

Appeal No. 11-57187

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

COURTHOUSE NEWS SERVICE,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HONORABLE MANUEL L. REAL
CASE NO. 11-08083**

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD

Robert A. Naeve
Erica L. Reilley
Nathaniel P. Garrett
JONES DAY
3161 Michelson Drive
Suite 800
Irvine, CA 92612-4408
Telephone: +1.949.851.3939
Facsimile: +1.949.553.7539
E-mail: rnaeve@jonesday.com

Attorneys for Defendant-Appellee
MICHAEL PLANET

COURTHOUSE NEWS SERVICE V. PLANET
(No. 11-57187)

INDEX TO SUPPLEMENTAL EXCERPTS OF RECORD

Docket No.	Date	Description	Page
22	10/20/2011	Defendant's Request for Judicial Notice in Support of Motion to Dismiss and Abstain	1
25-1	10/31/2011	Declaration of Julie Camacho in Support of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction	29
25-2	10/31/2011	Declaration of Cheryl Kanatzar in Support of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction	45
25-3	10/31/2011	Declaration of Karen Dalton-Koch in Support of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction	88
25-4	10/31/2011	Declaration of Robert Sherman in Support of Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction	109

Docket No.	Date	Description	Page
24	10/31/2011	Plaintiff Courthouse News Service's Opposition to the Motion to Dismiss and Abstain of Defendant Michael Planet	118

1 Robert A. Naeve (State Bar No. 106095)
2 rnaeve@jonesday.com
3 Erica L. Reilley (State Bar No. 211615)
4 elreilley@jonesday.com
5 JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
Facsimile: (949) 553-7539

6 Attorneys for Defendant
7 MICHAEL PLANET, IN HIS OFFICIAL
8 CAPACITY AS COURT EXECUTIVE
OFFICER/CLERK OF THE VENTURA
COUNTY SUPERIOR COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COURTHOUSE NEWS SERVICE.

Plaintiff,

V₂

MICHAEL PLANET, IN HIS
OFFICIAL CAPACITY AS COURT
EXECUTIVE OFFICER/CLERK OF
THE VENTURA COUNTY
SUPERIOR COURT

Defendant

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE IN
SUPPORT OF MOTION TO
DISMISS AND ABSTAIN**

Date: November 21, 2011
Time: 10:00 a.m.
Courtroom: 8

1 Pursuant to Federal Rule of Evidence 201, and in support of his concurrently
2 filed Motion to Dismiss and Abstain, defendant Michael D. Planet, in his official
3 capacity as Executive Officer and Clerk of the Superior Court of California, County
4 of Ventura, respectfully requests that the Court take judicial notice of the following
5 documents:

- 6 1. California Senate Bill 326, from the 2011-2002
7 Regular Session (as amended September 1, 2011),
8 available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_bill_20110901_amended_asm_v95.pdf. A true and correct copy
9 of this document is attached hereto as Exhibit A.
- 10 2. The California Senate Judiciary Committee's May
11 3, 2011 Bill Analysis of Senate Bill 326 (as
12 amended April 25, 2011), available at
13 http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_cfa_20110502_142806_sen_comm.html. A true and correct copy of this
14 document is attached hereto as Exhibit B.
- 15 3. Letter from the Judicial Council of California,
16 Administrative Office of the Courts, to the Senate
17 Judiciary Committee, dated April 27, 2011. A true
18 and correct copy of this document is attached
19 hereto as Exhibit C.
- 20 4. Letter from the Judicial Council of California,
21 Administrative Office of the Courts, to the
22 Assembly Judiciary Committee, dated June 9,
23 2011. A true and correct copy of this document is
24 attached hereto as Exhibit D.
- 25 5. The Bill History of California Senate Bill 326, from
26 the 2011-2002 Regular Session, available at
27 http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_bill_20110901_history.html. A true and correct copy of
28 this document is attached hereto as Exhibit E.

Request for Judicial Notice in Support of
Motion to Dismiss and Abstain
Case No. CV 11-08083 R (MANx)

Administrative Office of the Courts, to the Senate Judiciary Committee, dated August 8, 2011. A true and correct copy of this document is attached hereto as Exhibit F.

“A court shall take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b).

The Court “may take judicial notice of court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Exhibits A, B, and E are matters of public record. Further, they are not reasonably subject to dispute. Thus, they are the proper subject of judicial notice pursuant to Rule 201 of the Federal Rules of Evidence.

The Court may also take judicial notice of the contents of administrative bodies' records, as well as those documents that establish the dates upon which the administrative bodies take action, where the record's contents or the action's dates are not subject to reasonable dispute. See *City of Las Vegas, Nev. v. F.A.A.*, 570 F.3d 1109, fn. 1 (9th Cir. 2009) (taking judicial notice of document that established date administrative office approved waiver); *Jimenez v. Domino's Pizza, Inc.*, 238 F.R.D. 241, 246 (C.D. Cal. 2006) (taking judicial notice of contents of opinion letter issued by Division of Labor Standards Enforcement). Exhibits C, D, and F are records from the Judicial Council of California, Administrative Office of the Courts. Further, their existence is not reasonably subject to dispute. Thus, they are the proper subject of judicial notice.

1111

1111

1 For the foregoing reasons, Defendant requests that, in considering and ruling
2 upon his concurrently filed Motion to Dismiss and Abstain, the Court take judicial
3 notice of Exhibits A through F, attached hereto.

4 Dated: October 20, 2011 JONES DAY

5
6 By: /s/ Robert Naeve
7 Robert A. Naeve

8 Attorneys for Defendant
9 MICHAEL PLANET, IN HIS
10 OFFICIAL CAPACITY AS COURT
11 EXECUTIVE OFFICER/CLERK OF
12 THE VENTURA COUNTY
13 SUPERIOR COURT

14 LAI-3151596

15
16
17
18
19
20
21
22
23
24
25
26
27
28

Request for Judicial Notice in Support of
Motion to Dismiss and Abstain
Case No. CV 11-08083 R (MANx)

EXHIBIT A

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 22, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 326

Introduced by Senator Yee
(Coauthor: Assembly Member Dickinson)

February 14, 2011

An act to add Chapter 1.45 (commencing with Section 68180) to Title 8 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as amended, Yee. Court records: public access.

Existing law requires the Judicial Council to adopt rules of court to establish the standards and guidelines for the creation, maintenance, reproduction, and preservation of court records, and requires that these standards and guidelines reflect industry standards for each medium used, ensure the accuracy and preserve the integrity of the records, and ensure that the public can access and reproduce the records. Specifically, unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under specified provisions are required to be made reasonably accessible to all members of the public for viewing and duplication, and electronic court records must be viewable at the court, whether or not they are accessible remotely. Additionally, rules of court require courts to provide public access to electronic records, as specified.

This bill would require the Judicial Council, in consultation with stakeholder groups, and within 18 months of the date of enactment of

SB 326

— 2 —

this act, to adopt a rule of court to require courts to provide the public with same-day access to case-initiating civil and criminal court records, as defined, *at no cost to the requester*, for viewing at the courthouse. ~~The bill would require the rule to allow a court to charge a nominal fee for providing a copy of these records.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Timely public access to court records and documents as
4 public documents is an important right and necessity for an
5 informed citizenry.

6 (b) The use of new electronic technologies for filing court
7 actions and modernizing access to court records can, while intended
8 to streamline and improve court functions and public access to
9 court records, actually result in delays in access to court documents.

10 (c) Delays in public access to court documents and filings should
11 be minimized, therefore ensuring free flow of public information
12 in a timely and cost-effective manner.

13 (d) Delays in public access to case-initiating documents have a
14 special significance because those documents are the means by
15 which the public becomes aware that the powers of the judiciary
16 have been invoked with respect to a particular controversy or crime.
17 However, the use of electronic technologies for filing court actions
18 and modernizing access to court records have in many instances
19 had the unintended consequence of increasing delays in access to
20 those case-initiating court records.

21 (e) It is the intent of the Legislature to ensure, as California's
22 courts move forward to implement various electronic filing and
23 other technologies, that case-initiating documents, as well as other
24 court filings and documents, continue to be available to the public
25 on a timely basis.

26 SEC. 2. Chapter 1.45 (commencing with Section 68180) is
27 added to Title 8 of the Government Code, to read:

1 **CHAPTER 1.45. ACCESS TO CASE-INITIATING TRIAL COURT**
2 **RECORDS**

3
4 68180. The following definitions apply to this chapter:

5 (a) (1) “Case-initiating civil and criminal court records” means
6 all of the following:

7 (A) Any complaint or petition in an unlimited civil case, as
8 defined in Section 88 of the Code of Civil Procedure.

9 (B) Any writ petition, as provided for in Title 1 (commencing
10 with Section 1067) of Part 3 of the Code of Civil Procedure.

11 (C) Any indictment, information, or complaint in felony and
12 misdemeanor criminal actions.

13 (2) “Case-initiating civil and criminal court records” includes
14 both electronic and nonelectronic records.

15 (3) For the purposes of this chapter, “case-initiating civil and
16 criminal court records” does not include records that are sealed or
17 proposed to be sealed by court order and are confidential in
18 accordance with Rules 2.550 and 2.551 of the California Rules of
19 Court, or that are otherwise made confidential by law, including,
20 but not limited to, juvenile court records made confidential by
21 Section 827 of the Welfare and Institutions Code, Child Support
22 Case Registry Forms, as developed by the Judicial Council pursuant
23 to Section 4014 of the Family Code, adoption records made
24 confidential by Section 9200 of the Family Code, pleadings in
25 child custody proceedings containing information made
26 confidential by Section 3429 of the Family Code, determination
27 of parentage records made confidential by Section 7643 of the
28 Family Code, child and spousal support enforcement program
29 records made confidential by Section 17212 of the Family Code,
30 or any other case-initiating document that is confidential by law.

31 (b) “Public” means an individual, a group, or an entity,
32 including, but not limited to, the print or electronic media, or the
33 representative of an individual, group, or entity.

34 68181. (a) The Judicial Council, in consultation with
35 stakeholder groups, shall adopt, within 18 months of the date of
36 enactment of the act adding this section, a rule or rules of court to
37 require courts to provide the public with same-day access to
38 case-initiating civil and criminal court records, *at no cost to the*
39 *requester*; for viewing at the courthouse. To the extent possible
40 and practicable, the rule or rules shall provide for same-day access

SB 326

— 4 —

1 to those records that are received by the court within 30 minutes
2 of the court closing for that day. However, in no case shall these
3 records be made available later than 60 minutes after the court
4 opens the next court day.

5 ~~(b) The rule or rules shall allow a court to charge a nominal fee~~
6 ~~for providing a copy of these records, if a copy is requested at the~~
7 ~~courthouse.~~

8 ~~(e)~~

9 *(b)* The Legislature specifically recognizes the importance of
10 timely access not just to case-initiating civil and criminal court
11 records, but to all court records and documents. Nothing in this
12 statute or in the rule or rules of court to be adopted pursuant to this
13 statute may be construed to limit or otherwise negatively affect
14 the public's right of timely access to court records as a general
15 matter.

O

EXHIBIT B

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Senator Noreen Evans, Chair
2011-2012 Regular Session

SB 326 (Yee)
As Amended April 25, 2011
Hearing Date: May 3, 2011
Fiscal: Yes
Urgency: No
TW

SUBJECT

Court Records: Public Access

DESCRIPTION

This bill would require the Judicial Council of California to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records, as defined, by no later than the end of the day on which those records are received by the court.

BACKGROUND

Courts have long held that the public has a right of access to court records. The California Supreme Court stated that "it is a first principle that the people have the right to know what is done in their courts." (In re Shortridge (1893) 99 Cal. 526, 530.) Public access is necessary because "if public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism." (Estate of Hearst v. Trustees of Hearst Testamentary Trust (1977) 67 Cal.App.3d 777, 784.)

The right of public access to court records begins when the court record is filed with the court. (Bank of America National Trust & Savings Association v. Hotel Rittenhouse Associates (1986) 800 F.2d 339, 345.) Further, "While the courts have an inherent right to control their own records, preclusion from public inspection is permitted only upon a showing that revelation would tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." (Copley Press, Inc. v. Superior Court (1992) 6

(more)

[]

SB 326 (Yee)
Page 2 of ?

Cal.App.4th 106, 111.)

Although the public has a well-founded right of access to court records, the author reports increasing delays in public access to court records, with some courts apparently delaying public access to as much as one month for newly filed complaints.

This bill, sponsored by Californians Aware, Courthouse News Service, and the First Amendment Coalition, would require the Judicial Council of California to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records, as defined, by no later than the end of the day on which those records are received by the court.

CHANGES TO EXISTING LAW

Existing law, the California Constitution, declares the people's right of access to information concerning the conduct of the people's business. (Cal. Const., art I, sec. 3.)

Existing law provides that, unless access is otherwise restricted by law, court records shall be made reasonably accessible to all members of the public for viewing and duplication in paper or electronic form. (Gov. Code Sec. 68150(1).)

Existing law provides that court records sealed by court order are not open to public inspection. (Cal. Rules of Court, rule 2.550.)

Existing law provides that, unless confidentiality is required by law, court records are presumed to be open. (Cal. Rules of Court, rule 2.550.)

This bill would define "case-initiating civil and criminal court

"records" to mean: (1) any complaint or petition filed in an unlimited civil case; (2) any petition for writ of review; and (3) any indictment, information, or complaint in felony and misdemeanor criminal actions. This definition would include both electronic and nonelectronic records.

This bill would provide that "case-initiating civil and criminal court records" does not include records sealed or proposed to be

□

SB 326 (Yee)
Page 3 of ?

sealed by court order and are confidential under existing law, including but not limited to, certain juvenile court records, adoption records, child custody pleadings, and child and spousal support enforcement records.

This bill would require the Judicial Council to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records on the same day on which these records were filed in either paper or electronic form.

COMMENT

1. Stated need for the bill

The author writes:

ÝT]he problem to be remedied is a drastic and widespread deterioration in the timeliness of public access to court records. In the case of newly filed civil complaints, a delay in access effectively hides from the public the fact that a new lawsuit has been initiated. These delays in access are an obvious matter of concern to the news media, who are deprived of the ability to inform other interested members of the public on the business of the courts while it is still newsworthy. They are also a problem for the parties to the proceeding, who may not be able to learn about a court filing that directly impacts them until they receive service of the filing days - or even weeks - later. And delays in access may also impact those in the business and legal community who may be indirectly affected by a legal proceeding.

Finally, delays in access hinder the public's ability to oversee the activities of an important branch of government while those activities are still current, thus impairing the self-government that is so essential to the functioning of our democratic form of government.

Courthouse News Service, a sponsor of this bill, writes:

Courthouse News has directly experienced the deterioration of timely access to the civil court record. Its reporters make regular (in many cases, daily) in-person visits to courthouses throughout California to review newly filed civil complaints and determine which ones merit news coverage. When Courthouse

□

SB 326 (Yee)
Page 4 of ?

News has encountered access delays, its first step has always been to try to resolve those delays through cooperative discussions with court staff. In the past, these efforts have worked well, usually leading to solutions that ensured that interested persons could review and report on new civil complaints in a timely manner without imposing any significant cost or burden on courts.

In the last few years, however, Courthouse News has seen a fundamental shift in the landscape. Procedures that traditionally promoted timely access are unceremoniously dismantled or scaled back. And while Courthouse News has continued its attempts to resolve these problems through discussions with court staff, these efforts are becoming increasingly unproductive. Repeatedly, a solution reached after months of work with a particular court administrator disintegrates as soon as he or she leaves the court, and the delays return. Other courts have simply refused to improve access altogether.

2. Providing same-day public access to court records

This bill would require courts to provide access to case-initiating civil and criminal court records on the same day on which the court records were filed with the court. Existing law provides the public with reasonable access to court records. (Gov. Code Sec. 68150.) However, "reasonable access" is not defined under existing law. Proponents of this bill argue that,

while some courts are providing same-day access to court records, many other courts have failed and refused to provide a system whereby the public has access to court record information in a timely manner. The sponsors report that courts are claiming that the use of electronic technologies for filing court actions and modernizing access to court records have in many instances increased delays in access to such case-initiating court records.

The Judicial Council, an opponent of this bill, states that the same-day access provision of this bill "would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records. . . . SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing to accomplish this objective. . . . Requesting a court record filed minutes before the court closes to be available to the public that same day at the courthouse is

□

SB 326 (Yee)
Page 5 of ?

simply a logistical impossibility."

The author argues that the courts in years past have simply placed the day's court records "in a designated media bin that reporters would check at the end of the day as part of their regular courthouse news beat." However, some courts now claim they are unable to provide immediate access to court records through the media bin process. Proponents of this bill argue that one cost-effective way to provide same-day public access to newly filed court records is to require the filing parties to provide an additional copy of the documents being filed, which would be placed into a bin for public access.

That proposed alternative raises several logistical and other issues, however. Existing law requires court records to be created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance, and these court records must be indexed for convenient access. (Gov. Code Sec. 68150.) The Judicial Council argues that existing law requires newly filed court records to be created and maintained properly, and providing a bin with copies of these records for the public's review and potential disintegration of these court record copies contravenes the public's access to the complete records. Many courts are understaffed and would be unable to provide additional staff to supervise the court records copy bin to police the public's review of the records.

Further, copies of documents that are confidential by operation of law must be flagged and separated from court records that would be placed in the public review bin. Most importantly, requiring filing parties to provide an additional courtesy copy to be placed into a public review bin "would be unduly burdensome for litigants and thereby diminish access to justice [and] would impose significant workload burdens for courts to manage this flow of paper."

The proponents of this bill reiterate that the public has a constitutional right to access court records, regardless of how the court manages to provide such access. They point to a recent court case that held that a court failing to provide access to newly-filed case-initiating court records was in violation of the party's constitutional rights, which constitutes irreparable harm. (Courthouse News Service v. Jackson (S.D. Tex. 2010) 38 Media L. Rep. 1894.) The Jackson court entered a permanent injunction and final judgment

□

SB 326 (Yee)
Page 6 of ?

providing that the Harris County District Clerk's Office was enjoined from denying Courthouse News with all petitions and case-initiating documents in civil cases filed and received by the clerk's office between midnight and the time the clerk's office closes (5:00 p.m. Central Standard Time, Monday through Friday), except in the following circumstances:

- (1) where the filing party is seeking emergency relief, such as a temporary restraining order, the document has been sealed or deemed confidential;
- (2) where the clerk's office is in critical staffing mode or completely closed for business due to inclement weather, building evacuation or other emergency;
- (3) where a party has electronically filed a case-initiating document with a third-party provider but the document has not been received by the clerk's office;
- (4) where a case-initiating document has been rejected for lack of a filing fee and immediately returned to the filing

party; and
(5) where other extraordinary circumstances outside the control of the clerk's office make compliance literally impossible. (Id. at pgs. 3-4.)

Proponents of this bill argue that the provision of this bill that would provide same-day public access to court records is already being followed by a number of courts, and this bill, which is consistent with what other courts such as the Jackson court are determining as constitutional, is necessary to make sure the public has access to court records in all state courts.

In order to address the concerns that the "same-day" access provision of this bill is unworkable and impractical, the committee may wish to consider the following amendments, which provide a more realistic approach to providing same-day access. Further, after full implementation of the California Case Management System, the courts should be able to provide timely public access to case-initiating civil and criminal court records more easily and quickly.

Suggested Amendments :

1. On page 4, strike lines 17 through 28.
2. On page 4, on line 17 insert:

68181. (a) The Judicial Council, in consultation with stakeholder groups, shall adopt, within 18 months of

□

SB 326 (Yee)
Page 7 of ?

enactment of this Act, a rule or rules of court to require courts which have fully implemented the California Case Management System to provide, to the extent possible and practicable, the public with same-day access to case-initiating civil and criminal court records.

3. Limited definition of court records to be made publicly available under the provisions of this bill

This bill would require courts to make case-initiating civil and criminal court records publicly accessible in either paper or electronic form. Exempt from the definition of case-initiating civil and criminal court records are documents that are sealed or proposed to be sealed by court order or are confidential by operation of existing law. Existing law provides that documents under seal or requested to be under seal and court records made confidential by operation of law are to be withheld from public access. (Cal. Rules of Court, rule 2.550.) Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Fam. Code Sec. 1818(b)), juvenile court records (Welf. & Inst. Code Sec. 827), and search warrant affidavits sealed under People v. Hobbs (1994) 7 Cal.4th 948.

As introduced, this bill did not provide restrictions for sealed and confidential documents that are withheld from public access under existing law. The Los Angeles County District Attorney's Office expressed concern over this lack of restrictions, but stated its support of the bill as long as the bill was amended to exempt sealed and confidential court records from the provisions of the bill. The Judicial Council also expressed concern over the unlimited right of public access to court records under the introduced bill. Although this bill has been amended to provide protections under existing law for sealed and confidential records, the Judicial Council remains opposed to this bill because the court clerks, in addition to the other existing intake procedure requirements, would have to determine whether the document being filed was a document falling under the definition of a case-initiating document, which would further slow down the intake procedure and add additional burdens to the already strained court system.

Support : California Newspaper Publishers Association; Los Angeles County District Attorney's Office

□

SB 326 (Yee)
Page 8 of ?

Opposition : Judicial Council of California

HISTORY

Source : Californians Aware; Courthouse News Service; First Amendment Coalition

Related Pending Legislation : None Known

Prior Legislation : None Known

EXHIBIT C



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

April 27, 2011

CURTIS L. CHILD
Director, Office of Governmental Affairs

Hon. Noreen Evans, Chair
Senate Judiciary Committee
State Capitol, Room 4034
Sacramento, California 95814

Subject: SB 326 (Yee), as amended April 25, 2011 – Oppose
Hearing: Senate Judiciary Committee – May 3, 2011

Dear Senator Evans:

I regret to inform you that the Judicial Council continues to oppose SB 326 as amended April 25th, which would require the Judicial Council to adopt a rule of court requiring courts to make case initiating documents in civil and criminal matters available for public inspection at the courthouse no later than the end of the same day on which those records are received by the court. The council believes that SB 326 would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records.

The sponsors of SB 326 allege that courts are increasingly failing to provide same-day access to "case-initiating documents" and that the failure to provide such access is "contrary to the fundamentally public nature of adjudicative court records." While the council strongly favors timely public access to court records that are subject to public disclosure, SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing.

