to provide prompt access to complaints). Therefore, even if the common law provides the right of access, the press and public should have immediate access to civil complaints, and the district court should be reversed.

## CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court recognize the First Amendment right of access to civil complaints, which attaches upon filing, and reverse the lower court's dismissal of Plaintiff-Appellant's amended complaint.

Respectfully submitted,

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Appendix B

Dated: November 7, 2014  
Arlington, Va.

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,866 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
  
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Time New Roman font.

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REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS

Dated:       November 7, 2014  
              Arlington, Va.

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on November 7, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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## APPENDIX A

### SUPPLEMENTAL STATEMENT OF IDENTITY OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors working to defend and preserve First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance, and research in First Amendment and Freedom of Information Act litigation since 1970, and it frequently files friend-of-the-court briefs in significant media law cases.

With some 500 members, American Society of News Editors (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The

AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news to the more than 319,000 subscribers to the Bloomberg Professional service worldwide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg distributes news, information, and commentary to

millions of readers and listeners each day, and has published more than one hundred million stories.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company is a diverse, 131-year-old media enterprise with interests in television stations, newspapers, local news and information websites and licensing and syndication. The company's portfolio of locally focused media properties includes: 19 TV stations (ten ABC affiliates, three NBC affiliates, one independent and five Spanish-language stations); daily and community newspapers in 13 markets; and the Washington-based Scripps Media Center, home of the Scripps Howard News Service.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's

mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

First Look Media, Inc. is a new non-profit digital media venture that produces *The Intercept*, a digital magazine focused on national security reporting.

Gannett Co., Inc. is an international news and information company that publishes more than 80 daily newspapers in the United States – including *USA TODAY* – which reach 11.6 million readers daily. The company’s broadcasting portfolio includes more than 40 TV stations, reaching approximately one-third of all television households in America. Each of Gannett’s daily newspapers and TV stations operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

Hearst Corporation is one of the nation’s largest diversified media companies. Its major interests include the following: ownership of 15 daily and 38 weekly newspapers, including the *Houston Chronicle*, *San Francisco Chronicle* and *Albany (N.Y.) Times Union*; nearly 300 magazines around the world, including *Good Housekeeping*, *Cosmopolitan* and *O, The Oprah Magazine*; 29 television stations, which reach a combined 18% of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a

joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

Los Angeles Times Communications LLC publishes the Los Angeles Times, the largest metropolitan daily newspaper in the country. The Los Angeles Times operates the website [www.latimes.com](http://www.latimes.com), a leading source of national and international news.

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

MediaNews Group's more than 800 multi-platform products reach 61 million Americans each month across 18 states.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public

access to government and the work it does. The coalition is a broad-based organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

The New York Times Company is the publisher of *The New York Times*, *The Boston Globe*, and *International Herald Tribune* and operates such leading news websites as [nytimes.com](http://nytimes.com) and [bostonglobe.com](http://bostonglobe.com).

The New Yorker is an award-winning magazine of general interest, published weekly in print, digital, and online. Its writers regularly use information

provided by sources, confidential and non-confidential, to report on matters of state, national, and international importance.

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

The News Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The News Guild is a sector of the Communications Workers of America. CWA is America’s largest communications and media union, representing over 700,000 men and women in both private and public sectors.

North Jersey Media Group Inc. (“NJMG”) is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record*(Bergen County), the state’s second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a

family of glossy magazines, including (201) Magazine, Bergen County's premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Radio Television Digital News Association ("RTDNA") is the world's largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

Stephens Media LLC is a nationwide newspaper publisher with operations from North Carolina to Hawaii. Its largest newspaper is the *Las Vegas Review-Journal*.

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