

U.S. Court of Appeals Docket No. 11-57187

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

COURTHOUSE NEWS SERVICE,

Plaintiff/Appellant,

vs.

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

Defendant/Appellee.

On Appeal from a Decision of the United States District Court
for the Central District of California
Case No. CV11-08083 R
The Honorable Manuel Real

**APPELLANT COURTHOUSE NEWS SERVICE'S
REQUEST FOR JUDICIAL NOTICE**

Roger Myers, Esq.
Rachel Matteo-Boehm, Esq.
David Greene, Esq.
Leila Knox, Esq.
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel: 415-268-2000
rachel.matteo-boehm@bryancave.com

Attorneys for Plaintiff-Appellant
COURTHOUSE NEWS SERVICE

Plaintiff-Appellant Courthouse News Service (“Courthouse News”), in support of its concurrently filed Reply Brief, hereby requests that the Court take judicial notice of the following facts and documents in accordance with Federal Rule of Evidence 201:

1. The Bill History of California Senate Bill 326, from the 2011-2012 Regular Session, accessed from <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml> on September 5, 2012. A true and correct copy is attached hereto as Exhibit A.

2. That no action has been taken on California Senate Bill 326 since September 1, 2011.

3. That California Senate Bill 326 cannot be passed by the California Legislature because the deadline for the Legislature to do so has passed.

Each fact for which judicial notice is sought is not subject to reasonable dispute and is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonable questioned, as explained below.

The Bill History of California Senate Bill 326 can be accessed from the California Legislature’s official website, <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml> on September 5, 2012. It is settled that this Court

“may take judicial notice of . . . matters of public record,” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006), and that “[l]egislative history is properly a subject of judicial notice.” *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012). Defendant-Appellee Michael Planet surely will not contest the appropriateness of this Court taking judicial notice of this document because he sought judicial notice of an earlier version of this same document in the district court. Appellee’s Supplemental Excerpts of Record (“SER”) 24.

The fact that no action has been taken on California Senate Bill 326 since September 1, 2011 is not subject to reasonable dispute and is capable of accurate and ready determination. The Bill History provided by the California Legislature indicates that the last taken on Senate Bill 326 was on September 1, 2011, when the bill was “re-referred to Com. on APPR.” *See* Exhibit A.

The fact that California Senate Bill 326 cannot be passed by the California Legislature because the deadline for the Legislature to do so has passed is also not subject to reasonable dispute and is capable of accurate and ready determination. The California Constitution, art. 4, §10(c), provides, as follows:

Any bill introduced during the first year of the biennium of the

legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

Consistent with this constitutional limitation, the Joint Rules of the Senate and Assembly provides that August 31 of each even-numbered year is the “Last day for each house to pass bills.” Joint Rules of the Senate and Assembly, 2009-10 regular Session (Temporary Joint Rules of the Senate and Assembly, as usage and custom, for the 2011-12 regular Session), Rule 61(b)(17) (available at http://www.leginfo.ca.gov/rules/joint_rules.pdf). Copies of these authorities are included in the Appendix to this Request for Judicial Notice.

None of the exceptions to the constitutional September 1 deadline apply to Senate Bill 326. The previous version of the Bill History already in the record, which was generated using the Legislature’s since-revised Internet interface, indicates that the bill is “non-urgency,” “non-appropriations,” and “non-tax levy.” SER 24. Nor is it subject to reasonable dispute that Senate Bill 326 is not a statute calling an election, nor a bill that was passed after being vetoed by the Governor.

Thus, the last day for either the Senate or Assembly to pass Senate Bill 326 was August 31, 2012. As evidenced by Exhibit A, this deadline passed without Senate Bill 326 advancing out of the Assembly Appropriations Committee.

For the foregoing reasons, Courthouse News requests that the Court, in considering and ruling upon the Appeal, take judicial notice of Items 1, 2, and 3 above, including Exhibit A.

DATED: September 12, 2012

BRYAN CAVE LLP
ROGER MYERS
RACHEL MATTEO-BOEHM
DAVID GREENE
LEILA KNOX

By: /s/ Rachel Matteo-Boehm

Attorneys for Plaintiff-Appellant
Courthouse News Service

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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.

/s/ Rachel Matteo-Boehm