Many courts make court records available within one court day of their filing, yet this turnaround time is deemed insufficient by the sponsors of SB 326. They assert that courts are performing "an ever-growing list of additional administrative tasks that they have interposed between the

Hon. Noreen Evans
April 27, 2011
Page 2

filings of a document and its being made available to the public and the press.” Yet the courts note that one of those tasks may be the optical scanning of the document so that it can be made available to the public electronically and remotely in those cases in which remote access is appropriate. Providing remote electronic access to all on a next-day basis may better promote the objective of public access and accountability than reallocating resources to prioritize same-day access to paper records at the courthouse to those few who can come to the courthouse on a daily basis. However, the findings in SB 326 specifically lament the delays that may result from the use of electronic technologies. The council believes that any minor time delays are more than outweighed by the substantial public benefit to the public of providing electronic access to court records.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g. it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 has been amended to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received.

Sponsors have suggested that courts can simply collect newly filed records in a box while they await processing and provide access to those files on that basis. The courts, however, note that it is not appropriate to subject those records to unsupervised review before the court has entered sufficient information to protect the accuracy and integrity of the record. The only way for courts to comply with this standard would appear to be to require that all parties submit two copies of any document filed with the court. Yet, even this mandate, which would be unduly burdensome for litigants and thereby diminish access to justice, would impose significant workload burdens for courts to manage this flow of paper and sort those filings that are confidential from those that are not.

It is also critical to note that many court filings are not readily available for public access on the same day they are filed because the court needs to act upon them in a timely manner. Requests for temporary restraining orders for domestic violence, elder abuse, and civil harassment must be acted upon by the court on the day that they are filed unless they are filed too late in the day for the court to act upon them. Taking action on these matters before they become publicly available is an appropriate course of action, and best serves the interest of the underlying statutes that seek to provide immediate protection to those who need it. Criminal filings for in-custody defendants

Hon. Noreen Evans
April 27, 2011
Page 3

must lead to a timely arraignment of those defendants, and the court needs the filing in order to process the case and complete the arraignment. Courts need the flexibility to prioritize these critical functions and to provide access to the records within a reasonable time frame.

Finally, SB 326 provides no relief to courts for records that are filed late in the day. Requiring a court record filed minutes before the court closes to be available to the public that same day at the courthouse is simply a logistical impossibility. As amended, SB 326 continues to include these time sensitive filings, and fails to address how public access could be provided when the filing occurs late in the day. Would courts be forced to reduce the hours in which filings are accepted in order to create enough time to make new filings available before the courthouse closes? SB 326, with its singular emphasis on same day access would force courts to consider such illogical approaches.

The council is continuing to gather information on the costs to implement SB 326 on a statewide basis, but would note that even as amended, SB 326 would require approximately 2.5 million filings to be made available to the public on the day that they are filed. To complete the necessary processing of these filings would impose tremendous burdens on court operations at a time when courts are facing significant budget reductions. Many of our courts are seeing an increase in filings at the same time that they are laying off staff and/or leaving many positions vacant. Implementation of SB 326 in that context would have very negative impacts on the courts and require significant additional staff to accomplish its objectives without major disruptions and delays in all other areas of court operations.

For these reasons, the Judicial Council opposes SB 326.

Sincerely,



Tracy Kenny
Attorney

TK/yt

cc: Members, Senate Judiciary Committee

Hon. Leland Yee, Member of the Senate

Ms. Tara Welch, Counsel, Senate Judiciary Committee

Mr. John O'Malley, Courthouse News Service

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy

EXHIBIT D



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393

Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

June 9, 2011

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: SB 326 (Yee), as amended May 10, 2011 – Neutral

Dear Assembly Member Feuer:

The Judicial Council is pleased to inform you that it has removed its opposition to SB 326 and adopted a neutral position on the bill as it was amended on May 10th. SB 326 requires the Judicial Council, within 18 months of enactment of the legislation, to adopt a rule of court that would require courts that have fully implemented the California Case Management System (CCMS) to provide, to the extent possible and practicable, same day access to specified civil and criminal case initiating documents. The council was opposed to prior versions of SB 326 because they would have required all courts, regardless of their technology infrastructure, to make court filings available on the day that they were received by the court without exception. A number of concerns with this approach were raised which included: (1) the scope of records to be provided was overly broad and included high volume filings such as traffic tickets which are of little public interest, (2) courts cannot make records available before they have received preliminary processing and given resource constraints and current technology, that may take more than a day, (3) some filings need to be acted upon by the court immediately and cannot be made available until that action is complete, and (4) the introduced version of the bill made no exception for documents that are confidential as a matter of law.

Hon. Mike Feuer
June 9, 2011
Page 2

The May 10th version of SB 326 addresses each of these concerns. The scope of the records to be made available has been limited and does not include limited civil or small claims filings or any infractions, and it only encompasses “case initiating documents”, thus excluding the many other filings received by the court in these cases. The requirement that the mandate to make the records available would only apply in those courts that have fully implemented CCMS will address many of the case processing issues that were raised with the prior version. With electronic filing, and an electronic document management system, CCMS will significantly expedite the time it takes to make a record available to the public and reduce the workload burden on the courts to accomplish initial case processing. Yet even with CCMS, it is clear that there will be circumstances in which courts cannot meet a same day mandate, and the SB 326 amendments address this situation as well, by requiring such access only to the extent “possible and practicable.” Thus courts who are unable to meet this requirement because the court had to act on the filing before it could be made public, or simply because the filing came too late in the day to be made available on that same day, will not run afoul of the requirements to be developed pursuant to this legislation.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its current form, SB 326 strikes a balance and will require timely public access without placing undue burdens on the courts that must provide this access. As a result, it is no longer necessary for the council to oppose SB 326, and we have adopted a neutral position on the May 10th amended version of the bill.

Sincerely,



Tracy Kenny
Attorney

cc: Members, Assembly Judiciary Committee
Hon. Leland Yee, Member of the Assembly
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research
Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy

EXHIBIT E

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 326

AUTHOR : Yee

TOPIC : Court records: public access.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2011

Sept. 1 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.
Aug. 25 Set, second hearing. Placed on APPR. suspense file. Held in committee and under submission.
Aug. 22 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.
Aug. 17 Hearing postponed by committee.
July 6 Set, first hearing. Hearing canceled at the request of author.
June 21 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To consent calendar. (Ayes 10. Noes 0.) (June 21). Re-referred to Com. on APPR.
June 9 Referred to Com. on JUD.
June 1 In Assembly. Read first time. Held at Desk.
May 31 Read third time. Passed. (Ayes 39. Noes 0. Page 1184.) Ordered to the Assembly.
May 24 Read second time. Ordered to third reading.
May 23 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
May 13 Set for hearing May 23.
May 10 Read second time and amended. Re-referred to Com. on APPR. (Corrected May 11.)
May 9 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 0. Page 860.) (May 3).
Apr. 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
Apr. 21 Set for hearing May 3.
Feb. 24 Referred to Com. on JUD.
Feb. 15 From printer. May be acted upon on or after March 17.
Feb. 14 Introduced. Read first time. To Com. on RLS. for assignment. To print.

EXHIBIT F



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

August 8, 2011

CURTIS L. CHILD
Director, Office of Governmental Affairs

Hon. Felipe Fuentes, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: SB 326 (Yee), as proposed to be amended – Oppose/Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – August 17, 2011

Dear Assembly Member Fuentes:

The Judicial Council regrets to inform you that it has renewed its opposition to SB 326 as it is proposed to be amended because the requirement that courts make initial case filings available on a same day basis would be completely unworkable for the courts. In order to secure passage of SB 326 from the Senate Judiciary Committee, the author accepted amendments to the bill that made the same day access rule contingent upon a court having fully implemented the California Court Case Management System (CCMS). The amendments also provided these courts with the flexibility to implement this requirement “to the extent possible and practicable.” In requesting those amendments, the Senate Judiciary Committee was clear that while timely public access is critical, it is unreasonable to mandate immediate access at the same time that the Legislature is imposing substantial cuts to the budgets of the trial courts. The current amendments to SB 326 would eliminate the provisions relating to CCMS, and only allow courts flexibility on the same day access requirement until the first hour of the next court day. Thus the amended version of SB 326 would require courts, regardless of their technology infrastructure, to process and make available to the public most new civil and criminal filings within the same day or the first hour of the next day without exception. Subsequent to the Senate Judiciary Committee hearing, the ongoing cuts to the judicial branch in the budget were increased by an additional \$150 million.

Hon. Felipe Fuentes

August 8, 2011

#459

Page 2

Most courts were not in a position to comply with the same day mandate in SB 326 before these additional cuts were enacted, but in the face of even deeper reductions, courts will not have sufficient staff available to fulfill the requirements of SB 326.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g., it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 is being proposed to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received. While the amendments would allow the court one additional hour to complete these tasks on the following day, that level of flexibility is not sufficient given the resource shortages that courts currently face. In order to comply, courts would need to hire significantly more staff at a substantial cost.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its prior form, SB 326 struck a reasonable balance that would have required timely public access without placing undue burdens on the courts that must provide this access. The proposed amendments eliminate that balance and make SB 326 unworkable and very costly for the courts.

Fiscal Impact

In light of the \$350 million budget cut to the judicial branch for FY 2011-2012, and the corresponding reductions in court staff and operating hours necessitated by that budget cut as well as the budget reductions imposed in the last several years, the additional tasks imposed by this measure on the trial courts cannot realistically be accomplished without: (1) diverting existing court resources from other current constitutional and statutory responsibilities (resulting in burgeoning delays in processing of civil and criminal cases), or (2) additional court staff. While the number of additional court staff needed to comply with the requirements of SB 326 will vary from court to court, we estimate that the cost for additional court staff on a statewide basis would be between \$5 – 10 million, annually. The additional ongoing costs may be mitigated to the extent that an improved court case management system is implemented in certain trial courts in future years.

Hon. Felipe Fuentes

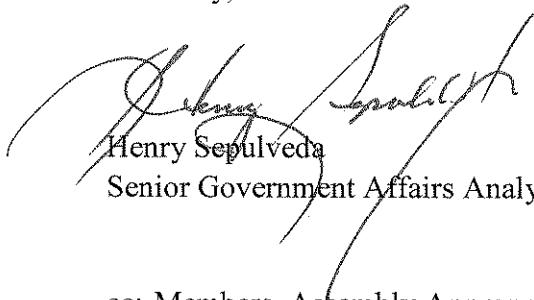
August 8, 2011

Page 3

#460

Please contact Tracy Kenny or me at 916-323-3121, or at henry.sepulveda@jud.ca.gov, or tracy.kenny@jud.ca.gov if you would like further information or have any questions about the impact of this legislation on the judicial branch.

Sincerely,



Henry Sepulveda

Senior Government Affairs Analyst

cc: Members, Assembly Appropriations Committee

Hon. Leland Yee, Member of the Senate

Ms. Susan Chan, Office of Senator Leland Yee

Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee

Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office

Mr. Michael Miyao, Budget Analyst, Department of Finance

1 Robert A. Naeve (State Bar No. 106095)
2 rnaeve@jonesday.com
3 Erica L. Reilley (State Bar No. 211615)
elreilley@jonesday.com
3 JONES DAY
4 3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
5 Facsimile: (949) 553-7539

6 Attorneys for Defendant
7 MICHAEL PLANET, IN HIS OFFICIAL
CAPACITY AS COURT EXECUTIVE
OFFICER/CLERK OF THE VENTURA
8 COUNTY SUPERIOR COURT

9
10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13 COURTHOUSE NEWS SERVICE,

14 Plaintiff,

15 v.

16 MICHAEL PLANET, IN HIS
17 OFFICIAL CAPACITY AS COURT
EXECUTIVE OFFICER/CLERK OF
18 THE VENTURA COUNTY
SUPERIOR COURT,

19 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DECLARATION OF JULIE
CAMACHO IN SUPPORT OF
DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: November 21, 2011
Time: 10:00 a.m.
Courtroom: 8

20
21
22
23
24
25
26
27
28
Declaration of Julie Camacho ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1 I, JULIE CAMACHO, hereby declare as follows:

2 1. I am a Court Program Manager for the Superior Court of the State of
3 California, County of Ventura (the “Ventura Superior Court”). I am responsible for
4 overseeing the operations of the civil, small claims and appeals units of the Ventura
5 Superior Court and the Court Processing Assistants (“CPAs”) who work at the Hall
6 of Justice, the primary courthouse location. I have personal knowledge of the facts
7 stated in this Declaration, and I could and would competently and truthfully testify
8 to these facts if called upon to do so.

9 2. It is my understanding that Plaintiff Courthouse News Service
10 (“CNS”) claims in this action that it has a right to “same-day access” of all newly
11 filed unlimited civil complaints, and that Ventura Superior Court’s processes have
12 led to “significant” delays in CNS’s access to those court records.

13 3. Specifically, I understand that CNS claims that, during the period of
14 August 8, 2011, through September 2, 2011, CNS’s reporter, Juliana Krolak,
15 reviewed 152 newly filed unlimited civil complaints and that CNS received same-
16 or next-day access in only a small fraction of those complaints.

17 4. I conducted my own independent analysis of the new unlimited
18 general civil complaints that were filed by the Ventura Superior Court at the Hall of
19 Justice courthouse between August 8, 2011, and September 2, 2011, and I report
20 the results of that analysis here. In general, my analysis showed exactly the
21 opposite of what CNS claims. The overwhelming bulk (more than 75%) of new
22 complaints were received, processed and sent to the Media Bin on the same or next
23 day.

24 5. I conducted my analysis by first performing searches within our Court
25 Case Management System (“CCMS”) to locate all the unlimited general civil cases
26 that were filed by the Ventura Superior Court at the Hall of Justice courthouse on
27 each court day during the relevant period. That search generated the following type
28 of exemplar screen shot:

Declaration of Julie Camacho ISO
Deft’s Opp. to Plf’s Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

Case Search

Case Accounting Calendar Courtroom Operations Judicial Officers Portals/Fatty Reports Forms Admin Work Queue ThinSlice October 18, 2011

Contact Us Log Out Case [2011] Legacy # [] Help []

Welcome, Jeannie Schiebel

Case

Case Search

Appeals

Associate Cases

Batch Case History Entries

Discardable Cases

Initiate Case

Initiate Legacy Case

Initiate Pseudo Case

Maintain Reserved Case Numbers

NSP List

Records Management

Search Pseudo Case

Transfer Cases

Will/Estate Plans

Case Number: [2011] **Legacy Number:** []

Case Category: [CIV - Unlabeled] **Case Type:** []

Case Sub Type: [] **Resource Position:** [] **Resource Name:** []

Case Status: [] **Location:** [Venture] []

Filed Date From: [08/08/2011] **To:** [08/08/2011] []

Participant 1: Category: [Person] First Name: [] Middle Name: [] Last Name: [] Sounds Like

^CMS ID Number: [] **Role:** []

Participant 2: Category: [Person] First Name: [] Middle Name: [] Last Name: [] Sounds Like

^CMS ID Number: [] **Role:** []

^ indicates a search item that can be used "with or without" any other search items listed above. A search not utilizing a "^\" marked item must be a combination of at least 2 or more other items.

Search Results

<input type="checkbox"/> Case Number	Short Case Title	Filed Date
<input type="checkbox"/> 56-2011-00401750-CJN/PA-VTA	Flaxton Morales VS Sonia Lopez	08/08/2011
<input type="checkbox"/> 56-2011-00401796-CUH/PA-VTA	In the Matter of Nicholas Payton Radford	08/08/2011
<input type="checkbox"/> 56-2011-00401798-CLB/PA-VTA	The State of California vs Martinez	08/08/2011
<input type="checkbox"/> 56-2011-00401801-CU-PA-VTA	In The Matter of Ryan West Radford	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401805-CU-CL-VTA	City National Bank vs. Star Marketing & Media Inc	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401826-CU-PA-VTA	Power Gomez vs. LeCouture	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401830-CU-BC-VTA	Featherston vs. Simply Divine Inc.	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401831-CU-BU-VTA	Garcia vs. Harral	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401843-CU-DC-VTA	House of Enterprises Inc vs. New Lux Company Inc	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401855-CU-BC-VTA	Rivani vs. BMW of North America LLC	08/08/2011
<input checked="" type="checkbox"/> 56-2011-00401858-CU-BC-VTA	K&G Seabridge II LLC vs. Middle Earth Properties LLC	08/08/2011

Copyright © 2004 The Judicial Council of California. All rights reserved.

T2-SPL-KSLO2 1 10.0/2016

A full-page copy of this exemplar screen shot is attached hereto as Exhibit A.

6. I then reviewed the list of cases filed on each court day to determine which were new unlimited general civil complaints. I crossed through those complaints that were *not* new unlimited general civil complaints as these types of cases are filings that do not go to the Media Bin; I put a check mark next those that were.

7. For each new unlimited general civil complaint, I reviewed the CCMS Records Management—Location History screen for the matter. That screen shows the location of the case file at any particular point in time following its processing date. For example, the attached screen shot shows the Location History page for *City National Bank v. Star Marketing & Media Inc.*, one of the unlimited general civil complaints filed on August 8, 2011:

Declaration of Julie Camacho ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1
2
3
4
5
6
7
8
9
10
11

12 CCMS-V3 entries reflect that the case file was located to the Media Bin on 08/08/11 - the
13 same day that the processing clerk filed the case and completed data entry in CCMS-V3.
14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The screenshot shows the CCMS-V3 interface. The top navigation bar includes links for Case Search, Appeals, Associate Cases, Batch Case History Entries, Disassociate Cases, Initiate Case, Initiate Legacy Case, Initiate Pseudo Case, Maintain Received Case, Members, and User List. The main content area is divided into two sections: 'Case Header' and 'Case Records Management-Location History'.

Case Header:

- Case Number: 56-2011-00401805-CU-CL-VTA
- Filing Date: 08/08/2011
- Case Title: City National Bank vs. Star Marketing & Media
- Case Status: Dismissed
- Case Category: Civil - Unlimited
- Case Type: Other Collections
- Case Age: 49 Days
- Judicial Officer: Department: 43
- Location: Ventura
- Next Event Type: Help

Case Records Management-Location History:

Custodian Name	ID Type/Number	Volume	Location Date	Location	Comments
Herrera, Alice	1	08/08/2011	HQ1 HQ1 - Sections RECORDS		
Herrera, Alice	1	08/08/2011	HQ1 HQ1 - Sections RECORDS MEDIA BIN		
Herrera, Alice	1	08/08/2011	HQ1		

A full-page copy of this screen shot of the Location History page for *City National Bank v. Star Marketing & Media Inc.* is attached hereto as Exhibit B.

8. The type-written notes at the bottom of the screen shot are notes I inputted as I evaluated the date on which each case was received, processed, and sent to the Media Bin.

9. Every new complaint received by Ventura Superior Court that is dropped off or received by overnight delivery is deemed filed on the date it was received, and may be "backdated" accordingly. Thus, for all backdated filings, the "Filing Date" in the upper-right-hand corner of the Case Header box reflects not only the date on which the document was deemed filed, but also the date it was received.

10. The entries below the Case Header box reflect the Location History for that particular file on any given date after it has been processed and entered into CCMS.

1 11. As the above screen shot shows, *City National Bank v. Star Marketing*
2 & *Media Inc.* was received and filed on August 8, 2011. It was processed and sent
3 to the Media Bin on August 8, 2011—the same day it was received. In accordance
4 with our standard practice, the file remained in the Media Bin in the Records
5 Department for ten days and was then removed from the Media Bin and shelved in
6 Records.

7 12. For each case that was filed but not sent to the Media Bin on the same
8 day, I reviewed the Case History screen in CCMS to determine when the file was
9 processed. For example, the following screen shot shows the Location History
10 page for *Power Gomez v. LaCouture*, a case that was received and deemed filed on
11 August 8, 2011, but was not sent to the Media Bin until August 9, 2011:

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Custodian Name	ID Type/Number	Volume	Location Date	Location	Courier	Comments
Hartinez, Darcie		1	08/10/2011	HOJ		
				HOJ - Sections RECORDS		
Cobea, Hania		1	08/09/2011	HOJ		
				HOJ - Sections RECORDS mediation		
Cobea, Hania		1	08/08/2011	HOJ		
				HOJ - Sections RECORDS		
Cobea, Hania		1	08/08/2011	HOJ		
				HOJ - Sections RECORDS		

A full-page copy of this screen shot of the Location History page for *Power Gomez v. LaCouture* is attached hereto as Exhibit C.

13. The Case History screen in the system shows even more detail, including each document that was processed along with the new complaint. Thus, for *Power Gomez v. LaCouture*, a complaint, declaration for court assignment, and civil case cover sheet were processed as part of the initial filing of the complaint. Because the complaint was received on August 8, all documents have a filed date of

1 August 8 as well. However, by placing my cursor over the person icon on the
2 screen I am able to determine that the documents were backdated. A small box
3 opens up to show the actual date and time the documents were processed, not just
4 the date they were deemed filed:

	08:16:12 AM	 Automatic Schedule CMC to File Case Management Statement	
	08/09/2011 08:16:12 AM	 Clock started.	
3	08/08/2011 08:16:12 AM	 Civil Case Cover Sheet filed by Power Gomez, Christopher; Power Gomez, Michelle on 08/08/2011. Refers to: LaCouture, Daniel; Durham School Services LP	Power Gomez, Christopher (Plaintiff); Power Gomez, Michelle (Plaintiff) Filing Details
2	08/08/2011 08:16:12 AM	 Declaration for Court Assignment filed by Power Gomez, Christopher; Power Gomez, Michelle on 08/08/2011. Refers to: LaCouture, Daniel; Durham School Services LP	Power Gomez, Christopher (Plaintiff); Power Gomez, Michelle (Plaintiff) Filing Details
1	08/08/2011 08:16:12 AM	 Complaint filed by Power Gomez, Christopher; Power Gomez, Michelle on 08/08/2011. [H] Refers to: LaCouture, Daniel; Durham School Services LP	Power Gomez, Christopher (Plaintiff); Power Gomez, Michelle (Plaintiff) Filing Details

A full-page copy of this screen shot for *Power Gomez v. LaCouture* is attached hereto as Exhibit D.

14. All the documents for the *Power Gomez v. LaCouture* file were processed on August 9, 2011, at 8:16 a.m.—essentially the first thing the next morning after it was received. And as the prior screen shot shows, the file was sent to the Media Bin that same day.

15. I conducted an identical analysis for all new unlimited general civil complaints filed on all court days between August 8, 2011, and September 2, 2011. My analysis revealed that 147 new unlimited general civil complaints were filed by Ventura Superior Court during that time.

16. Of those 147 new unlimited general civil complaints, 47 of them were received, processed and placed in the Media Bin all on the same day.

17. Fifty-four (54) of them were received on one day and processed and placed in the Media Bin on the next day.

18. Another 18 of them were processed and placed in the Media Bin within two days of receipt.

1 19. Seventeen (17) of the 147 new unlimited general civil complaints
2 needed to be directed to a judicial officer immediately, or were transferred in from a
3 Superior Court in another county.

4 20. Seven (7) of them did not get placed in the Media Bin due to an
5 inadvertent clerical error.

6 21. Of the remaining four (4) files, three filings were backdated five (5)
7 days and one filing was backdated 10 days. These files had delays that were due
8 either to being received and couriered from the Simi Valley branch, or from an
9 anomaly in processing that cannot be tracked through CCMS or independently
10 recalled by the CPAs who processed the filings. Given the hundreds of documents
11 our CPAs must process by hand each day, this is not surprising. Those remaining
12 files, however, did eventually make it to the Media Bin.

13 22. I further understand that CNS has complained in the past about four
14 specific case files and alleged delays of access to each ranging from eight to 13
15 days. I have researched those files through the information available in CCMS and
16 have determined the following:

17 (a) *Estrada v. Rubio's Restaurant, Inc.*, Case No. 56-2010-
18 00387332: This case was received, processed into CCMS, and deemed filed all on
19 December 20, 2010, and then sent to the Media Bin that same day.

20 (b) *Berber v. Holiday Retirement*, Case No. 56-2010-00387945:
21 This case was received and deemed filed on December 28, 2010, and was processed
22 into CCMS on January 4, 2011. The file was sent to the Media Bin the same day it
23 was processed. The delay in processing likely was due to the intervening New
24 Year's Holiday.

25 (c) *Harrison v. Rite Aide Corp.*, Case No. 56-2010-00387942: This
26 case was received and deemed filed on December 28, 2010, and was processed into
27 CCMS on January 4, 2011. The file was sent to the Media Bin the same day it was
28

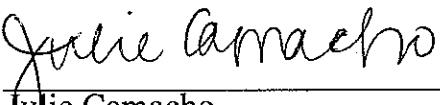
1 processed. The delay in processing likely was due to the intervening New Year's
2 Holiday.

3 (d) *Latham v. Bumbarger*, Case No. 56-2011-00389425: This case
4 was received, processed and deemed filed on January 12, 2011, and was
5 immediately delivered to a judicial officer for review of a fee waiver that was
6 presented with the complaint.

7 23. None of these cases reflect the type of delay to access that CNS
8 claims.

9
10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed on October 31, 2011, at Ventura, California.

13
14 
15 Julie Camacho

16
17
18
19
20
21
22
23
24
25
26
27
28
Declaration of Julie Camacho ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

EXHIBIT A

Case Search

Page 1 of 1

Case	Accounting	Calendar	Courtrooms	Disposition	Judicial Officers	Personnel	Reports	Forms	Actions	Work Queue	Timeline
Welcome, Jcanacho											
Case Search											
Appeals											
Associate Cases											
Batch Case History Entries											
Case	Case	Case	Case	Case	Case	Case	Case	Case	Case	Case	Case
Dissociate Cases											
Initiate Case											
Initiate Legacy Case											
Initiate Pseudo Case											
Maintain Reserved Case Numbers											
NSF List											
Records Management											
Search Pseudo Case											
Transfer Cases											
Wills/Estate Plans											
Case Search	Case Category: <input type="text" value="50 - 2011 -"/> <input type="button" value="Search"/>	Legacy Number: <input type="text"/>									
	Case Sub Type: <input type="text"/>										
	Resource Position: <input type="text"/>										
	Case Status: <input type="text"/>										
	Filed Date From: <input type="text" value="08/08/2011"/> <input type="button" value="To:"/> <input type="text" value="08/08/2011"/> <input type="button" value="Search"/>										
	Resource Name: <input type="text"/>										
	Location: <input type="text"/>										
Participant 1: <input type="text"/> Category: <input type="text"/> First Name: <input type="text"/> Middle Name: <input type="text"/> Last Name: <input type="checkbox" value="Sounds Like"/>											
Participant 2: <input type="text"/> Person: <input type="text"/> First Name: <input type="text"/> Middle Name: <input type="text"/> Last Name: <input type="checkbox" value="Sounds Like"/>											
^CMS ID Number: <input type="text"/> Role: <input type="text"/>											
<p>^ indicates a search item that can be used "with or without" any other search items listed above. A search not utilizing a '^' marked item must be a combination of at least 2 or more other items.</p>											
<input type="button" value="Reset"/>											
Search Results											
All	Case Number	Short Case Title	Filed Date								
<input type="checkbox"/>	56-2011-00401750-CU-PHR-VTA	Flemion Morales VS Sonia Lopez	08/08/2011								
<input type="checkbox"/>	56-2011-00401796-CU-SHL-VTA	In the Matter of Nicholas Payton Radford	08/08/2011								
<input type="checkbox"/>	56-2011-00401798-CU-PHE-VTA	The State of California vs Martinez	08/08/2011								
<input type="checkbox"/>	56-2011-00401801-CU-PSE-VTA	In The Matter of Ryan West Redford	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401805-CU-GL-VTA	City National Bank vs. Star Marketing & Media Inc	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401826-CU-PA-VTA	Power Gomez vs. LaCouture	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401830-CU-BC-VTA	Featherston vs. Simply Divine Inc	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401831-CU-BC-VTA	Garcia vs. Harrah	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401843-CU-BC-VTA	House of Enterprises Inc vs. New Lux Company Inc	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401845-CU-BC-VTA	Rivani vs. BMW of North America LLC	08/08/2011								
<input checked="" type="checkbox"/>	56-2011-00401858-CU-BC-VTA	K&G Seabridge II LLC vs. Middle Earth Properties LLC	08/08/2011								
<input type="button" value="Reset Search"/>											

EXHIBIT B

Case	Accounting	Calendar	Configuration	Disposition	Judicial Officers	Person/Family	Reports	Forms	Actions	Work Queue	TheSlicer	Comments
Welcome, Kamache												
Case Search												
Appeals												
Associate Case												
Batch Case History Entries												
Dissociate Case												
Initiate Case												
Initiate Legacy Case												
Initiate Pseudo Case												
Maintain Reserved Case numbers												
HSP List												
Records Management												
Search Pseudo Case												
Transfer Cases												
Wills/Estate Plans												
Herrera, Alice												
Herrera, Alice												

Case Header											
Case Number:	56-2011-00401805-CU-CL-VTA			Filing Date:	08/08/2011			Case Status:	Dismissed		
Case Title:	City National Bank vs. Star Marketing & Media			Case Category:	Civil - Unlimited			Location:	Ventura		
Case Type:	Other Collections			Case Age:	49 Days			Judicial Officer:			
Next Event Type:				Department:	43			Next Event Date:			

Records Management-Location History											
Custodian Name	ID Type/ Number	Volume	Location Date	Location	Courier	Comments	Help				
Martinez, Dacia	1		08/18/2011	HOJ							
Herrera, Alice	1		08/08/2011	HOJ - Sections RECORDS							
				HOJ - Sections RECORDS							
				media bin							
				HOJ							

CCMS-V3 entries reflect that the case file was located to the Media Bin on 08/08/11 - the same day that the processing clerk filed the case and completed data entry in CCMS-V3.

EXHIBIT C

Case Header						
Case Number:	56-2011-00401826-CU-PA-VTA					
Case Title:	Power Gomez vs. LaCouture					
Case Category:	Civil - Unlimited					
Case Type:	PI/PD/WD - Auto					
Case Age:	77 Days					
Next Event Type:						
Next Event Date:						
Case Help						
Records Management-Location History						
Customer Name	ID Type / Number	Volume	Location Date	Location	Courier	Comments
Martinez, Garcia	1	08/18/2011	HOJ	HOJ - Sections	RECORDS	
Ochoa, Maria	1	08/09/2011	HOJ	HOJ - Sections	RECORDS	mediabin
Ochoa, Maria	1	08/05/2011	HOJ	HOJ - Sections	RECORDS	
Ochoa, Maria	1	08/08/2011	HOJ			

[Cancel](#)

EXHIBIT D

00:10:12 AM	<img alt="Clock icon" data-bbox="865

1 Robert A. Naeve (State Bar No. 106095)
2 rnaeve@jonesday.com
3 Erica L. Reilley (State Bar No. 211615)
4 elreilley@jonesday.com
5 JONES DAY
6 3161 Michelson Drive, Suite 800
7 Irvine, CA 92612
8 Telephone: (949) 851-3939
9 Facsimile: (949) 553-7539

10 Attorneys for Defendant
11 MICHAEL PLANET, IN HIS OFFICIAL
12 CAPACITY AS COURT EXECUTIVE
13 OFFICER/CLERK OF THE VENTURA
14 COUNTY SUPERIOR COURT

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 COURTHOUSE NEWS SERVICE,

18 Plaintiff,

19 v.

20 MICHAEL PLANET, IN HIS
21 OFFICIAL CAPACITY AS COURT
22 EXECUTIVE OFFICER/CLERK OF
23 THE VENTURA COUNTY
24 SUPERIOR COURT,

25 Defendant.

26 Case No. CV11-08083 R (MANx)

27 Assigned for all purposes to
28 Hon. Manuel L. Real

**DECLARATION OF CHERYL
KANATZAR IN SUPPORT OF
DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: November 21, 2011
Time: 10:00 a.m.
Courtroom: 8

1 I, CHERYL KANATZAR, declare and state as follows:
2

3 1. I am employed as a Deputy Executive Officer of the Superior Court of
4 California, County of Ventura (“Ventura Superior Court” or “Superior Court”). I
5 am responsible for the overall administrative operations of the Superior Court in the
6 areas of court processing and courtroom operations. As is relevant to this lawsuit,
7 “court processing” includes processing of, and access to, all filings with the
8 Ventura Superior Court, including those filings at the Hall of Justice facility, the
9 Court’s primary location. In addition, I was responsible for overseeing the
10 management of all of the Court Processing Assistants (“CPAs”) who work in the
11 Civil Department of the Superior Court’s Clerk’s Office, including the CPAs who
12 are assigned to work the public filing windows, the new filings desks, and the
13 Records and Exhibits Departments. I have personal knowledge of the facts stated
14 in this Declaration, and I could and would competently and truthfully testify to
15 these facts if called upon to do so.

16 2. It is my understanding that Courthouse News Service (“CNS”) claims
17 in this action that Ventura Superior Court can and should provide “same-day
18 access” to newly filed civil unlimited complaints. I provide this declaration to
19 explain why it is not possible for the Superior Court to provide same-day access.

20 **A. Civil Clerk’s Office Staffing And Caseload Generally.**

21 3. By way of background, Ventura Superior Court’s Civil Department
22 operates out of two locations, its Hall of Justice Center in Ventura, and its Simi
23 Valley location. CNS has not insisted on a right of same-day access to newly filed
24 complaints filed with our Simi Valley court; this declaration will deal only with the
25 filings at the Hall of Justice facility.

26 4. Ventura Superior Court does *not* maintain filings in electronic format,
27 and does *not* require litigants to submit motions, orders and other filings through an
28

1 online filing system like the federal courts' Pacer system. Instead, Ventura
2 Superior Court maintains only standard physical files for all actions pending in the
3 County of Ventura. Litigants must physically file paper copies of their documents.
4 They can do so either by depositing them with CPAs in our Civil Department as
5 described elsewhere in this Declaration, or by faxing or emailing their documents to
6 the Civil Department, where a CPA must then generate paper documents for our
7 files. Therefore, unlike the clerk's office in federal and other electronic filing
8 courts, the clerk's office in the Ventura Superior Court *is* burdened by the
9 substantial additional administrative task imposed by the need to process by hand
10 every document filed with the court.

11 5. According to our Court Case Management System ("CCMS"), which
12 maintains our docket of court filings as well as our court calendars, the CPAs in the
13 civil clerk's office are responsible for receiving, filing and processing in excess of
14 151,000 separate filings each year:

2008 Civil Filings	144,184
2009 Civil Filings	151,281
2010 Civil Filings	151,203

20 6. The Superior Court currently employs 14 CPAs in the Civil
21 Department, plus one Civil Department supervisor, to handle all of these filings.
22 Each of the CPAs is responsible for a particular function or "desk" in the Civil
23 Department, including the answers and motions, arbitration, fax filings, judgments,
24 mandatory early settlement conference assignments, motions, new filings and
25 orders, as well as public filing windows 7, 8, 9, 10 and 11.

26 7. The workload carried by each of our CPAs is very heavy. By way of
27 example only, Jessica Brown is the CPA III currently responsible for our
28

1 Mandatory Early Settlement Conference Desk. Despite what the name might
2 imply, Ms. Brown is responsible for a very high volume of filings that must be
3 processed on a daily basis. During a typical day, she is responsible for reviewing
4 and scheduling appropriate case management hearings for approximately 4 to 5
5 amended complaints, 7 to 8 notices of settlement and 3 to 4 amendments to
6 complaints. In addition, she is responsible for receiving, processing and inputting
7 into CCMS 4 to 5 substitution of attorney / notice of change of address forms per
8 day. Ms. Brown is also responsible for reviewing and scheduling for hearing
9 petitions for *de novo* review of wage and hour decisions by the California Division
10 of Labor Standards Enforcement; for processing Notices of Removal to federal
11 court; for making settlement officer assignments; and for scheduling settlement
12 hearings before the settlement officer. She also reviews and schedules in CCMS
13 follow-up calendars for cases transferred to Ventura Superior Court from other
14 courts as well as case consolidations ordered by judges of the Superior Court. She
15 also reviews files in which a proof of service of a new complaint, or status
16 conference reports, or post-settlement dismissals have not been timely filed, and
17 schedules OSC hearings in cases in which the appropriate documents have not been
18 filed by the parties. In addition to these tasks, she is responsible for mailing from
19 60 to 70 notices and other forms to be served on litigants; for working at one of the
20 public filing windows for several hours each day; and for answering telephones for
21 at least an hour per day.

22 8. The workloads of the remaining CPAs in the Civil Department are
23 equally heavy, and will likely increase in the coming year. As explained in the
24 Notice of Change in Processing of Civil Filings attached to this Declaration as
25 Exhibit “A,” effective October 11, 2011, CPAs in our Hall of Justice facility in
26 Ventura assumed responsibility for processing “case initiating papers, including
27 complaints” for cases filed in our East County courthouse located in Simi Valley:
28



Superior Court of California
County of Ventura

**NOTICE OF CHANGE IN PROCESSING
OF CIVIL FILINGS**

Effective October 11, 2011

Effective October 11, 2011, case initiating papers, including complaints, applications and petitions, applications for renewals of judgment, and clerk and court default judgment packets (except for requests for entry of default) will be processed in the Ventura clerk's office, only.

For efficiency and timeliness of processing, the Court encourages to the extent possible that all the above listed documents be dropped in the Ventura Court location. (All named documents dropped in the East County must be transported by the Court to Ventura for filing.) Documents relating to Unlawful Detainers will be excluded.

Documents may be dropped off at the civil filing counters, or at window 14, in room 210 of the Hall of Justice during regular business hours.

A drop box is located directly outside of the clerks' office, and documents placed in the box by 5:00 pm will be deemed deposited for filing that same business day.

9. We transferred responsibilities for new case filings to the Hall of
Justice facility because reduced staffing at the Simi Valley Courthouse made it
difficult to process work in a timely manner.

10. It is possible that further changes to CPA job responsibilities will be
implemented in 2012. As explained in the Public Notice of Request for Public
Input attached to this Declaration as Exhibit "B," the Superior Court is now
considering whether to relocate the civil courtrooms located in Simi Valley to the
Hall of Justice facility in Ventura.

PUBLIC NOTICE OF REQUEST FOR PUBLIC INPUT

(California Rules of Court, rule 10.620)

Superior Court of California, County of Ventura

RESPONDING TO REDUCTION IN WORKFORCE CAUSED BY THE FISCAL CRISIS
THE VENTURA SUPERIOR COURT IS CONSIDERING REASSIGNING
THE EAST COUNTY CIVIL LAW JUDGES AND CLERK'S OPERATIONS
TO THE HALL OF JUSTICE

The Ventura Superior Court is considering reassigning its two East County Civil Law Judges (Courtrooms S3 and S5) and all related civil clerk's office operations at that location, except unlawful detainees, to its main courthouse located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California in late January, early February 2012. The proposed changes are due to the significant reduction in funding for the California court system. The Ventura Superior Court is facing a \$5.8 million dollar deficit for fiscal year beginning July 2011, which is projected to increase to \$9.3 million for fiscal year beginning July 2012.

If this relocation takes effect, it will increase the workload of our Civil Department CPAs.

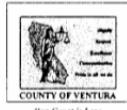
11. The workload carried by our CPAs has been made even heavier as the result of budgetary shortfalls experienced by the State of California generally and the Ventura Superior Court in particular. These budgetary shortfalls have resulted in mandatory furlough days for our CPAs, as well as a hiring freeze, which effectively prevents us from hiring new CPAs in the clerk's office when existing CPAs retire or quit. As of the end of September 2011, Ventura Superior Court had no fewer than 42 vacancies for full-time staff positions. 22 of these vacancies arise in my areas of responsibility; four occurred within the civil processing Civil Department and another four occurred in the Records Department.

12. This reduction in staffing levels necessitated a number of changes in the business operations of the clerk's office. First, we reduced the public business hours for the clerk's office effective July 1, 2009. As can be seen from this excerpt from the July 1, 2009 memorandum issued to all staff in the clerk's office, which I approved, the public and telephone hours were reduced so that the doors to the clerk's office would be closed at 4:00 p.m., rather than 5:00 p.m.: *cc: [REDACTED] 141150*

Declaration of Cheryl Kanatzar ISO

Deft's Opp. to Plf's Mot. for Prelim. Inj.

Case No. CV 11-08083 R (MANx)



SUPERIOR COURT OF CALIFORNIA • COUNTY OF VENTURA

INTEROFFICE MEMORANDUM

July 1, 2009

To: **Civil/Small Claims/Appeals Staff**
From: **Julie Camacho, Court Program Manager**
Subject: **Revised Court Closing Time of 4:00 p.m.**

As you are all aware, the Ventura Superior Court processing units hours of service to the public and telephone hours have been revised effective Wednesday, July 1, 2009.

The doors to the public lobby will be closed at 4:00 p.m.

Telephone calls from the public and outside agencies (i.e., Court of Appeal, District Attorney's Office, etc.) will not be accepted from 11:30 a.m. to 1:30 p.m., and 4:00 p.m. to 5:00 p.m. Telephone calls from other court departments and courtroom staff will continue to be accepted.

A locked court drop box has been placed in the hallway outside the lobby doors. Documents placed in the drop box before 5:00 p.m. will be receive stamped by court staff when they are removed from the box. When the documents are processed, they will receive a filing date the same as the date they were received.

A complete copy of this July 1, 2009 memorandum is attached to this Declaration as Exhibit "C."

13. To accommodate the change in office hours with the need to accept filings before 5:00 p.m., the Ventura Superior Court installed a secure drop box near the clerk's office on the second floor of the Hall of Justice facility. Civil and family law filings can be deposited in the drop box for same-day filing at any time prior to 5:00 p.m. Staff from the Family Law Department or the Civil Department retrieve documents from the drop box twice each day, at 4:30 p.m. and 5:00 p.m. Documents retrieved from the drop box are date-stamped "Received" on the back of the first page, and are then distributed to the appropriate back office CPA for processing. Dropped documents, including new complaints, are deemed filed on

1 the day they are stamped received. If the documents are processed the next day, our
2 CPAs are instructed to back-date the file stamp to properly reflect the date upon
3 which the document is deemed filed.

4 14. To further accommodate reduced staffing levels in the clerk's office,
5 the Ventura Superior Court changed the procedure by which new complaints are
6 accepted for filing. The Civil Department receives approximately 8 civil unlimited
7 complaints, along with literally hundreds of other documents, including answers,
8 motions and notices of various types, on a daily basis. Prior to June 2010, most of
9 these complaints were received by CPAs at the public filing windows, who were
10 responsible for fully opening new files and for issuing summons and related
11 documents upon receipt. However, the practice of creating new files upon receipt
12 of complaints at the filing window became increasingly unworkable because of the
13 small number of open clerk windows; the increasing line of customers waiting for
14 those windows; the advent of the CCMS filing system, which requires our CPAs to
15 enter considerably more information regarding a new complaint before a file
16 number can be generated; the reduction in the number of CPAs available to staff the
17 public filing windows; and the reduction of hours the clerk's office could remain
18 open in light of current budget constraints.

19 15. Accordingly, Ventura Superior Court implemented a change to its
20 filing system effective June 21, 2010. As explained in the following excerpt from
21 our May 19, 2010 Notice of Counter Filing Changes, which I approved, most new
22 complaints could only be "dropped off" at the public filing windows, so that they
23 could be processed by back-counter CPAs:



Superior Court of California

COUNTY OF VENTURA
Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

May 19, 2010

NOTICE OF COUNTER FILING CHANGES

Effective June 21, 2010, the Ventura Superior Court of California, County of Ventura, will implement a change to the documents permitted to be filed at the front office filing counters.

The following documents will be required to be dropped off for back office processing:

CIVIL (All documents relating to Unlawful Detainer cases are excluded from this change.)

1. Case initiating papers including Complaints, Petitions and Applications
2. Applications for and Renewals of Judgment
3. Clerk and court default judgment packets, **except** Requests for Entry of Default

Note: The documents listed above can be dropped at the civil filing counters in Ventura and East County, or at Window 14 in Ventura.

A complete copy of our May 19, 2010 notice is attached to this Declaration as Exhibit "D."

16. Under this change in procedure, new complaints are date-stamped "Received" at the public filing window, and given to a behind-the-counter new filings desk CPA, who is responsible for opening a new file, issuing a case number, and providing conformed copies to counsel. As is the case with documents retrieved from the drop box, new complaints received at the public filing window are deemed filed on the date they are stamped received. If they are received late in the day and processed at a later time, the new filings desk CPA is instructed to back-date the file stamp to properly reflect the date upon which the document is deemed filed.

17. This change in procedure allowed the clerk's office to prioritize work

Declaration of Cheryl Kanatzar ISO
Def'ts Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1 based on the needs of our public customers and bench officers. From the Superior
2 Court's standpoint, most new complaint files remain essentially inactive for
3 approximately 65 days, until the summons and complaint are served, and the
4 defendant(s) answers or take some other action. Hence, receiving "dropped"
5 complaints at the public filing window for later processing the same day, allows our
6 limited staff to deal with other customers waiting in line at the civil filing windows,
7 and to deal with other pressing issues, including *ex parte* applications, and other
8 time sensitive matters.

9

10 **B. CNS's Demand For "Same-Day Access."**

11 18. As a practical matter, CNS's reporter is the only "reporter" who asks
12 to see our new case files. The Superior Court only infrequently receives requests
13 from other reporters for access to case files or new complaints. As is the case with
14 CNS, we grant other reporters the same access we provide to members of the
15 general public.

16 19. It is my understanding that, prior to November 2010, CNS's reporter,
17 Juliana Krolak, only visited our clerk's office on roughly a weekly basis. In the
18 2008 – 2009 time period, Ms. Krolak occasionally complained that she could not
19 locate particular case files that should have been placed in the Media Bin in our
20 Records Department. We worked with Ms. Krolak and her supervisor, Chris
21 Marshall, to determine why some files were not being deposited in the Media Bin,
22 and took steps to ensure that new files were first placed in our Media Bin where
23 they would remain for approximately one week before being placed in our shelves
24 for filing.

25 20. On or about July 23, 2009, I received the following letter from Mr.
26 Marshall which confirmed our efforts to route new complaints to the Media Bin:
27

1

2 July 23, 2009

VENTURA SUPERIOR COURT
ADMINISTRATION

3

4 Cheryl Kanatzar
5 Deputy Executive Officer
6 Superior Court of California
7 County of Ventura
8 Hall of Justice
9 800 South Victoria Avenue
Ventura, CA 93009

10

11 Re: Media Access to New Civil Filings

12

13 Dear Ms. Kanatzar:

14

15 On behalf of Julianna Krolak and all of us at Courthouse News Service, I would like to
16 thank you and your professional and helpful staff for assisting us in ensuring new civil
17 unlimited filings make it to the media bin for media review before being placed on the
18 shelf.

19

20 Your actions have greatly improved press access to an important courthouse in the state
21 of California, and for that we are deeply appreciative.

22

23 If you ever have any questions for me, I am always available and we will not hesitate to
24 contact you in the future if we have questions. Once again, thank you for your assistance.

25

Sincerely,



26 Chris Marshall
Northern California Bureau Chief

27

28

A complete copy of this letter is attached to this Declaration as Exhibit "E."

21. It is my understanding that CNS alleges in its complaint that the
22 Superior Court somehow agreed to an "arrangement" by which "newly filed
23 complaints were to be made available to Courthouse News' reporter after some
24 processing but before the complaints had been fully processed, the result of which
25 was that access became much more timely." This allegation is not correct. As
noted above, Ventura Superior Court took steps to ensure that fully processed
complaints were timely deposited in the Records Department Media Bin. For
reasons that will be detailed below, it has never been our practice to grant access to
"partially processed" complaints.

26. I received another letter from Mr. Marshall more than a year later on
27 February 7, 2011. Mr. Marshall notified me for the first time in this letter that Ms.
28 Krolak had been visiting the Superior Court's Records Department on a daily basis

1 since November 2010; that CNS hoped that she could review newly filed
2 complaints on the on the same day they were filed; but that Ms. Krolak had
3 experienced delays:
4

5 Until a few months ago Ms. Krolak had been visiting the main division of the Ventura
6 Superior Court on a twice-a-week basis to review new civil unlimited complaints
7 (Courthouse News does not cover criminal or family actions, nor does it review limited
8 civil actions). In recognition of the increasing importance of Ventura County as a source
9 of newsworthy litigation, Ms. Krolak began visiting the Court on a daily basis in
10 November, with each of her visits occurring near the end of each court day.

11 Given these now-daily visits, Courthouse News hoped that it would be able to review and
12 report on new civil complaints at the end of the same day on which those complaints are
13 filed. This same-day access is provided to news reporters who make daily visits to other
14 major superior courts, including the California Superior Courts in Los Angeles,
15 Riverside, San Francisco, and Santa Clara, as well as other major courts across the nation.
16 A survey that further describes the same-day access that news reporters have in other
17 courts is enclosed for your review.

18 Unfortunately, access to new civil complaints at the Ventura County Superior Court is
19 nowhere near same-day. In a recent one-week survey of unlimited jurisdiction cases
20 covered by Courthouse News, Ms. Krolak saw only one case on the day it was filed.
21 Of the remaining cases, a majority was three days to one week old and a large minority
22 was one to two weeks old.

23 A copy of Mr. Marshall's February 7, 2011 letter without exhibits is attached to this
24 Declaration as Exhibit "F."

25 23. I discussed Mr. Marshall's letter with Julie Camacho, the Court
26 Program Manager responsible for CPAs working in the Department. In response,
27 we issued the following February 17, 2011 email which directs Civil Department
28 CPAs to make every effort to complete their filings and get them to the Records
Department Media Bin in a timely fashion:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

From: Martha McLaughlin
To: Civil Staff
Date: 2/17/2011 4:22 PM
Subject: New Filings - Routing to Records (including media bin) FORTHWITH

STAFF:

Concerns have been raised with respect to the delay in time of new filings being sent to court records (to include the media bin). Everyone is being asked to please make every effort to complete your entire new filing (s) on the same day filed. Please assemble and distribute to either the cart or the media bin box timely. We understand you may need a day or so more if you encounter a new filing that has multiple parties for entry. However, short of that, it is **imperative** that the files move on their way daily. This not only ensures proper location, but it helps to eliminate mix-up in placing of labels on documents, missing files, etc. Thank you for your prompt cooperation, please make good use of 4:00-5:00 p.m. time for this activity. Please see me if you have any questions or concerns.

A complete copy of the February 17, 2011 email is attached to this Declaration as Exhibit "G."

24. I spoke with Mr. Marshall by telephone sometime in March 2011 about his February 7, 2011 letter. He explained that Ms. Krolak now visited the Records Department every day, and said that she needed "same-day access." He explained that CNS had obtained same-day access from other courts in California, as demonstrated by the attachment to his letter. He also said that he just needed access to electronic copies of new complaints, and that, in other courts, CNS "reporters" could go to a computer terminal and review new complaints on line.

25. In response, I explained to Mr. Marshall that Ventura Superior Court was *not* an electronic filing court like most of the courts identified in his letter; that we did *not* image Superior Court filings; that we did *not* accept any type of e-filings; that our filing system was *not* automated as is the case with the federal court Pacer system; and that we still manually enter each document into physical files. Mr. Marshall nonetheless insisted that Ms. Krolak be given access to new complaints the same day as they were filed.

26. After speaking with the Superior Court's staff, including Ms. Camacho, I spoke to Mr. Marshall again by telephone several days later. I told him

1 that we would do what we could to get newly filed complaints to the Media Bin as
2 fast as possible; that, if we are able to process new complaints early in the day, we
3 would put them in the Media Bin on the same day; but that we would otherwise do
4 our best to process new complaints and deposit them in the Media Bin on the day
5 after they had been filed. Mr. Marshall said that he and his attorneys would not be
6 happy with this response.

7 27. As a result of these communications with Mr. Marshall, I worked with
8 Julie Camacho to reprioritize the procedures by which newly filed complaints are
9 processed and made available to the public in the Superior Court's Media Bin,
10 which is located in our Records Department. As explained in the following excerpt
11 from Ms. Camacho's March 15, 2011 email to Maria Ochoa, the CPA then assigned
12 to the new filings desk, we asked Maria to give "the highest priority" to processing
13 new civil unlimited complaints, so that there could be a two-day turnaround
14 between the date a new complaint is filed, and the date the newly filed complaint
15 would be deposited in the Media Bin for public review:

16
17 **From:** Julie Camacho
To: Maria Ochoa; Martha McLaughlin
Date: 3/15/2011 8:26 AM
Subject: Re-Prioritizing of New Filings Desk
18 **CC:** Denise Lugo; Mari Soto; Vicki Knight

19
20 Maria -

21 I just want to confirm in writing for everyone the decisions that we made last week regarding re-prioritizing the
22 limited and unlimited new complaints.

23 To save staff from having to photocopy the backlog of Unlimited jurisdiction new complaints for the media bin,
24 these filings will now be the highest priority complaints to be filed. We receive on average 6 per day. Maria has
25 started separated the "other" new complaints by limited and unlimited jurisdiction and labeling them as such.

26 Maria will work on these filings as the first and highest priority item on her desk (along with any Unlawful
27 Detainer filings she may get) and immediately route them to the Media bin in Records. We have promised a
maximum 2 day turn around to the media. Unlimited cases includes any petitions where the procedure states to
forward the file to the Media Bin.

This also means that if Maria is out of the office, her work will need to be prioritized and the Unlimited new
filings will need to be assigned to another clerk each day.

If there are any issues that arise with this procedure, please let me know. This is a trial period to make sure
that this procedure works.

28 Thank you,
Julie

1 A complete copy of our March 15, 2011 email is attached to this Declaration as
2 Exhibit "H."

3 28. While we cannot guarantee a two-day turnaround to the Media Bin in
4 all cases for the reasons explained below, Ms. Camacho's March 15, 2011 email
5 confirms our current practice with respect to filing of, and access to, newly filed
6 civil unlimited complaints.

7 **C. It Is Not Possible For Ventura Superior Court To Provide "Same-**
8 **Day Access" To Newly Filed Civil Unlimited Complaints.**

9 29. Since at least March 2011, Ventura Superior Court has given "the
10 highest priority" to filing civil unlimited complaints so that they can be forwarded
11 to the Media Bin in the Records Department for public review. Indeed, in
12 approximately August of this year, we obtained an exception from the courtwide
13 hiring freeze in order to hire a new CPA in the Civil Department, and we then
14 assigned a *second* CPA to the new filings desk. The "first priority" of this second
15 CPA is to identify and process newly filed civil unlimited complaints.

16 30. It is my understanding that CNS remains unsatisfied with the speed by
17 which newly filed civil unlimited complaints are processed and routed to the Media
18 Bin in the Records Department for review. However, from my perspective as
19 Deputy Executive Officer of the Superior Court, it is not possible to guarantee
20 "same-day access" to newly filed civil unlimited complaints for at least the
21 following reasons.

22 31. First, it is important to note that newly filed civil unlimited complaints
23 can be "dropped" with the Superior Court for filing in a number of different ways.
24 For example, newly filed complaints can be dropped for filing: (a) with a CPA at
25 the public filing windows in the clerk's office, as described above; (b) in the after
26 hours drop box described above, which is only accessed at 4:30 and 5:00 p.m. each
27 day; (c) by messenger services that deliver a number of filings for a number of

1 cases in bulk to unattended Window 14, usually in the afternoon; (d) by mail, which
2 is delivered to the new filings desk twice daily; and (e) via “fax filing” and “email
3 filing,” by which new complaints are received electronically, and are thereafter
4 printed and processed by the assigned CPA. In addition, civil unlimited complaints
5 that are dropped for filing at the Simi Valley Courthouse are retrieved and delivered
6 to the new filings desk once a day by a Superior Court courier. As explained
7 above, new civil unlimited complaints that are “dropped” in any of these locations
8 are marked “received” on the date they are delivered. However, delivery of these
9 complaints to the new filings desk can be delayed by a day or more (in the event of
10 an intervening weekend) if they are “dropped” late in the day, or not delivered to
11 the new filings desk until later that day or early the next morning. The Superior
12 Court has no control over the timing by which new complaints are “dropped” for
13 filing, and cannot guarantee same-day access to these complaints for that reason.
14

15 32. Second, furloughs and court closures necessitated by our budgetary
16 shortfalls also preclude the Ventura Superior Court from guaranteeing “same-day
17 access” to newly filed civil unlimited complaints. As explained in the Superior
18 Court’s September 22, 2011 press release attached to this Declaration as Exhibit
19 “I,” the Superior Court’s Clerk’s Office will be closed to the public on “November
20 23, 2011, December 23, 27, 28, 29 and 30, 2011 to mitigate the impact of additional
21 unpaid employee furlough days on court operations.” However, newly filed
22 complaints can still be deposited in the Superior Court’s drop box, and as explained
23 elsewhere in this Declaration, they will be deemed filed as of the date they are
24 stamped “received.” However, it will not be possible to grant “same-day access” to
25 these newly filed complaints when the Superior Court’s Clerk’s Office is closed.
26

27 33. Second, it is not possible to guarantee “same-day access” to
28 complaints that are immediately assigned to judicial officers. This category
includes cases in which plaintiffs simultaneously file complaints and *ex parte*

1 applications for temporary restraining orders; complaints for which plaintiffs seek
2 fee waivers which must be approved by a judicial officer before the complaint can
3 be accepted for processing; and complaints filed on behalf of minors by guardians
4 ad litem, who must be appointed as guardians by a judicial officer before the
5 complaint can be accepted for processing. Newly filed civil unlimited complaints
6 that are immediately assigned to judicial officers may remain in chambers for
7 anywhere from one to several days or longer depending on whether the assigned
8 judicial officer needs to retain the file for further action. The Superior Court is not
9 in a position to guarantee same-day access to these files for this reason.

10 34. Third, it is not possible to guarantee “same-day access” to newly filed
11 civil unlimited complaints that are processed by newly appointed CPAs. One of the
12 Superior Court’s highest responsibilities is to ensure and promote public trust and
13 confidence in the Court and its filings. The Superior Court cannot satisfy this
14 responsibility unless it ensures that its files are in good order, and are complete and
15 accurate. Hence, complaints that are processed by newly appointed CPAs are
16 subject to a quality control review in which new files are routed to Ms. Martha
17 McLaughlin, Court Program Supervisor II in charge of the Civil Department, who
18 is responsible for supervising Civil CPAs. It is not uncommon for new CPAs
19 improperly to process incomplete complaints that should be rejected; to improperly
20 enter crucial case data that would impair CCMS from properly tracking and
21 assigning the case; and to improperly enter contact information for attorneys.
22 These complaints are not ready for review, by the press or other members of the
23 general public. Instead, Ms. McLaughlin refers the complaint and its file back to
24 the newly hired CPA who must correct and resubmit the file for final review and
25 approval. Newly filed civil unlimited complaints are placed in the Media Bin in the
26 Records Department by Ms. McLaughlin only after they have been corrected and
27 approved. Once the file is approved, Ms. McLaughlin walks it to the Media Bin;
28

1 the new filings CPA then deals with conformed copies. This quality control
2 process could take from one to several days. The Superior Court is not in a position
3 to guarantee same-day access to complaints processed by newly appointed CPAs
4 for this reason.

5 **D. It Is Not Possible To Allow CNS Reporters “Behind The Counter”**
6 **To Review Newly Filed Complaints Before They Are Processed.**

7 35. It has been suggested that we could ensure more timely access to
8 newly filed civil unlimited complaints by allowing Ms. Krolak to go “behind the
9 counter” in the Civil Department and to review dropped complaints that have not
10 been processed, filed and approved for public viewing. This suggestion is not
11 workable for a number of reasons.

12 36. First, the Superior Court’s security procedures were tightened
13 considerably after the occurrence of a shooting incident involving an Employment
14 Development Department employee in Oxnard. The Superior Court’s current
15 policies prohibit members of the general public from accessing processing desks
16 where new civil unlimited complaints are maintained prior to processing.

17 37. Second, the Superior Court cannot allow CNS or other members of the
18 public to review new civil unlimited complaints until they are filed to ensure that
19 the Court respects the privacy of litigants. For example, litigants who file fee
20 waiver requests must include personal financial information with their fee waiver
21 requests. These requests are kept with the complaints they accompany until after
22 they are assigned to a judicial officer and processed by a CPA. It would be
23 inappropriate to grant access to these confidential records.

24 38. Allowing members of the public access to new complaints before they
25 are filed also violates the Superior Court’s accounting protocols. New complaints
26 cannot be processed or filed until the plaintiff or plaintiffs have paid the proper
27 filing fee. Filing fees usually are paid by check, which are attached to a new
28

1 complaint until it is processed. The Superior Court requires CPAs to balance out
2 each day and has established strict cash handling and audit procedures to ensure
3 that moneys deposited with the Superior Court are secure. It is inconsistent with
4 these protocols and procedures to allow public access to those areas of the clerk's
5 office, including the new filings desk, where filing fees are maintained.

6 39. Quality control concerns also counsel against allowing the general
7 public to review new complaints before they are filed. As noted above, one of the
8 Superior Court's highest responsibilities is to ensure and promote public trust and
9 confidence in the Court and its filings. The Superior Court does not satisfy this
10 responsibility by allowing access to new complaints that may be rejected for filing,
11 or that are in some way incomplete.

12 40. Finally, but perhaps more importantly, it is my understanding that the
13 Superior Court's current practice of granting access to civil unlimited complaints
14 after they have been processed and filed complies with California law. In
15 particular, it is my understanding that the Superior Court's practice of granting
16 access to newly filed civil unlimited complaints once they are processed and placed
17 in the Records Department Media Bin complies with California Government Code
18 section 68150, which grants a right of "reasonable access" to "court records,"
19 which is defined by Government Code section 68151 to include, "[a]ll filed papers
20 and documents in the case folder, but if no case folder is created by the court, all
21 filed papers and documents that would have been in the case folder if one had been
22 created."

23 41. Similarly, it is my understanding that the Ventura Superior Court's
24 practice is consistent with the provisions of California Rule of Court 2.400(a),
25 which provides that, "[o]nly the clerk may remove and replace records in the
26 court's files," and that, "[u]nless otherwise provided by these rules or ordered by
27 the court, court records may only be inspected by the public in the office of the
28

1 clerk.”

2 **E. Summary.**

3 42. The Ventura Superior Court has *not* enacted a blanket policy against
4 granting same-day access to newly filed civil unlimited complaints. To the
5 contrary, the Superior Court recognizes the role the First Amendment plays in our
6 society, and does not and will not deny access to documents maintained in its
7 public files.

8 43. In addition, the Superior Court has granted, and will continue to grant
9 “reasonable access” to its public files, including newly filed civil unlimited
10 complaints, to all members of the public, including the press. It is for these reasons
11 that we have made it our “highest priority” to process and file civil unlimited
12 complaints so that they can be forwarded to the Media Bin in the Records
13 Department for public review. However, given current staffing and financial
14 constraints, it is not possible or practical for the Superior Court to *guarantee* “same-
15 day access” to newly filed civil unlimited complaints as CNS demands.

16 44. In this regard, I wholeheartedly agree with the statements of the
17 California Judicial Council when it explained its opposition to CNS’s proposed
18 “same-day access” legislation as follows:

19 20 Many courts are unable to meet the same day standard because they must
21 complete basic case processing tasks before they release the records to the
22 public in order to ensure that they do not release confidential information,
23 that the filing is valid (e.g. it is accompanied by the appropriate filing fee and
24 is directed to the proper court), and to have sufficient information such that
25 the court can protect the accuracy and integrity of the record prior to its
26 release. These tasks are important functions of the court in its role as
27 custodian of these records, and the speed with which access is provided must
28 be reasonably balanced with these responsibilities. . . . On any given day the
volume of filings may be such that courts cannot satisfy both requirements -
if they perform the required screening, they will not be able to release records
on the day that they are received.

1 Sponsors have suggested that courts can simply collect newly-filed records in
2 a box while they await processing and provide access to those files on that
3 basis. The courts, however, note that it is not appropriate to subject those
4 records to unsupervised review before the court has entered sufficient
5 information to protect the accuracy and integrity of the record. The only way
6 for courts to comply with this standard would appear to be to require that all
7 parties submit two copies of any document filed with the court. Yet, even this
8 mandate, which would be unduly burdensome for litigants and thereby
9 diminish access to justice, would impose significant workload burdens for
10 courts to manage this flow of paper and sort those filings that are confidential
11 from those that are not.

12 It is also critical to note that many court filings are not readily available for
13 public access on the same day they are filed because the court needs to act
14 upon them in a timely manner. Requests for temporary restraining orders for
15 domestic violence, elder abuse, and civil harassment must be acted upon by
16 the court on the day that they are filed unless they are filed too late in the day
17 for the court to act upon them. Taking action on these matters before they
18 become publicly available is an appropriate course of action, and best serves
19 the interest of the underlying statutes that seek to provide immediate
20 protection to those who need it. Criminal filings for in-custody defendants
21 must lead to a timely arraignment of those defendants, and the court needs
22 the filing in order to process the case and complete the arraignment. Courts
23 need the flexibility to prioritize these critical functions and to provide access
24 to the records within a reasonable time frame.

25 I declare under penalty of perjury under the laws of the United States of
26 America that the foregoing is true and correct.

27 Executed this 31st day of October 2011 at Ventura, California.

28 
Cheryl Kanatzar

Declaration of Cheryl Kanatzar ISO
Def't's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

Exhibits To Kanatzar Declaration
Case No. CV 11-08083 R (MANx)



Superior Court of California
County of Ventura

**NOTICE OF CHANGE IN PROCESSING
OF CIVIL FILINGS**

Effective October 11, 2011

Effective October 11, 2011, case initiating papers, including complaints, applications and petitions, applications for renewals of judgment, and clerk and court default judgment packets (except for requests for entry of default) will be processed in the Ventura clerk's office, only.

For efficiency and timeliness of processing, the Court encourages to the extent possible that all the above listed documents be dropped in the Ventura Court location. (All named documents dropped in the East County must be transported by the Court to Ventura for filing.) Documents relating to Unlawful Detainers will be excluded.

Documents may be dropped off at the civil filing counters, or at window 14, in room 210 of the Hall of Justice during regular business hours.

A drop box is located directly outside of the clerks' office, and documents placed in the box by 5:00 pm will be deemed deposited for filing that same business day.

We appreciate your cooperation in implementing this change, and thank you in advance.

Contact: Julie Camacho (Ventura) 805.654.2247
or
Keri Griffith (East County) 805.582.8076

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

PUBLIC NOTICE OF REQUEST FOR PUBLIC INPUT

(California Rules of Court, rule 10.620)

Superior Court of California, County of Ventura

RESPONDING TO REDUCTION IN WORKFORCE CAUSED BY THE FISCAL CRISIS THE VENTURA SUPERIOR COURT IS CONSIDERING REASSIGNING THE EAST COUNTY CIVIL LAW JUDGES AND CLERK'S OPERATIONS TO THE HALL OF JUSTICE

The Ventura Superior Court is considering reassigning its two East County Civil Law Judges (Courtrooms S3 and S5) and all related civil clerk's office operations at that location, except unlawful detainers, to its main courthouse located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California in late January, early February 2012. The proposed changes are due to the significant reduction in funding for the California court system. The Ventura Superior Court is facing a \$5.8 million dollar deficit for fiscal year beginning July 2011, which is projected to increase to \$9.3 million for fiscal year beginning July 2012.

Court employees currently working at the East County Courthouse civil clerk's office are responsible for processing all civil, family and small claims matters filed at that location. Due to hiring freezes, mandatory furloughs and layoffs, staffing at the East County Courthouse has been so reduced that the clerk's office is unable to process the work in all these areas in a timely manner. Given the urgency of the problem, as a temporary solution, the court is transporting all initiating civil case filings to the Hall of Justice in Ventura for processing and then transporting the files back to the East County Courthouse in Simi Valley. Moving the civil courtrooms will allow for greater efficiencies by processing all civil cases in one court location. While the court regrets that inadequate funding is reducing access to the courts for the citizens of this county, it cannot maintain the current level of services.

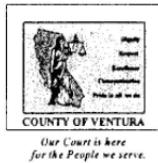
The East County Courthouse would continue to hear and accept filings for Family Law Small Claims, Unlawful Detainers and Traffic matters.

The public is invited to comment on this proposal, either by mail or e-mail, by November 8, 2011. Please direct your response to:

Michael D. Planet, Court Executive Officer
P.O. Box 6489
Ventura, CA 93006-6489
relocationresponse@ventura.courts.ca.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “C”



SUPERIOR COURT OF CALIFORNIA ♦ COUNTY OF VENTURA

INTEROFFICE MEMORANDUM

July 1, 2009

To: **Civil/Small Claims/Appeals Staff**
JMC
From: **Julie Camacho, Court Program Manager**
Subject: **Revised Court Closing Time of 4:00 p.m.**

As you are all aware, the Ventura Superior Court processing units hours of service to the public and telephone hours have been revised effective Wednesday, July 1, 2009.

The doors to the public lobby will be closed at 4:00 p.m.

Telephone calls from the public and outside agencies (i.e., Court of Appeal, District Attorney's Office, etc.) will not be accepted from 11:30 a.m. to 1:30 p.m., and 4:00 p.m. to 5:00 p.m. Telephone calls from other court departments and courtroom staff will continue to be accepted.

A locked court drop box has been placed in the hallway outside the lobby doors. Documents placed in the drop box before 5:00 p.m. will be receive stamped by court staff when they are removed from the box. When the documents are processed, they will receive a filing date the same as the date they were received.

At 4:00 p.m., the goal will be to clear the lobby of customers as quickly as possible so that as much time as possible can be spent processing backlog. In order to accomplish this goal, the following guidelines will be followed by processing staff at 4:00 p.m.:

1. If you are assisting customers in the Single Filing lines, process their single case filings and continue to assist each customer in line until the lobby is cleared.
2. If you are assisting customers in the multiple filing lines, complete the processing of any document you are working on at 4:00 p.m. If the customer has additional filings give them the option of dropping off the remaining filings, or returning on the next business day.
3. If additional customers are in the lobby in the multiple filing lines at 4:00 p.m., the clerk will process 1 case filing per customer. Customers will then be

given the option of dropping off the remaining filings, or returning on the next business day.

4. Back office staff must place their telephones on "Not Ready" between the hours of 11:30 a.m. and 1:30 p.m., and 4:00 p.m. to 5:00 p.m.
5. Back office staff must return their phones to operating status promptly at 1:30 p.m.

Once the lobby doors are closed, direct all customers to exit the lobby through the double doors across from the Small Claims Unit.

The supervisors will assign work to the counter staff. The focus will be on processing the oldest backlog in the office.

The time that the office is closed to the public must be spent productively. Please remember to remain focused on processing of work.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “D”



Superior Court of California

COUNTY OF VENTURA
Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

May 19, 2010

NOTICE OF COUNTER FILING CHANGES

Effective June 21, 2010, the Ventura Superior Court of California, County of Ventura, will implement a change to the documents permitted to be filed at the front office filing counters.

The following documents will be required to be dropped off for back office processing:

CIVIL (All documents relating to Unlawful Detainer cases are excluded from this change.)

1. Case initiating papers including Complaints, Petitions and Applications
2. Applications for and Renewals of Judgment
3. Clerk and court default judgment packets, **except** Requests for Entry of Default

Note: The documents listed above can be dropped at the civil filing counters in Ventura and East County, or at Window 14 in Ventura.

FAMILY LAW

1. Case initiating papers, **except** Restraining Orders
2. Any document without a future hearing date scheduled

Dropped documents must include:

1. A stamped, self-addressed envelope **OR**
2. Attorney service drop box number

Documents dropped without one of the above will be placed in the public pick-up bin and, if not picked up within thirty days, will be discarded.

Dropped documents will be received stamped, and will be processed as of the date they are dropped, unless rejected.

"We appreciate your cooperation in implementing these changes, and thank you in advance."

Michael D. Planet
Court Executive Officer

Mailing Address: P.O. Box 6489, Ventura, California 93006-6489

Exhibits To Kanatzar Declaration
Case No. CV 11-08083 R (MANx)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “E”

Courthouse News Service

July 23, 2009

RECEIVED

JUL 27 2009

VENTURA SUPERIOR COURT
ADMINISTRATION

Cheryl Kanatzar
Deputy Executive Officer
Superior Court of California
County of Ventura
Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

Re: Media Access to New Civil Filings

Dear Ms. Kanatzar:

On behalf of Julianna Krolak and all of us at Courthouse News Service, I would like to thank you and your professional and helpful staff for assisting us in ensuring new civil unlimited filings make it to the media bin for media review before being placed on the shelf.

Your actions have greatly improved press access to an important courthouse in the state of California, and for that we are deeply appreciative.

If you ever have any questions for me, I am always available and we will not hesitate to contact you in the future if we have questions. Once again, thank you for your assistance.

Sincerely,



Chris Marshall
Northern California Bureau Chief

Encl.

bcc:

Bill Girdner
Editor

Julianna Krolak
Courthouse Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “F”

RECEIVED

FEB 09 2011

COURTHOUSE NEWS SERVICE

30 N. Raymond Avenue, Suite 310, Pasadena CA 91103, (626) 577-6700, home@courthousenews.com

VENTURA SUPERIOR COURT
ADMINISTRATION

Chris Marshall
Northern California Bureau Chief
Courthouse News Service
(415) 861-7361
sanfran@courthousenews.com

February 7, 2011

Cheryl Kanatzar
Court Executive Officer
Ventura County Superior Court
800 South Victoria Avenue
Ventura, California 93009

Dear Ms. Kanatzar:

I am writing for Courthouse News Service (CNS), on behalf of reporter Julianna Krolak, regarding media access to newly-filed civil complaints at the Ventura County Superior Court. Courthouse News Service appreciated your willingness to work with us to set up the media bin a few years ago and we trust we will be able to work together again in a cooperative manner to address our present concerns.

As you may recall, Courthouse News Service is a legal news service for lawyers and the news media. Founded in 1990, Courthouse News is similar to other news wire services, such as the Associated Press, except that it focuses on civil lawsuits, from the date of filing through the appellate level. Courthouse News does not report on criminal or family law matters. The majority of Courthouse News' nearly 2,500 subscribers nationwide are lawyers and law firms, including many prominent California firms. However, law schools and media outlets are increasingly looking to Courthouse News for information about newsworthy civil filings, and include such well-known California media outlets and law schools as the *San Jose Mercury News*, the *Los Angeles Times*, the *Los Angeles Business Journal*, UCLA Law Library, Stanford Law School, and Loyola Law School. Courthouse News' core news publications are its new litigation reports, which are e-mailed to subscribers daily and contain coverage of all significant newly-filed civil complaints filed in a particular jurisdiction. In addition, Courthouse News' website (www.courthousenews.com), which features news reports and commentary about civil cases and appeals, receives an average of 600,000 unique visitors each month.

Until a few months ago Ms. Krolak had been visiting the main division of the Ventura Superior Court on a twice-a-week basis to review new civil unlimited complaints (Courthouse News does not cover criminal or family actions, nor does it review limited civil actions). In recognition of the increasing importance of Ventura County as a source of newsworthy litigation, Ms. Krolak began visiting the Court on a daily basis in November, with each of her visits occurring near the end of each court day.

Given these now-daily visits, Courthouse News hoped that it would be able to review and report on new civil complaints at the end of the same day on which those complaints are filed. This same-day access is provided to news reporters who make daily visits to other major superior courts, including the California Superior Courts in Los Angeles, Riverside, San Francisco, and Santa Clara, as well as other major courts across the nation. A survey that further describes the same-day access that news reporters have in other courts is enclosed for your review.

Unfortunately, access to new civil complaints at the Ventura County Superior Court is nowhere near same-day. In a recent one-week survey of unlimited jurisdiction cases covered by Courthouse News, Ms. Krolak saw only one case on the day it was filed. Of the remaining cases, a majority was three days to one week old and a large minority was one to two weeks old.

For example, a case against Rubio's Restaurant alleging sexual harassment (56-2010-00387332) was not made available for media review until 13 days after it was filed; a complaint claiming The Bonaventure denied a worker's medical leave request (56-2010-00387945) was not available until 8 days after the filing date; another complaint charging Rite-Aid with refusing to accommodate a worker's medical restrictions (56-2010-00387942) was delayed by 9 days and finally a complaint where an investor allegedly took advantage of the elderly (56-2011-00389425) was not made available until 13 days after it was filed.

In an age where the average news cycle is less than 24-hours, these delays eliminate the newsworthy nature of new cases filed in this court.

In most courts that Courthouse News visits on a daily basis we have been able to work with staff to ensure that we have access to all newly-filed civil unlimited cases on the day they are filed.

I recently spoke with Leticia Tueraca, Records Division Supervisor, about achieving access to cases on the day they are filed. While Ms. Tueraca was helpful and willing to adjust procedures to assist our endeavor, she told me that ultimately it was not in her power to affect a switch to same-day access as almost every case does not make it to the Records Division until days after it is filed. Courthouse News thus requests your assistance in setting up procedures to ensure access to newly-filed complaints on the day they are filed for any media entity that assigns a reporter to cover the courthouse on a daily basis, regardless of whether all administrative tasks associated with those cases have been completed.

The current use of a media bin could be incorporated into these procedures. One possible solution would be for the media bin to be placed in the Civil Division where the intake counters are located, which Ms. Krolak could access near the end of the day. Such a system would allow Ms. Krolak access to cases soon after they are filed without requiring the court to speed up processing, which Courthouse News is not requesting. In fact it has been Courthouse News' experience that attempts to speed up processing rarely result in

lasting results, due to staff sick days, vacations, breaks and other variations in work schedules. Courthouse News welcomes the opportunity to discuss procedures that will ensure access to unlimited civil cases on the day they are filed.

While I am not a lawyer, it is my understanding that the law provides for a right of timely access to new court filings, and that the law also recognizes it is appropriate to create special access procedures for the media so they can convey that information to other interested members of the legal, academic and business communities.

As shown in the enclosed survey, many other courts in California and around the nation have set up systems to allow members of the media to review newly-filed cases on the day they are filed, regardless of whether all of the administrative tasks associated with new complaint intake have been completed.

Courthouse News Service has worked cooperatively with courts across the country to ensure all members of the media are able to access civil complaints on the day they are filed. We are confident that by working together we can find a solution to ensure similar timely access at the Ventura County Superior Court. To this end, Ms. Krolak and I would gladly meet with you to discuss ways to secure that access at this court.

Sincerely,



Chris Marshall

Enclosure

cc: William Girdner, Editor, Courthouse News Service
Rachel Matteo-Boehm, Esq., Holme Roberts & Owen LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “G”

**Julie Camacho - New Filings - Routing to Records (including media bin)
FORTHWITH**

From: Martha McLaughlin
To: Civil Staff
Date: 2/17/2011 4:22 PM
Subject: New Filings - Routing to Records (including media bin) FORTHWITH

STAFF:

Concerns have been raised with respect to the delay in time of new filings being sent to court records (to include the media bin). Everyone is being asked to please make every effort to complete your entire new filing (s) on the same day filed. Please assemble and distribute to either the cart or the media bin box timely. We understand you may need a day or so more if you encounter a new filing that has multiple parties for entry. However, short of that, it is **imperative** that the files move on their way daily. This not only ensures proper location, but it helps to eliminate mix-up in placing of labels on documents, missing files, etc. Thank you for your prompt cooperation, please make good use of 4:00-5:00 p.m. time for this activity. Please see me if you have any questions or concerns.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “H”

Julie Camacho - Re-Prioritizing of New Filings Desk

From: Julie Camacho
To: Maria Ochoa; Martha McLaughlin
Date: 3/15/2011 8:26 AM
Subject: Re-Prioritizing of New Filings Desk
CC: Denise Lugo; Mari Soto; Vicki Knight

Maria -

I just want to confirm in writing for everyone the decisions that we made last week regarding re-prioritizing the limited and unlimited new complaints.

To save staff from having to photocopy the backlog of Unlimited jurisdiction new complaints for the media bin, these filings will now be the highest priority complaints to be filed. We receive on average 6 per day. Maria has started separated the "other" new complaints by limited and unlimited jurisdiction and labeling them as such.

Maria will work on these filings as the first and highest priority item on her desk (along with any Unlawful Detainer filings she may get) and immediately route them to the Media bin in Records. We have promised a maximum 2 day turn around to the media. Unlimited cases includes any petitions where the procedure states to forward the file to the Media Bin.

This also means that if Maria is out of the office, her work will need to be prioritized and the Unlimited new filings will need to be assigned to another clerk each day.

If there are any issues that arise with this procedure, please let me know. This is a trial period to make sure that this procedure works.

Thank you,
Julie

Julie Camacho
Court Program Manager
Superior Court of California
County of Ventura
Hall of Justice, Room 210
800 S. Victoria Avenue
Ventura, CA 93009

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “I”



*Superior Court of
California*

COUNTY OF VENTURA
Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

Michael D. Planet
Executive Officer/Clerk
and Jury Commissioner

FOR IMMEDIATE RELEASE

Date: September 22, 2011

Contact: Robert Sherman
Assistant Court Executive Officer
(805) 654-2964

**VENTURA SUPERIOR COURT ANNOUNCES BUDGET REDUCTION MEASURES:
Including Layoffs, Furloughs, Partial Court Closures and Reduced Service Hours**

The actions outlined here are necessary to address the continued reductions in funding for the California court system. Since the 2008-09 fiscal year the Governor and Legislature have approved \$652 million in ongoing budget cuts to the judicial branch. These reductions have resulted in a budget deficit of \$5.8 million for 2011-12 for the Ventura Superior Court. This is along with the prospect of even deeper cuts in the 2012-13 fiscal year.

The Superior Court of California, County of Ventura, is providing notice of the decision of the Presiding Judge to institute partial closure days on the dates designated below.

The majority of the courtrooms and all clerks' offices at all three courthouse locations will be closed on November 23, 2011, December 23, 27, 28, 29 and 30, 2011 to mitigate the impact of additional unpaid employee furlough days on court operations. These partial closure days are not court holidays, so statutory deadlines will not be extended. However, drop boxes are currently provided outside each clerical office for filing papers or submitting payments. Documents placed in the boxes by 5:00 p.m. are deemed deposited for filing that same business day. Most cases already calendared for hearing will be rescheduled and the affected parties notified by the court.

The exterior walk-up window on the north side of the Hall of Justice, Government Center, 800 South Victoria Ave., will be open between 8:00 a.m. and 6:45 p.m. for handling criminal/traffic payments and collections payments only. Limited courtrooms will be open to hear urgent matters, and a judge will be available to sign any other necessary documents on an emergency basis at the Hall of Justice. A courtroom will also be open at the Juvenile Justice Center for urgent juvenile matters. All Simi Valley courtrooms will be closed.

Mailing Address: P.O. Box 6489, Ventura, California 93006-6489

Exhibits To Kanatzar Declaration
Case No. CV 11-08083 R (MANx)

These dates were selected to minimize the impact on the public and court staff as court business is generally the slowest during the holiday season.

Effective Tuesday, January 3, 2012, the hours of the Clerk's Office, Monday through Friday, shall be 8:00 a.m. to 3:00 p.m. for traffic, civil, small claims, family law, criminal, juvenile, probate and records. Phone hours will be from 8:00 a.m. – 11:30 a.m., and 1:30 p.m. – 3:00 p.m. The Walk-up Express Window at the main Ventura Courthouse for Traffic and Collections payments only will remain open from 8:00 a.m. to 6:45 p.m. Monday through Friday.

Staffing in the Clerk's Offices has been significantly impacted by unfilled vacancies and furloughs. A reduction in the Clerk's Office hours will help court staff to timely process cases and prepare court calendars. Drop boxes are currently provided outside each Clerk's Office for filing papers or submitting payments. Documents placed in the boxes by 5:00 p.m. are deemed deposited for filing that same business day.

This week the court issued layoff notices to four (4) court employees after labor negotiations with the SEIU bargaining unit on budget reductions. After completing negotiations with the Criminal Justice Attorney's Association of Ventura County and SEIU, all court staff are taking mandatory unpaid furlough days ranging from thirteen (13) to eighteen (18) days depending on classification. All staff were required to take twelve (12) unpaid mandatory furlough days in the 2009-10 and 2010-11 fiscal years. This fiscal year's furloughs represents approximately 44,000 staff hours of lost work time directly impacting the court's ability to provide prior levels of service to the public.

In addition to the unpaid employee furloughs and staff layoffs, the court has also instituted other cost saving measures including, a freeze on hiring with thirty-seven (37) vacant positions that is projected to save \$2 million over the fiscal year; along with the reengineering of various court processes for efficiencies, reductions in non-salary related operating expenses, and the closure of the Colonia Self Help Center.

###

Robert A. Naeve (State Bar No. 106095)
rnaeve@jonesday.com
Erica L. Reilley (State Bar No. 211615)
elreilley@jonesday.com
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 851-3939
Facsimile: (949) 553-7539

Atorneys for Defendant
MICHAEL PLANET, IN HIS OFFICIAL
CAPACITY AS COURT EXECUTIVE
OFFICER/CLERK OF THE VENTURA
COUNTY SUPERIOR COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COURTHOUSE NEWS SERVICE.

Plaintiff.

V

MICHAEL PLANET, IN HIS
OFFICIAL CAPACITY AS COURT
EXECUTIVE OFFICER/CLERK OF
THE VENTURA COUNTY
SUPERIOR COURT.

Defendant

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DECLARATION OF KAREN
DALTON-KOCH SUBMITTED
IN OPPOSITION TO MOTION
FOR PRELIMINARY
INJUNCTION**

Date: November 21, 2011
Time: 10:00 a.m.
Courtroom: 8

Dalton Declaration ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

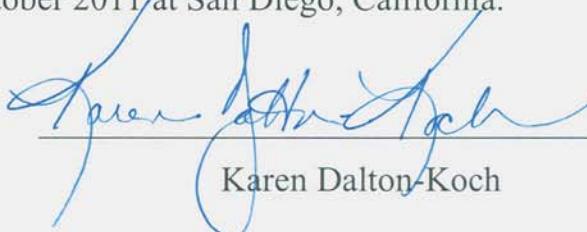
1 I, KAREN DALTON-KOCH, declare and state as follows:
2

3 1. I am the Public Information Officer of the Superior Court of
4 California, County of San Diego. I have personal knowledge of the facts stated in
5 this Declaration. I could and would competently and truthfully testify to these facts
6 if called upon to do so.

7 2. Attached to this Declaration as Exhibit "A" is a document entitled
8 Scorecard Detail – Superior Court of the State of California Access To Newly Filed
9 Civil Complaints, which was received by my office on or about February 2011.
10

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed this 31st day of October 2011 at San Diego, California.
14



15
16 Karen Dalton Koch
17

18
19
20
21
22
23
24
25
26
27
28
Dalton Declaration ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

SCORE

REPORT CARD DETAIL

PREPARED BY
COURTHOUSE NEWS SERVICE

ABCDF

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
ACCESS TO NEWLY FILED
CIVIL COMPLAINTS

Vers. 1/14/2011



REPORT CARD SUMMARY

SUPERIOR COURT OF THE STATE OF CALIFORNIA ACCESS TO NEWLY FILED CIVIL COMPLAINTS

Report Card 2011	
Subject	Evaluated by
Court	Grade
Access to Newly-filed Civil Complaints	Courthouse News Service
Alameda County Superior Court	A
Los Angeles County Superior Court (Downtown)	A
San Francisco County Superior Court	A
Riverside County Superior Court	A-
Santa Clara County Superior Court	A-
Solano County Superior Court	B-
Sonoma County Superior Court	B-
Contra Costa County Superior Court	C
Fresno County Superior Court	C
Orange County Superior Court	C
San Diego County Superior Court	C
Sacramento County Superior Court	D
San Bernardino County Superior Court	D
Santa Barbara County Superior Court	D
Ventura County Superior Court	D
Kern County Superior Court	F
San Mateo County Superior Court	F

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Alameda County Superior Court

Description
<p>Access procedures: Courthouse News is permitted to review case information and electronic versions of new complaints filed at the René C. Davidson Courthouse using a computer terminal at a desk behind the counter. The full text of most complaints are scanned and uploaded for electronic viewing, including remote viewing, on the day of filing. If any complaints that Courthouse News' reporter is interested in reviewing are not uploaded, the reporter sends an email to court staff listing those cases, and court staff uploads those complaints by 5:15 p.m.</p>
<p>Complaint availability: 98% of complaints are available on the same day they are filed.</p>
<p>Efforts to resolve delays: After experiencing delays in access in 2010 following a change in procedures instituted by a new court administrator, Courthouse News contacted the court executive officer and presiding judge. Following discussions with court officials, the court developed the current access procedures, which resolved the delays.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

C

Contra Costa County Superior Court

Description
<p>Access procedures: Unlike other major courts, the Contra Costa Superior Court does not allow reporters to see newly-filed civil complaints until after they have been fully processed. Court staff places fully-processed complaints into a media bin for reporters to review. If there are complaints that have been processed but are not in the bin (which Courthouse News' reporter identifies based on the assigned case numbers), the reporter can request up to five complaints from court staff. If a reporter requests more than five complaints that are not already in the bin, the reporter must pay \$15.</p>
<p>Complaint availability: On average, about 80% of complaints that Courthouse News reports on are one court day old, and the remaining 20% are between two and five court days old by the time Courthouse News is permitted to see them.</p>
<p>Efforts to resolve delays: Courthouse News wrote to Court Executive Officer Kiri Torre twice in 2010 regarding access delays, but these efforts have not resolved the problem. While Ms. Torre has indicated she will make efforts to speed up processing, she has informed Courthouse News that the court will not be changing its policy of not allowing reporters to see new filings until after they have been fully processed, the result of which will almost certainly mean continued delays.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

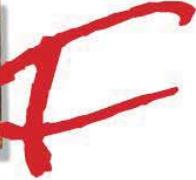
Fresno County Superior Court

Description
<p>Access procedures: Courthouse News' reporter waits in line to be buzzed into the clerk's secure file viewing room, which can take up to 10 minutes if the clerks are busy with other customers. Once in the viewing room, the reporter again waits in line to give the clerk a list of file case numbers to review, which begins with the first case number following the last case accessed during the previous visit. The clerk will only give Courthouse News' reporter those complaints that have been fully processed. Courthouse News' reporter then reviews complaints at a table in the viewing room.</p>
<p>Complaint availability: Historically, this court had same-day, behind-the-counter access for members of the news media. Currently, only about 10% of complaints are available for viewing on the same day they are filed, and 20% are available one court day after they are filed. The remaining 70% of newly filed complaints are first made available for review by news reporters anywhere between two to seven court days after filing.</p>
<p>Efforts to resolve delays: No recent efforts.</p>
<p>Efforts to resolve delays: Courthouse News attempted to work with court officials several years ago to reinstate timely access, but to no avail. Courthouse News is again attempting to work with court officials toward this goal.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE



REPORT CARD DETAIL

Kern County Superior Court

Description
<p>Access procedures: Until recently, this court had procedures for permitting Courthouse News' reporter to access and review new complaints in a timely manner. Unfortunately, the court recently instituted new access procedures that have resulted in access delays. Under the new procedures, the reporter is required to use the court's outdated website to review limited online docket information to identify potentially newsworthy filings. The reporter then requests complaints of interest from the court staff, but is only given those that have been processed and placed on the shelf. Compounding the delays in access, Courthouse News' reporter is only permitted to review ten complaints per visit.</p>
<p>Complaint availability: Previously, Courthouse News was able to access and review all of the complaints that had been filed since the reporter's last visit. Under the new access system, most complaints that Courthouse News' reporter sees are three weeks to one month old. For example, during one recent week, the newest complaint that Courthouse News' reporter saw was four court days old. The remaining 75% of complaints were three weeks old or older.</p>
<p>Efforts to resolve delays: Courthouse News has recently attempted to work with the court to resolve access delays, only to be told that it must obtain a state-issued professional photocopier's license in order to have timely access to newly filed complaints that are available on the shelf. This statutory scheme, contained in Business & Professions Code § 22450 <i>et seq.</i>, was never intended for members of the news media. Courthouse News wrote to court officials to request same-day access to newly filed unlimited civil complaints in December 2010, and received a response from Court Executive Officer Terry McNally, who pledged to develop new procedures for improved access. Courthouse News is waiting to hear from the court on specifics related to procedural changes in access.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE A REPORT CARD DETAIL

Los Angeles County Superior Court (Downtown - Stanley Mosk Courthouse)

Description
Access procedures: At the Stanley Mosk Courthouse in downtown Los Angeles, complaints are scanned on the day of filing, and reporters review all new actions filed on a particular day through the court's computer system, which includes terminals for the general public in the courthouse and additional terminals in a designated press room located in the same building. Both the filing room – including the intake and processing areas – and the area in which the general public views cases on computer monitors close at 4:30 p.m., but the press room remains open until 7 p.m., which enables reporters to review even the latest-filed complaints on a same-day basis. On the rare occasion that a newsworthy case is not in the court's system, the court's public relations staff actively hunts the case down and provides it to the press. About 90 new civil, general jurisdiction cases are filed each day.
Complaint availability: Complaints are available at the end of the same day they are filed.
Efforts to resolve delays: N/A

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

C

Orange County Superior Court

Description
<p>Access procedures: Even though most complaints are filed in paper form (e-filing is only mandatory for complex cases), Courthouse News is not permitted to see paper complaints, but instead must wait until those complaints are scanned and made available for electronic viewing through computer terminals at the courthouse or online via the court's web site. E-filed complaints are also made available for review in the same manner.</p>
<p>Complaint availability: Courthouse News does not see any complaints, whether e-filed or paper filed, on a same-day basis. The percentage of new complaints available on a next-day basis varies, but typically ranges from 60 to 100%. Those complaints that are not available the day after filing are generally accessible between two court days and one week after filing. E-filed cases typically take longer to appear on the court's online system than paper-filed complaints.</p>
<p>Efforts to resolve delays: Courthouse News' editor met with Court Executive Officer Alan Carlson in June 2010 to request that the court return to its previous, longstanding practice of providing same-day access to newly filed complaints, but never heard back from Mr. Carlson as to that request. In October 2010, Courthouse News again met with Mr. Carlson to request same-day access. As part of that request, Courthouse News asked for what it refers to as the e-filing "in-box" – <i>i.e.</i>, access, through a computer terminal, to the electronic versions of new complaints as soon as they are received by the court (in other words, the ability to see exactly the same thing as court staff sees when complaints are received). Mr. Carlson has never gotten back to Courthouse News regarding these requests, and the delays continue.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Riverside County Superior Court

Description
<p>Access procedures: Thanks to the efforts of Court Executive Officer Sherri Carter, who recently joined the court after serving for many years as the clerk of the United States District Court for the Central District of California, new complaints are now made available for viewing through the court's website on a same-day basis. Electronic versions of new complaints can be viewed free of charge using terminals at the courthouse, or remotely over the Internet for a fee.</p>
<p>Complaint availability: Same day of filing. However, complaints are not posted to the web site until after the courthouse closes for the day, the practical effect of which is that Courthouse News must pay a subscription fee to view new complaints on a same-day basis. Ms. Carter has indicated that she will address this issue.</p>
<p>Efforts to resolve delays: Prior to Ms. Carter's intervention, Courthouse News had worked for many years to resolve persistent delays in access in Riverside, which had been caused by the court's policy of not allowing reporters to see the actual paper complaints but instead requiring reporters to wait until after these complaints had been scanned and made available for electronic viewing. These efforts included at least two in-person meetings and numerous phone calls with court officials. After each of these discussions, access would improve, only to deteriorate soon after each set of discussions.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Sacramento County Superior Court

Description
<p>Access procedures: Currently, the court permits members of the news media to see newly filed complaints only after they have been processed, scanned and made available for electronic viewing on the Court's online case management system.</p>
<p>Complaint availability: A recent tracking exercise showed that, of complaints that Courthouse News reported on, less than 5% were available for review on the same day they were filed. About 35% of complaints were available one court day after filing, 20% were available two court days after filing, and the remaining 40% of complaints were available three or more court days after filing, with access to some complaints delayed by seven or more court days.</p>
<p>Efforts to resolve delays: Delays in access have been a longstanding problem at this court. In 2007, Courthouse News met with court officials in an effort to resolve these delays. Court officials at that time were cooperative and agreed to implement a pilot program that permitted members of the news media to review each day's new complaints between 4 and 5 p.m., even if they had not been fully processed, so long as reporters provided identification, and the files provided to the reporter were logged by the civil records staff. Although the pilot program initially appeared to be working well, it soon fell apart due to inconsistencies in implementation, and following the replacement of a key administrator, it was abandoned. Courthouse News made several follow-up attempts to find a solution to the problem, meeting with court officials in early 2009 and again in mid-2010 in an effort to resolve the delays. In both instances, court officials declined to take any steps to remedy the delays.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

San Bernardino County Superior Court

Description
<p>Access procedures: Courthouse News' reporter fills out a form listing the case numbers for all complaints the reporter would like to view, which she identifies using the court's online docket, which is typically one day old. Additionally, the reporter lists those complaints that were unavailable during the previous visit, either because the case files had been forwarded to the judge's chambers, or because the clerk's staff simply could not locate those complaints. Courthouse News' reporter is only permitted to review complaints that have been fully processed.</p>
<p>Complaint availability: The newest complaints that Courthouse News' reporter can access are two days old, with the average delay anywhere between one and two weeks.</p>
<p>Efforts to resolve delays: Courthouse News' reporter has made informal efforts over the years to work with court administrators to ensure timely access to newly filed civil complaints, but has not made any progress, largely due to a belief on some court personnel's part that any efforts would be lost due to staff turnover.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE

REPORT CARD DETAIL

San Diego County Superior Court

Description

Access procedures: Court staff places newly filed complaints in a media bin for press review only after they have been docketed and entered into the court's case management system. The court requires mandatory e-filing for construction defect cases, which are only available through LexisNexis's paid website or on a terminal at the courthouse.

Complaint availability: Of cases reported by Courthouse News, about 10% are available on the same day they are filed. Approximately half of the complaints – 45% – are at least one court day old, and the remaining 45% are delayed anywhere from two court days to three weeks.

Efforts to resolve delays: Since 1996, Courthouse News' editor has worked with officials at the court to improve access. After seven letters from the editor to court officials, and as many in return, as well as three meetings between court officials and Courthouse News' attorney at the time, Robert Longstreth, the court clerk agreed in 2006 to implement a pilot project whereby newly filed complaints would be placed in a designated "media bin," thereby giving members of the news media earlier – though rarely same-day – access to newly filed unlimited jurisdiction civil complaints. In 2008, just two days before Mr. Longstreth was to be enrobed as a San Diego County Superior Court judge, the clerk wrote to Courthouse News to announce that the pilot project was discontinued. Courthouse News' editor sent a lengthy letter in response, with a copy to the presiding judge, pointing out that timely access to newly filed complaints is the norm at other major courts across the country. The media bin was subsequently reinstated, although complaints are seldom placed in the bin on a same-day basis.

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE A REPORT CARD DETAIL

San Francisco County Superior Court

Description
<p>Access procedures: Per the court's written protocol, news reporters are allowed behind the counter to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. If reporters come into the clerk's office before 3 p.m., they may view new cases that have been filed up until that time. Between 3 and 4:30 p.m., the filings are placed in a media box, which is available to news reporters for viewing in the records department, whether or not those cases have been entered into the computer system or otherwise processed. A copy machine that was provided to the court by Courthouse News is available for all members of the news media to make copies of filings of interest.</p>
<p>Complaint availability: Same-day access is generally between 80 and 100% during any given week at this court. A recent tracking exercise showed that of complaints reported by Courthouse News, 85% were filed on the same day they were provided to the reporter.</p>
<p>Efforts to resolve delays: Although the court's access procedures have remained essentially the same for many years, in late 2009, the court revoked its prior practice of allowing Courthouse News' reporter to remain behind the counter for a half-hour after the court stopped accepting new filings, but while court personnel were still working in the area. This prior practice had allowed Courthouse News sufficient time to review the later-filed complaints, which were often not made available until shortly before closing, and its revocation resulted in significant access delays. In December 2009, Courthouse News met with court officials in an effort to address the matter. Following this meeting, the situation improved somewhat. Still, court officials declined to reinstate the former policy of allowing Courthouse News to remain in the records area for a half-hour after closing, the result of which has been that Courthouse News often does not see late-filed complaints until either right before its reporter must leave the premises, leaving virtually no time to report on the complaint, or the day after filing.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE



REPORT CARD DETAIL

San Mateo County Superior Court

Description
<p>Access procedures: Courthouse News' reporter accesses and downloads newly filed complaints from the court's online access system. Although complaints are also available in paper form at the courthouse, the delays in accessing complaints in this manner are even longer.</p>
<p>Complaint availability: Of cases reported from the online system, approximately 30% are three court days old, 10% are four days old, 20% are one week old, and 40% are more than one week old. The delays for accessing complaints in person are worse, since complaints are posted online before court staff makes the paper complaints accessible for review at the court.</p>
<p>Efforts to resolve delays: Courthouse News has attempted to work with court officials in 2007, 2008 and 2009 to resolve delays in access to complaints, but none of these efforts has resulted in any lasting improvements.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Santa Barbara County Superior Court

Description
<p>Access procedures: Courthouse News' reporter is not permitted to request access to any complaints until case information appears on a docket sheet that is available in the records room or on the court's online system, both of which typically take several days. Once the record of a new case appears in either of these places, the reporter asks to see the complaint.</p>
<p>Complaint availability: Of complaints that Courthouse News reports, approximately 15% are five court days old, 15% are six days old, 30% are one week old, 30% are between one and two weeks old, and 10% are two weeks old or older.</p>
<p>Efforts to resolve delays: Courthouse News worked with the court in 2004 to resolve delays in access that appeared to stem from the court's policy of only permitting reporters to review complaints that had been fully processed. Court officials responded favorably, investigating the cause of the delays and putting procedures in place that would ensure that staff retrieves all complaints filed since the reporter's last visit. Unfortunately, access once again deteriorated in 2009, apparently due to the court's return to its practice of processing cases before making them available for review. Since Courthouse News recently began covering this court on a daily basis, it is attempting to work with court officials to develop procedures for same-day access to newly filed complaints. One of Courthouse News' editors recently spoke with a supervisor at the court, who was unwilling to consider procedural changes that would make same-day access possible. Courthouse News will continue to attempt to work with court officials to resolve the current delays.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Solano County Superior Court

Description
Frequency of visits: Daily
Access procedures: Courthouse News' reporter must review case information on the court's computer and then request specific files from court staff, listing each file on a separate piece of paper. There is an official limit of 10 cases per day that the reporter can access, although this limit is not always enforced. Often, the reporter requests her permitted 10 cases, but is only given one or two cases in return.
Complaint availability: Of cases reported by Courthouse News, about 70% are one to three court days old; about 10% are four to six days old; and almost 20% are a week or more old.
Efforts to resolve delays: Courthouse News successfully worked with officials in 2005 to resolve delays in access that appeared to be connected with the court's policy of immediately transferring files to the judges after docketing for disqualification purposes. However, access has since dropped off, and Courthouse News has not yet initiated a new round of discussions about the current access delays.

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE

REPORT CARD DETAIL

Sonoma County Superior Court

Description
<p>Access procedures: The court has set up a media bin where clerks deposit newly filed complaints for press review, and has designated two court staffers to make sure reporters see all the newly filed actions on the day after they are filed, regardless of whether they have been fully processed. Unfortunately, access has declined recently due to the clerks' failure to place newly filed complaints in the media bin following minimal processing.</p>
<p>Complaint availability: Of complaints that Courthouse News reports, about 40% are one court day old, another 25% are between two and six court days old, and the remaining 35% are between one week and more than one month old.</p>
<p>Efforts to resolve delays: Courthouse News worked with court officials in 2008 and 2009 to resolve delays in access. Although Court officials were receptive to suggestions on improving media access to newly filed civil complaints, and instituted the media bin solution in mid-2009, this solution has been short-lived as court staff have not been consistent in following the new procedures. Courthouse News is continuing to work with court officials in an effort to improve access.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

SCORE REPORT CARD DETAIL

Ventura County Superior Court (Main Courthouse)

Description
<p>Access procedures: Pursuant to an arrangement worked out between court officials and Courthouse News in 2009, newly filed civil complaints are supposed to be placed in a media bin for review after only minimal processing. However, the newest complaints that are placed in this bin are at least two court days old, while the majority of complaints are not available until one to two weeks after they are filed, and Courthouse News' reporter cannot access some complaints until more than a month after they are filed. To compound matters, the court will only permit Courthouse News' reporter to review 25 complaints per day beyond what is available in the media bin, and will only allow five complaints to be checked out at a time.</p>
<p>Complaint availability: Courthouse News never sees complaints on the same day they are filed at the Ventura Courthouse. Of the complaints filed in Ventura that Courthouse News reports on, about 40% are one day to one week old, another 40% are one to two weeks old, and the remaining 20% are two weeks to nearly four months old.</p>
<p>Efforts to resolve delays: Courthouse News worked with court officials in 2009 to set up the current media bin procedure, as well as establish a process by which the reporter could request in advance any cases that were unavailable during the previous visit. Although at first it seemed to be working well, access deteriorated due to the court staff not placing all newly filed complaints in the bin. Courthouse News has recently engaged court staff in another round of discussions in an effort to improve access.</p>

SUPERIOR COURT
OF THE STATE
OF CALIFORNIA
ACCESS TO
NEWLY FILED
CIVIL COMPLAINTS

PREPARED BY COURTHOUSE NEWS SERVICE

1 Robert A. Naeve (State Bar No. 106095)
2 rnaeve@jonesday.com
3 Erica L. Reilley (State Bar No. 211615)
4 elreilley@jonesday.com
5 JONES DAY
6 3161 Michelson Drive, Suite 800
7 Irvine, CA 92612
8 Telephone: (949) 851-3939
9 Facsimile: (949) 553-7539

10 Attorneys for Defendant
11 MICHAEL PLANET, IN HIS OFFICIAL
12 CAPACITY AS COURT EXECUTIVE
13 OFFICER/CLERK OF THE VENTURA
14 COUNTY SUPERIOR COURT

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 COURTHOUSE NEWS SERVICE,

20 Plaintiff,

21 v.

22 MICHAEL PLANET, IN HIS
23 OFFICIAL CAPACITY AS COURT
24 EXECUTIVE OFFICER/CLERK OF
25 THE VENTURA COUNTY
26 SUPERIOR COURT,

27 Defendant.

28 Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DECLARATION OF ROBERT
SHERMAN IN SUPPORT OF
DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Declaration of Robert Sherman ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1 I, ROBERT SHERMAN, hereby declare as follows:

2 1. I am the Assistant Court Executive Officer and Chief Financial Officer
3 for the Superior Court of the State of California, County of Ventura (the "Ventura
4 Superior Court"). I have been the Assistant Court Executive Officer since 2004,
5 and the Chief Financial Officer since 1999. As the Assistant Court Executive
6 Officer, I am responsible for substantial management authority in the court and
7 assisting the Court Executive Officer with strategic direction and overall
8 management of the court's non-judicial operations, as well as serving in the absence
9 of the Court Executive Officer. As the Chief Financial Officer, I am responsible for
10 the overall fiscal and budgetary administration of the court. I have personal
11 knowledge of the facts stated in this Declaration, and I could and would
12 competently and truthfully testify to these facts if called upon to do so.

13 2. The California state judicial system is in the midst of an unprecedented
14 financial crisis. Over the last three fiscal years, the statewide budget for the courts
15 has been cut by more than \$350 million.

16 3. Ventura Superior Court has been not been spared from the impact of
17 these statewide cuts. Over the last three fiscal years, the Ventura Superior Court
18 budget has been cut by more than \$13 million:

- 19 • FY 09-10 budget cuts totaled \$3.5 million
- 20 • FY 10-11 budget cuts totaled \$3.6 million
- 21 • FY 11-12 budget cuts totaled \$5.9 million

22 4. Ventura Superior Court has done many things in an effort to mitigate
23 the impact of these cuts over the last few years.

24 5. Starting in FY 08-09, Ventura Superior Court instituted a hiring freeze.
25 As a result of that freeze and natural attrition, the vacancy rate for administrative
26 positions has more than doubled. In 2008, there were 22 vacant administrative
27 positions. As of October 25, 2011, there were 48.5 vacancies (accounting for one
28 split-position vacancy). This comparison can be seen in the August 2008 Vacancy

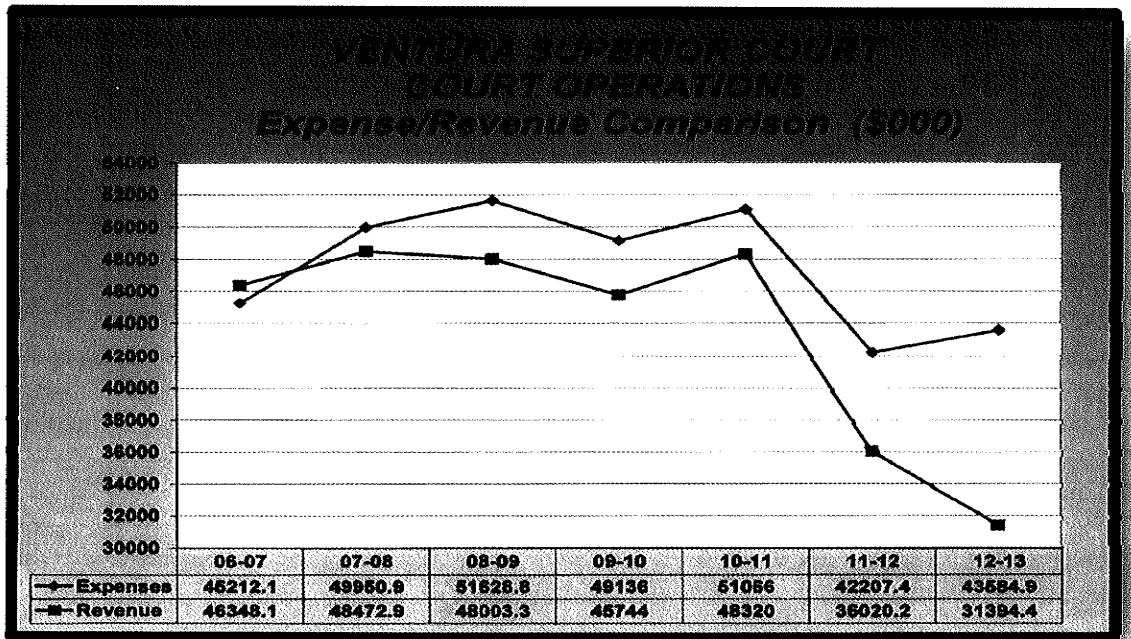
Declaration of Robert Sherman ISO
Def't's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1 Report and the October 2011 Vacancy Report, true and correct copies of which are
2 attached hereto as Exhibit A and B, respectively. These charts were prepared by
3 the court's human resources department and validated by my staff at my direction.

4 6. Ventura Superior Court also has increased staff furlough days. In prior
5 fiscal years, all court staff was required to take a minimum of 12 furlough days,
6 though staff could volunteer to take more. In this fiscal year, depending on the
7 category of employee, court staff are required to take anywhere from 13 to 18
8 mandatory furlough days.

9 7. Additionally, Ventura Superior Court has reduced the hours it is open
10 to the public. Currently, the courthouse closes at 4:00 p.m., an hour earlier than its
11 traditional 5:00 p.m. closing time. Effective January 1, 2012, the courthouse will
12 close at 3:00 p.m., another hour earlier.

13 8. All these expense control measures over the past three fiscal years
14 included more than \$1.7 million in operating expense reductions in FY 09-10 alone,
15 and they are still not enough. The deficit between revenue and expenses continues
16 to grow:



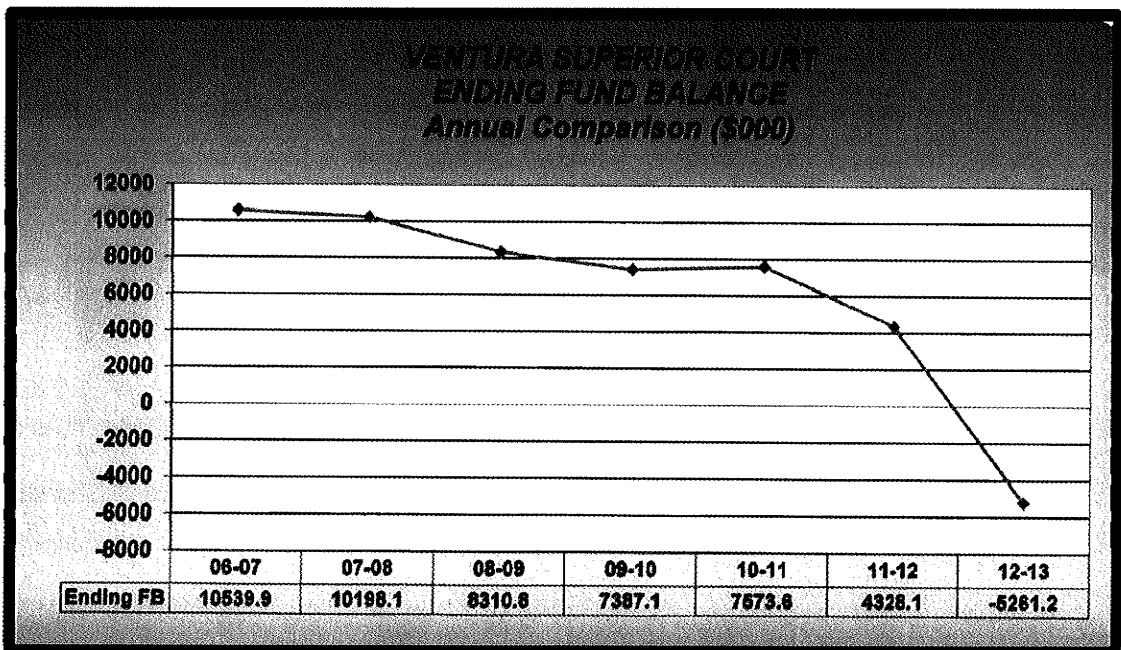
28 Declaration of Robert Sherman ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

1 This Court Operations Expense/Revenue Comparison chart was prepared by my
2 staff at my direction. As the chart shows, the cumulative effect of these budget cuts
3 has resulted in a \$5.9 million shortfall this current fiscal year.

4 9. Ventura Superior Court has only two mechanisms to offset this
5 shortfall.

6 10. First, Ventura Superior Court can draw from a locally generated
7 stream of revenue derived from Ventura Superior Court's Collections Unit, which
8 is responsible for collection of all court ordered fines, probation fees, juvenile
9 detention fees, probation investigation fees and victim restitution. Typically, the
10 revenue generated from the Collections Unit—which totaled \$2.7 million last
11 year—would go to Ventura Superior Court's reserve fund. This year, that entire
12 \$2.7 million is being used to help offset the \$5.9 million shortfall.

13 11. Second, Ventura Superior Court can draw from its reserve fund, which
14 is formally known as the court's Fund Balance. The Fund Balance has decreased
15 from \$10.5 million in FY 06-07 to \$4.3 million this year, FY 11-12:



This Ending Fund Balance chart was prepared by my staff at my direction.

12. For this current fiscal year, Ventura Superior Court will draw \$3.2 million from the Fund Balance, which, when combined with the \$2.7 million, serves to make up the \$5.9 million shortfall.

13. The situation is only expected to get worse. The budget cuts for Ventura Superior Court's next fiscal year (FY 12-13) are expected to increase by \$6.3 million. Those cuts will net a \$12.2 million shortfall.

14. In an effort to make up that shortfall, the Ventura Superior Court Fund Balance will be entirely depleted. Indeed, using all the expected \$2.7 million in revenue from the Collections Unit and combining that with the \$4.3 million remaining in the Fund Balance, will still leave a shortfall of \$5.2 million. That is a *remaining* shortfall nearly equal to the current year's total shortfall.

15. Ventura Superior Court will have no other ways in which to deal with that shortfall other than through additional staff reductions and court closures. There will be no additional reserve funds or other sources of revenue.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 28, 2011, at Ventura, California.

ura, California.

Robert Sherman

LAI-3152263v1

Declaration of Robert Sherman ISO
Deft's Opp. to Plf's Mot. for Prelim. Inj.
Case No. CV 11-08083 R (MANx)

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Confidential

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

VACANCY REPORT

Confidential

Note: Any filled positions that are not assigned before this revision will appear on this report.

10/24/2011

10/25/11

Budget	CEAO/ODEO	DEPARTMENT	MANAGER	JOB TITLE	UNIT	Current Vacant	Vacant By	Date Vacant	# of Days Vacant	Recruit Date	# of Days Filled	Recruitment Status	Current Hrly Rate	Latest % Int'.	Ex-Date	Budgeted Salary	Comments			
1	9531	Michael Plaintiff	Executive Office	Matthew Plaintiff	Duty Executive Officer	UNE	00638	Terry Brode	07/16/11	102	On Hold	N/A	Frozen	52.5	3.50%	06/26/2008	1.00	\$10,221 Vacant: Terms retired - last day 7/1/2011.		
2	9445	Pat Patterson	Reporting Services	Matthew Plaintiff	Court Reporter	SEU	21010	Elke Stoumpe	08/09/11	81	On Hold	N/A	Frozen	52.5	2.25%	06/26/2009	0.00	\$10,221 Vacant: Promoted - last day 8/9/2011.		
3	9525	Pat Patterson	Jury Services	Nan Richardson	Supervisor III	SEU	22141	Richard Golder	08/09/11	655	On Hold	N/A	Frozen	52.6	2.25%	06/27/2010	1.00	\$5,370 Vacant: Relieved - last day 8/9/2011.		
4	9560	Pat Patterson	Information Technology	Roger James	Senior Systems Analyst-Apps	SEU	00768	Sandi Hittaker	01/09/10	655	On Hold	N/A	Held	52.5	2.25%	06/27/2010	1.00	\$6,100 Held for VA-Baadt ICH 2010. Temporarily filled by M. Soto, eff 6/27/2010.		
5	9560	Pat Patterson	Information Technology	Roger James	Business Process Analyst	UNE	23335	Mark Branch	07/07/11	116	On Hold	N/A	Frozen	52.5	3.50%	06/29/2008	1.00	\$7,550 Vacant: Mark retired - last day 7/7/2011.		
6	9465	Pat Patterson	Information Technology	Roger James	Business Process Analyst	SEU	00962	Erica Siquela	07/17/10	591	On Hold	N/A	Frozen	52.2	2.25%	06/26/2009	1.00	\$7,550 Vacant: Held for VA-Baadt ICH 2010.		
7	9501	Robert Sherman	Child Delinquent	VTA	Court Reporter	SEU	00267	Liseleth Koen	08/09/11	61	On Hold	N/A	Frozen	51.4	2.25%	06/27/2010	1.00	\$4,313 Vacant: Vacant: Liseleth transferred to Court 7/7/2011.		
8	9303	Robert Sherman	Child Non-Delinq.	VTA	Richard Cabral	SEU	00976	Amy Solis	07/23/11	95	On Hold	N/A	Recruit	52.0	0.0%	n/a	1.00	\$4,264 Vacant: Amy Solis promoted to Court Reporter - last day 7/23/2011.		
9	10	9536	Robert Sherman	Fiscal - VTA	Patty Baars	Senior Accountant	UNE	00630	Patty Baars	03/20/11	220	On Hold	N/A	Frozen	53.1	3.50%	06/26/2008	1.00	\$5,370 Vacant: Patty Baars promoted to Fiscal Director - 03/20/2011.	
10	11	9536	Robert Sherman	Fiscal - VTA	Patty Baars	Accounting Assistant III	SEU	00576	Elizabeth Zuber	08/07/11	178	On Hold	N/A	Frozen	52.5	2.25%	06/27/2010	1.00	\$4,264 Vacant: Patty Baars promoted to Fiscal Director - 03/20/2011.	
11	12	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26110	00686	Cecilia Sanchez	07/09/11	178	On Hold	N/A	Held	51.9	2.25%	06/27/2010	1.00	\$3,315 Held for VA-Baadt ICH 2010. Cecilia Sanchez promoted to VTA for 90 days.
12	13	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	00585	Leanne Crockett (Corde)	02/28/09	116	On Hold	N/A	Frozen	52.6	2.25%	06/27/2010	1.00	\$5,436 Vacant: Leanne Crockett (Corde) promoted to VTA for 90 days.	
13	14	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	25738	2618	On Hold	N/A	PEVADING FIL	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.			
14	15	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26175	New Position	05/21/11	167	08/23/11	64	N/A	Recruit	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.
15	16	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26176	New Position	05/21/11	167	08/23/11	64	N/A	Recruit	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.
16	17	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26177	New Position	05/21/11	167	08/23/11	64	N/A	Recruit	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.
17	18	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26178	New Position	05/21/11	167	08/23/11	64	N/A	Recruit	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.
18	19	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26179	New Position	05/21/11	167	08/23/11	64	N/A	Recruit	51.4	2.25%	06/27/2010	1.00	\$4,373 Vacant: Richard Cabral promoted to VTA for 90 days.
19	20	9301	Robert Sherman	Child Delinquent	VTA	Richard Cabral	SEU	26180	Leanne Crockett (Corde)	02/28/09	116	On Hold	N/A	Held	51.4	2.25%	06/27/2010	1.00	\$5,436 Vacant: Leanne Crockett (Corde) promoted to VTA for 90 days.	
20	21	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	00674	John Smith	10/03/08	1118	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
21	22	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	22356	Sheri Gonzalez	07/09/09	1926	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
22	23	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	00787	Connie Barone	05/09/09	893	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
23	24	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	20013	Sara Watson	05/09/09	879	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
24	25	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	0022409	On Hold	05/09/09	322	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
25	26	9427	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	00774	John Edward	01/03/11	205	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
26	27	9426	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	22355	Antonio Grimaldo	10/03/08	1118	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
27	28	9426	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	22354	Naomie Martin	10/30/10	361	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
28	29	9426	Cheryl Kunkler	Trifunctional Office	VTA	Kathy O'Dell	SEU	22354	Naomie Martin	10/30/10	361	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
29	30	9427	Cheryl Kunkler	Trifunctional Office	VTA	Irene Lopez	SEU	22353	Imi Muder	10/02/11	24	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
30	31	9427	Cheryl Kunkler	Trifunctional Office	VTA	Irene Lopez	SEU	007748	Imi Muder	10/02/11	1140	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
31	32	9426	Cheryl Kunkler	Trifunctional Office	VTA	Sarah Waters	SEU	00861	Olivia Garcia	09/11/08	1954	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Olivia Garcia promoted to Sarah Waters - to remain open for FY 10-11.	
32	33	9426	Cheryl Kunkler	Trifunctional Office	VTA	Sarah Waters	SEU	00869	Colin Flores	10/09/10	3018	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
33	34	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00769	Judy Jensen	01/03/11	3018	On Hold	N/A	Held	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Held for VA-Baadt ICH 2010.	
34	35	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00953	Sheri Stroby	09/23/11	223	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Sheri Stroby promoted to Keri Griffith - to remain open for FY 10-11.	
35	36	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00954	Naomi Cimino	09/23/11	894	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Naomi Cimino promoted to Keri Griffith - to remain open for FY 10-11.	
36	37	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00955	Naomi Cimino	09/23/11	894	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Naomi Cimino promoted to Keri Griffith - to remain open for FY 10-11.	
37	38	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00956	Naomi Cimino	09/23/11	894	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Naomi Cimino promoted to Keri Griffith - to remain open for FY 10-11.	
38	39	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00957	Julie Cimino	09/23/11	893	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Julie Cimino promoted to Keri Griffith - to remain open for FY 10-11.	
39	40	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00958	Julie Cimino	09/23/11	893	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Julie Cimino promoted to Keri Griffith - to remain open for FY 10-11.	
40	41	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00959	Roberta Martin	09/17/11	40	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Roberta Martin promoted to Keri Griffith - to remain open for FY 10-11.	
41	42	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00960	Lucy Jaramillo	09/17/11	40	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Lucy Jaramillo promoted to Keri Griffith - to remain open for FY 10-11.	
42	43	9426	Cheryl Kunkler	Trifunctional Office	VTA	Keri Griffith	SEU	00961	Lucy Jaramillo	09/17/11	40	On Hold	N/A	Frozen	52.7	2.25%	06/27/2010	1.00	\$4,227 Vacant: Lucy Jaramillo promoted to Keri Griffith - to remain open for FY 10-11.	
43	44	9501	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	22915	Jerry Fink	10/04/11	12	On Hold	N/A	Frozen	51.7	2.25%	06/26/2010	1.00	\$3,315 Vacant: Jerry Fink promoted to Keri Griffith - to remain open for FY 10-11.	
44	45	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	22916	Donna Muzel	10/04/11	12	On Hold	N/A	Frozen	51.7	2.25%	06/26/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
45	46	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00962	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
46	47	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00963	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
47	48	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00964	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
48	49	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00965	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
49	50	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00966	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
50	51	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00967	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
51	52	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00968	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
52	53	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00969	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
53	54	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00970	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to Keri Griffith - to remain open for FY 10-11.	
54	55	9426	Cheryl Kunkler	Child Care Coordinator	VTA	Keri Griffith	SEU	00971	Donna Muzel	09/23/11	923	On Hold	N/A	Frozen	51.7	2.25%	06/27/2010	1.00	\$3,315 Vacant: Donna Muzel promoted to K	

Rachel Matteo-Boehm (SBN 195492)

rachel.matteo-boehm@hro.com

David Greene (SBN 160107)

david.greene@hro.com

Leila C. Knox (SBN 245999)

leila.knox@hro.com

HOLME ROBERTS & OWEN LLP

560 Mission Street, Suite 250

San Francisco, CA 94105-2994

Telephone: (415) 268-2000

Facsimile: (415) 268-1999

Attorneys for Plaintiff

COURTHOUSE NEWS SERVICE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Courthouse News Service.

Plaintiff.

V.

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

Defendant.

CASE NO. CV11-08083 R (MANx)

**PLAINTIFF COURTHOUSE NEWS
SERVICE'S OPPOSITION TO THE
MOTION TO DISMISS AND
ABSTAIN OF DEFENDANT
MICHAEL PLANET**

Date: Nov. 21, 2011

Time: 10:00 am

Courtroom: G-8 (2nd Floor)

Judge: The Hon. Manuel L. Real

1 TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. DEFENDANT'S MOTION MISSTATES THE NATURE OF THE RELIEF COURTHOUSE NEWS SEEKS, AND CERTAIN CORRECTIONS TO DEFENDANT'S ASSERTIONS ARE ALSO IN ORDER	2
A. Defendant's Concession That There Is A First Amendment Right Of Access To Civil Court Records Means Access To Those Records Cannot Be Denied Unless Strict Requirements Are Met, And Those Requirements Trump State Statutes That Are Less Protective Of Access	2
B. The Failure Of SB 326 To Pass Earlier This Year Demonstrates The Need For This Court To Act	3
C. Defendant's Description Of The Nature Of Courthouse News' Claims And The Relief Sought Is Inaccurate; Courthouse News Seeks Only An Order That Defendant Stop Obstructing Same-Day Access	5
II. THIS COURT SHOULD NOT ABSTAIN FROM DECIDING THE IMPORTANT ISSUES OF FEDERAL LAW RAISED IN THE COMPLAINT	6
A. Abstention Is Strongly Disfavored; A Federal Court Should Decline To Exercise Its Federal Question Jurisdiction In Only The Rarest Of Situations	6
B. The <i>O'Shea</i> Abstention Doctrine Does Not Apply Because The Relief Courthouse News Seeks Will Not Be Highly Intrusive On The State Court, Unworkable Or Require This Court To Audit The State Court.....	7
C. <i>Pullman</i> Abstention is Not Appropriate Because This Court Need Not Decide A Single Issue of State Law.....	14
III. DEFENDANT'S ATTEMPT TO AVOID ADJUDICATION OF HIS DELAYS IN ACCESS UNDER THE FIRST AMENDMENT AND COMMON LAW HAS NO MERIT, AND HIS MOTION TO DISMISS	

1	COURTHOUSE NEWS' FIRST AND SECOND CLAIMS FOR RELIEF SHOULD BE DENIED.....	16
2		
3	A. Defendant's Motion Should Be Denied Because The First And Second Claims For Relief Are Grounded Not Just In The Denial Of Same-Day Access In Particular, But Also The Overall Delays In General.....	16
4		
5	B. Whether A Denial Of Same Day Access Violates The First Amendment And Common Law Rights Of Access Is A Factual Inquiry To Be Determined On A Case-By-Case Basis, And Is Not An Appropriate Basis For Dismissal Under FRCP 12(b)(6).....	18
6		
7	C. Defendant's Other Arguments In Support Of His Motion To Dismiss Lack Merit	19
8		
9	IV. GIVEN DEFENDANT'S ASSERTION OF ELEVENTH AMENDMENT IMMUNITY, COURTHOUSE NEWS CONSENTS TO THE DISMISSAL OF ITS STATE LAW CLAIM, AND THAT CLAIM ONLY.....	23
10		
11	CONCLUSION.....	23
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

FEDERAL CASES

Page(s)	
3	<i>31 Foster Children v. Bush</i> , 329 F.3d 1255 (11 th Cir. 2003) 8
4	<i>Ad Hoc. Commission on Judicial Admin v. Massachusetts</i> , 488 F.2d 1241 (1 st Cir. 1973) 11
5	
6	<i>Associated Press v. District Court</i> , 705 F.2d 1143 (9 th Cir. 1983) 3, 19
7	
8	<i>Benavidez v. Eu</i> , 34 F.3d 825 (9 th Cir. 1994) 8, 9
9	
10	<i>Clement v. California Department of Corrections</i> , 364 F.3d 1148 (9 th Cir. 2004) 9
11	
12	<i>Colorado River Water Conservation District v. United States</i> , 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976) 7
13	
14	<i>Connecticut Magazine v. Moraghan</i> , 676 F. Supp. 38 (D. Conn. 1987) 14
15	
16	<i>County of Allegheny v. Frank Mashuda</i> , 360 U.S. 185, 79 S. Ct. 1060, 3 L. Ed. 2d 1163 (1959) 7
17	
18	<i>Courthouse News Service v. Jackson</i> , 2009 U.S. Dist. LEXIS 62300, 38 Media L. Rep. 1890 (S.D. Tex. 2009) 5, 6, 19, 22
19	
20	<i>Courthouse News Service v. Jackson</i> , 2010 U.S. Dist. LEXIS 74571, 38 Media L. Rep. 1894 (S.D. Tex. 2010) 5, 6, 19, 22
21	
22	<i>Doe v. United States Department of Justice</i> , 753 F.2d 1092 (D.C. Cir. 1985) 17
23	
24	<i>In re Eastman Kodak Co.</i> , 2010 WL 2490982 (S.D.N.Y. 2010) 23
25	
26	
27	
28	

1	<i>E.T. v. Cantil-Sakauye</i> , ____ F.3d ___, No. 10-15248, slip op. 17457 (9 th Cir., Sept. 13, 2011).....	10, 11
2		
3	<i>FOCUS v. Allegheny Court of Common Pleas</i> , 75 F.3d 834 (3 rd Cir. 1996)	14
4		
5	<i>Family Division Trial Lawyers of the Superior Court-D.C. v. Moultrie</i> , 725 F.2d 695 (D.C. Cir. 1984).....	10
6		
7	<i>Gardner v. Luckey</i> , 500 F.2d 712 (5 th Cir. 1974)	10
8		
9	<i>Gerstein v. Pugh</i> , 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975)	8
10		
11	<i>Gilbertson v. Albright</i> , 381 F.3d 965, 968 (9 th Cir. 2004) (en banc)	8
12		
13	<i>Globe Newspaper Co. v. Pokaski</i> , 868 F.2d 497 (1 st Cir. 1989).....	19
14		
15	<i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982)	3, 13
16		
17	<i>Green v. City of Tucson</i> , 255 F.3d 1086 (9 th Cir. 2001)	8
18		
19	<i>Joseph A. v. Ingram</i> , 275 F.3d 1253 (10 th Cir. 2002)	8
20		
21	<i>Kamakana v. City & County of Honolulu</i> , 447 F.3d 1172 (9 th Cir. 2006)	18
22		
23	<i>Kaufman v. Kaye</i> , 466 F.3d 83 (2d Cir. 2006)	12
24		
25	<i>Lake v. Speziale</i> , 580 F. Supp. 1318 (D. Conn. 1984).....	10
26		
27	<i>Los Angeles County Bar Association v. Eu</i> , 979 F.2d 697 (9 th Cir. 1992)	11
28		

1	<i>Luckey v. Miller</i> , 976 F.2d 673 (11 th Cir. 1992)	10
2	<i>Mason v. County of Cook</i> , 488 F. Supp. 2d 761 (N.D. Ill. 2007).....	10
3	<i>Massey v. Banning Unified School District</i> , 256 F. Supp. 2d 1090 (C.D. Cal. 2003)	17
4	<i>Middlesex County Ethics Commission v. Garden State Bar Association</i> , 457 U.S. 423, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982)	8
5	<i>Miofsky v. Superior Court</i> , 703 F.2d 332 (9 th Cir. 1983)	7
6	<i>Navarro v. Block</i> , 250 F.3d 729 (9 th Cir. 2001)	17
7	<i>New Orleans Public Service, Inc. v. Council of City of New Orleans</i> , 491 U.S. 350, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989)	7
8	<i>Newcal Industrial, Inc. v. Ikon Office Solution</i> , 513 F.3d 1038 (9 th Cir. 2008)	4
9	<i>Norwalk Core v. Norwalk Redevelopment Agency</i> , 395 F.2d 920 (2d Cir. 1968)	17
10	<i>In re NVIDIA</i> , , 2008 WL. 1859067 (N.D. Cal. 2008)	22
11	<i>O'Shea v. Littleton</i> , 414 U.S. 488, 94 S. Ct. 669 38, L. Ed. 2d 674 (1974) .. 6, 7, 8, 9, 10, 11, 12, 13	
12	<i>Papasan v. Allen</i> , 478 U.S. 265, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)	23
13	<i>Parker v. Turner</i> , 626 F.2d 1 (6 th Cir. 1980)	10
14	<i>Phoenix Newspapers, Inc. v. United States District Court</i> , 156 F.3d 940 (9th Cir. 1998)	3
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	<i>Pompey v. Broward County</i> , 95 F.3d 1543 (11 th Cir. 1996)	10
2	<i>Porter v. Jones</i> , 319 F.3d 483 (9 th Cir. 2003)	15, 16
3	<i>Potrero Hills Landfill, Inc. v. County of Solano</i> , __ F.3d __, No. 10-15229 slip op. 17295 (9 th Cir., Sept. 13, 2011).....	7, 15
4	<i>Press-Enterprise Co. v. Superior Court</i> , 478 U.S. 1, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986)	3, 18
5	<i>Pulliam v. Allen</i> , 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565	6, 7, 8, 10
6	<i>Railroad Commission of Texas v. Pullman</i> , 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941)	14, 15, 16
7	<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980)	1, 15, 18
8	<i>Ripplinger v. Collins</i> , 868 F.2d 1043 (9 th Cir. 1989)	15
9	<i>Rivera-Puig v. Garcia-Rosario</i> , 983 F.2d 311 (1 st Cir. 1992).....	13, 14, 15
10	<i>Shroyer v. New Cingular Wireless Services, Inc.</i> , 622 F.3d 1035 (9 th Cir. 2010)	17
11	<i>The Fort Wayne Journal-Gazette v. Baker</i> , 788 F. Supp. 379 (N.D. Ind. 1992)	13, 14
12	<i>The Hartford Courant Co. v. Pellegrino</i> , 380 F.3d 83 (2d Cir. 2004)	13, 14, 15, 16
13	<i>Times Mirror Co v. United States</i> , 873 F.2d 1210 (9 th Cir. 1989)	18
14	<i>United States v. Brooklier</i> , 685 F.2d 1162 (9 th Cir. 1982)	2
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	<i>United States v. Edwards</i> , 672 F.2d 1289 (7 th Cir. 1982)	18
2	<i>United States v. Edwards</i> , 823 F.2d 111 (5 th Cir. 1987)	21, 22
3	<i>Valley Broad. Co. v. United States District Court</i> , 798 F.2d 1289 (9 th Cir. 1986)	18
4	<i>Wisconsin Department of Corrections v. Schacht</i> , 524 U.S. 381, 118 S. Ct. 2047, 141 L. Ed. 2d 364 (1998)	23
5	<i>Wisconsin v. Constantineau</i> , 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971)	14
6	<i>Wolfson v. Brammer</i> , 616 F.3d 1045 (9 th Cir. 2010)	15
7	<i>Younger v. Harris</i> , 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)	7, 8, 9, 12, 13, 14

STATE CASES

15	<i>In re Estate of Hearst</i> , 67 Cal. App. 3d 777, 136 Cal. Rptr. 821 (1977)	19
16	<i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> , 20 Cal. 4 th 1178, 86 Cal. Rptr. 2d 778 (1999)	15, 19

FEDERAL STATUTES

21	Federal Rule of Civil Procedure 12(b)(6)	4, 17, 18, 22
----	--	---------------

STATE STATUTES

23	Cal. Code Civ. Proc. § 124	15
24	Cal. Rule of Court 2.550	15
25	California Government Code § 68150.....	3, 5, 16
26	California Penal Code § 868	3

INTRODUCTION

The public's right of timely access to court records is not simply a "courtesy" granted by the courts. It is a fundamental civil liberty that the courts cannot infringe upon without conducting a demanding constitutional analysis, even though court executives like Defendant may prefer to avoid it.

Despite acknowledging that the public has First Amendment rights of access to the court records in his control, Defendant shows little respect for those rights, and seems affronted by a request that such access be timely. Moreover, Defendant is dismissive of the press's role, recognized repeatedly by the Supreme Court, in obtaining access to the courts as the public's surrogate. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980).

In an effort to avoid having a federal court examine his practice of denying access to civil complaints until his staff – and his staff alone – exercising its unfettered discretion, determines when it will make those records available, Defendant mischaracterizes both the First Amendment rights at issue and the relief Courthouse News seeks to vindicate those rights. As the Supreme Court has repeatedly held, when a First Amendment right of access exists, blanket rules and policies restricting such access must give way to case-by-case determinations in order to ensure that access is restricted in only exceptional circumstances. The Complaint in this case seeks only injunctive and declaratory relief that would prevent Defendant from continuing his practice of restricting access to new complaints without complying with the procedural and substantive requirements the Supreme Court and the Ninth Circuit have set forth. Nor is there any reason for this Court to abstain from deciding these issues of federal constitutional law, leaving Courthouse News to enforce these rights in the very court that is denying them.

With one exception, *see infra*, Defendant's Motion to Dismiss and Abstain must thus be rejected. The Complaint clearly sets forth claims based on the denials of the rights of access for which this Court can, and should, grant relief.

I.

**DEFENDANT'S MOTION MISSTATES THE NATURE OF THE RELIEF
COURTHOUSE NEWS SEEKS, AND CERTAIN CORRECTIONS TO
DEFENDANT'S ASSERTIONS ARE ALSO IN ORDER**

As a preliminary matter, Defendant's motion to dismiss and abstain is notable for the extent to which it misstates both the nature Courthouse News' claims as well as the facts and the law relevant to those claims. Accordingly, before proceeding to address the merits of Defendant's motion, certain preliminary observations and corrections are in order.

A. Defendant's Concession That There Is A First Amendment Right Of Access To Civil Court Records Means Access To Those Records Cannot Be Denied Unless Strict Requirements Are Met, And Those Requirements Trump State Statutes That Are Less Protective Of Access

Defendant concedes, as he must, that there is a First Amendment right of access to civil court records, and that such access must be timely. Def's Memorandum, at 18 (“CNS alleges that it has both a constitutional and common-law right of access to court records, and that such access must be timely. ... Ventura Superior Court does not dispute either proposition”). Nor does he appear to dispute that there is a First Amendment right of access to civil court complaints. However, he fails to appreciate two important features of the First Amendment access right.

First, once the First Amendment right of access is found to attach to a record or a class of records, it can *only* be overcome on a case-by-case basis, by way of an adjudicative process performed by a judge where the party seeking to restrict access satisfies the stringent three-part test established by the Ninth Circuit. *United States v. Brooklier*, 685 F.2d 1162, 1168-69 (9th Cir. 1982). Under the test, the party seeking to restrict access (in this case, Defendant) must prove: (1) the existence of a right of comparable importance to the First Amendment that is threatened by public access to the court records; (2) a substantial probability of irreparable damage to the asserted right will result if access is not withheld; and (3) a substantial probability that alternatives to withholding access will not adequately protect the asserted right.

1 *Phoenix Newspapers, Inc. v. United States District Court*, 156 F.3d 940, 949 (9th Cir.
2 1998); *Associated Press v. District Court*, 705 F.2d 1143, 1145-46 (9th Cir. 1983).

3 *Second*, neither California Government Code § 68150 nor any of the Rules of
4 Court Defendant relies on may trump the federal constitutional right of access. In its
5 landmark 1986 decision in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14,
6 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (“*Press-Enterprise II*”), the U.S. Supreme
7 Court found California Penal Code § 868 unconstitutional because the law permitted
8 courts to close criminal preliminary hearings on a mere showing of a reasonable
9 probability of harm rather than meeting the more demanding test mandated by the
10 First Amendment. Similarly, in 1982, the high court held unconstitutional a
11 Massachusetts state statute requiring trial courts to exclude the public from the
12 courtroom during the testimony of a minor victim of a sex crime in all instances; such
13 determinations, the high court said, would have to be made on a case-by-case basis in
14 accordance with First Amendment standards. *Globe Newspaper Co. v. Superior*
15 *Court*, 457 U.S. 596, 606-08, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982).

16 As these and other cases make clear, neither Government Code § 68150 nor the
17 Rules of Court on which Defendant relies can set lower standards for access than what
18 is required by the First Amendment. Senate Bill 326 would have provided clear
19 direction to trial courts to provide same day access, but it would not have allowed
20 courts to provide fewer rights than those already guaranteed by the Constitution.
21 Thus, neither existing state law nor SB 326 should deter this Court from making a
22 determination about Courthouse News’ First Amendment rights.

23 **B. The Failure Of SB 326 To Pass Earlier This Year Demonstrates The Need**
24 **For This Court To Act**

25 Because Defendant makes so much of Courthouse News’ support of SB 326,
26 and incorrectly attributes certain statements made in connection with that bill to
27 Courthouse News, a brief response is in order.

28 Traditionally, and as demonstrated by the examples set forth in paragraphs 10-

1 14 & Exhibit 1 of Courthouse News' Complaint,¹ courts have provided same-day
2 access to new civil complaints after initial intake tasks, for example accepting the
3 filing fee, assigning a case number, and/or noting the first-named plaintiffs and
4 defendants on an intake log, but well before full processing. This enabled reporters
5 who visit courts at the end of each court day to review the large majority of civil cases
6 filed earlier that same day. Many courts in California and across the nation still
7 provide the traditional same-day access in this manner, including this Court. *See*
8 Complaint ¶¶ 10-14 & Exh. 1. As indicated in the bill text, however, the use of new
9 electronic technologies for filing court actions and modernizing access to court
10 records has, in some instances, resulted in delays in access to court documents.

11 Senate Bill 326 would have addressed these delays by directing the California
12 Judicial Council, which governs California's state courts, to adopt a Rule of Court
13 requiring newly filed complaints to be made available for inspection at the courthouse
14 no later than the end of each court day. However, as Defendant readily acknowledges,
15 that bill did not make it out of committee this year, and it is strongly opposed by the
16 California Judicial Council, Administrative Office of the Courts. Given this reality,
17 and having tried and failed in its efforts to work cooperatively with Defendant and his
18 staff to resolve the delays in access at Ventura Superior, Courthouse News' only real
19 avenue to resolving those delays was federal litigation. Thus, if anything, SB 326
20 only serves to emphasize the need for this Court to exercise its jurisdiction over the
21 current dispute.

22
23
24 ¹ Nowhere in Defendant's notice of motion or supporting memorandum does he
25 specify the Federal Rule of Civil Procedure or other statutory authority under which
26 he is bringing his motion. However, because Defendant states his motion to dismiss is
27 for "failure to state a claim," Courthouse News assumes it is brought under FRCP
28 12(b)(6). As such, the Court must "accept as true all facts alleged in the complaint,
and drawing all reasonable inferences in favor of" the plaintiff. *Newcal Indus., Inc. v.
Ikon Office Solution*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008).

1 One final point about SB 326 is also in order. On page 8 of his
2 memorandum, Defendant asserts that in sponsoring the bill, Courthouse News
3 “claimed that: (a) Government Code section 68150 already ‘provides the public
4 with reasonable access to court records;’” and that “(b) the term ‘reasonable
5 access is not defined” Def’s Memorandum, at 8; *see also* 17 (making similar
6 assertions about what Courthouse News purportedly “acknowledged”).

7 This is flat-out wrong. Courthouse News *never* claimed that Government Code
8 § 68150 “already ‘provides the public with reasonable access to court records,’” nor
9 has it ever “acknowledged” that “the term ‘reasonable access is not defined.’” As is
10 clear from Defendant’s own Request for Judicial Notice, these “claims” were made
11 not by Courthouse News but rather by the California Senate Judiciary Committee, the
12 author of the Bill Analysis in question. Def’s RJD, Exh. B at B9.

13 **C. Defendant’s Description Of The Nature Of Courthouse News’ Claims And
14 The Relief Sought Is Inaccurate; Courthouse News Seeks Only An Order
15 That Defendant Stop Obstructing Same-Day Access**

16 In an effort to support his abstention arguments, Defendant mischaracterizes the
17 nature of Courthouse News’ claims and the scope of relief it seeks, claiming that a
18 ruling favoring Courthouse News “would require this Court to ‘inquire into the
19 administration of [California’s judicial] system, its utilization of personnel,’ and the
20 advisability of requiring it to adopt a ‘same-day access’ policy in light of critical and
21 competing state budgetary concerns.” This is not correct. Nor is Courthouse News
22 asking Defendant to, as he puts it, “hurry up,” or otherwise resolve delays in judicial
23 administration. Def’s Memorandum, at 13, 22.

24 The relief Courthouse News is seeking is quite simple: prohibit Defendant from
25 obstructing timely access to the newly filed civil complaints at Ventura Superior –
26 documents that, because they are newly filed, are literally sitting right there in the
27 intake area. This is nothing more than the relief the United States District Court for
28 the Southern District of Texas granted in a recent case involving similar delays in
access to new case-initiating documents. *Courthouse News Service v. Jackson*, 2009

1 U.S. Dist. LEXIS 62300, at *14, 38 Media L. Rep. 1890 (S.D. Tex. 2009).² And it is
2 nothing more than what is already being provided to Courthouse News and other
3 reporters in other state and federal courts in California and across the nation, as
4 described in the Complaint at paragraphs 10-14 & Exhibit 1. And as the experience of
5 these courts demonstrates, same-day access need not involve any undue cost or staff
6 effort, much less the far-reaching restructuring of the California court system that
7 Defendant suggests.

8 **II.**

9 **THIS COURT SHOULD NOT ABSTAIN FROM DECIDING THE**
10 **IMPORTANT ISSUES OF FEDERAL LAW RAISED IN THE COMPLAINT**

11 Defendant has moved this Court to abstain or in the alternative dismiss the
12 Complaint on the basis of the *O'Shea* and *Pullman* abstention doctrines. Neither
13 doctrine properly applies to the Complaint. Defendant's abstention arguments must
14 thus be rejected.

15 **A. Abstention Is Strongly Disfavored; A Federal Court Should Decline To**
16 **Exercise Its Federal Question Jurisdiction In Only The Rarest Of**
17 **Situations**

18 Federal courts have an "unflagging obligation" to exercise their jurisdiction

19 _____

20 ² In *Jackson*, the United States District Court for the Southern District of Texas issued
21 a preliminary injunction requiring the Houston state court clerk to cease his practice of
22 delaying access to new to case-initiating civil petitions filed in that court until after
23 they had been fully processed and posted on his web site, and instead provide those
24 documents to Courthouse News Service "on the same day the petitions are filed,"
25 except where the filing party was seeking a temporary restraining order or other
immediate relief or had properly placed the pleading under seal. *Id.* at *14-15. That
preliminary injunction order was followed by a stipulated permanent injunction
requiring same-day access. *Courthouse News Service v. Jackson*, 2010 U.S. Dist.
LEXIS 74571, 38 Media L. Rep. 1894 (S.D. Tex. 2010). In light of these decisions,
Courthouse News respectfully disagrees with Defendant's assertion that no court has
"even considered" whether access to new civil case filings should be provided on the
same day they are filed or submitted to the court. Def's Memorandum, at 20.

1 and thus should abstain from deciding issues of federal constitutional law, especially
2 when raised in the context of § 1983 lawsuits, in only the most “extraordinary and
3 narrow” situations. *Miofsky v. Superior Court*, 703 F.2d 332, 338 (9th Cir. 1983)
4 (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800,
5 817-18, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976), and *County of Allegheny v. Frank*
6 *Mashuda*, 360 U.S. 185, 188, 79 S. Ct. 1060, 3 L. Ed. 2d 1163 (1959)). *See also*
7 *Potrero Hills Landfill, Inc. v. County of Solano*, __ F.3d __, __, No. 10-15229 slip op.
8 17295, 17305 (9th Cir., Sept. 13, 2011) (quoting *New Orleans Public Service, Inc. v.*
9 *Council of City of New Orleans*, 491 U.S. 350, 358, 109 S. Ct. 2506, 105 L. Ed. 2d
10 298 (1989) (“*NOPSI*”) (“[A]bstention remains an extraordinary and narrow exception
11 to the general rule that federal courts ‘have no more right to decline the exercise of
12 jurisdiction which is given, than to usurp that which is not given.’”). Courts must thus
13 apply abstention doctrines narrowly to avoid “mak[ing] a mockery of the rule that
14 only exceptional circumstances justify a federal court’s refusal to decide a case in
15 deference to the States.” *NOPSI*, 491 U.S. at 368, and should be extremely reluctant
16 to expand established abstention doctrines beyond their strictly defined bounds.
17 *Potrero Hills*, No. 10-15229 at 17304-05; *Miofsky*, 703 F.2d at 338.

18 **B. The *O’Shea* Abstention Doctrine Does Not Apply Because The Relief**
19 **Courthouse News Seeks Will Not Be Highly Intrusive On The State**
20 **Court, Unworkable Or Require This Court To Audit The State Court**

21 Defendant’s attempt to apply *O’Shea* abstention to the present matter must be
22 rejected because the straightforward relief Courthouse News seeks is not the type to
23 which the doctrine applies.

24 The *O’Shea* abstention doctrine, first announced in *O’Shea v. Littleton*, 414
25 U.S. 488, 94 S. Ct. 669 38, L. Ed. 2d 674 (1974), is a seldom-used and highly
26 specialized application of the abstention doctrine established by the Supreme Court in
27 *Younger v. Harris*, 401 U.S. 37, 43-44, 91 S. Ct. 746, 27 L. Ed. 2d. 669 (1971). *See*
28 *Pulliam v. Allen*, 466 U.S. 522, 539 n.20, 104 S. Ct. 1970, 80 L. Ed. 2d 565

1 (describing *O'Shea* as being decided on “*Younger v. Harris* grounds”).³ Whereas
2 *Younger* addressed the concern that federal courts not *unduly* interfere with *pending*
3 state court proceedings, *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*,
4 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982), *O'Shea* focused on the
5 concern that federal lawsuits against state court systems would result indirectly in the
6 same type of undue and serious interruption of both pending and future state court
7 litigation “that *Younger v. Harris* and related cases sought to prevent.” 414 U.S. at
8 500. The hallmark of both *Younger* and *O'Shea* is thus the actual interruption of and
9 interference with the adjudication of lawsuits in the state court. *See Gerstein v. Pugh*,
10 420 U.S. 103, 108 n.9, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975) (rejecting *Younger*
11 abstention in action to require Florida prosecutors to hold probable cause hearings).

12 As such, as in *Younger*, a dismissal under *O'Shea* is based on prudential
13 concerns for comity and federalism raised by the interference with state adjudicatory
14 proceedings rather than a lack of jurisdiction. *Benavidez v. Eu*, 34 F.3d 825, 829 (9th
15 Cir. 1994). Like *Younger* abstention, *O'Shea* abstention is not discretionary; this
16 Court has no discretion to abstain from this case when the narrow and exacting legal
17 standards of *O'Shea* are not strictly met. *See Green v. City of Tucson*, 255 F.3d
18 1086, 1093 (9th Cir. 2001) (en banc), *overruled on other grounds by Gilbertson v.*
19 *Albright*, 381 F.3d 965, 968 (9th Cir. 2004) (en banc).

20 In *O'Shea*, a potential class of all African-American residents of an Illinois city
21 claimed that the county magistrate and judge denied them their civil rights by setting
22 higher bonds, imposing harsher confinement conditions and bringing mere ordinance
23 violations to trial in a racially discriminatory and retaliatory manner, and sought an
24 injunction against such practices. 414 U.S. at 491-92. As one of its bases for

25
26 ³ Justice White, the author of *O'Shea*, was a member of the majority in *Pulliam* as
27 well. Many courts analyze the *O'Shea* concerns as merely components of *Younger*
28 abstention. *See, e.g.*, *31 Foster Children v. Bush*, 329 F.3d 1255, 1276-77 (11th Cir.
2003); *Joseph A. v. Ingram*, 275 F.3d 1253, 1271 (10th Cir. 2002).

1 dismissal, the court found that the injunction contemplated by the Seventh Circuit
2 would establish a basis for future intervention that would be “a major continuing
3 intrusion” because it would lead to “continuous or piecemeal interruptions” of future
4 state court proceedings by “any of the members of the respondents’ broadly defined
5 class.” *Id.* at 500. The court further found the contemplated injunction “unworkable”
6 because of “inherent difficulties in defining the proper standards against which such
7 claims might be measured, and the significant problems of proving noncompliance in
8 individual cases” and the fact that the federal court would be required to continuously
9 monitor and supervise the operation of the state court. *Id.* at 501-02. Because the
10 class of plaintiffs was so broad and the potential violations of law so varied and
11 numerous, enforcement of the contemplated injunction would require “nothing less
12 than an ongoing federal audit of state criminal proceedings.” *Id.* at 500.

13 *O’Shea* abstention is thus required only if the requested relief meets three
14 conditions: (1) it will be a major continuing intrusion, (2) it will be unworkable, and
15 (3) it will require the federal court to audit/monitor the state court extensively on an
16 ongoing basis.⁴ See *Clement v. California Dep’t of Corrections*, 364 F.3d 1148, 1153
17 (9th Cir. 2004) (applying this formulation of *O’Shea* as a substantive limitation on the
18 injunctive relief available against a state entity to address similar federalism and
19 comity concerns).

20

21 ⁴ As with *Younger*, a court must not abstain unless all of these elements are satisfied;
22 the court is not permitted to use the strength of one element to balance out weaknesses
23 in the others. See *Benavidez*, 34 F.3d at 832. Notably, the fact of potential legislation
24 that might address the same issues raised in federal court is not part of the *O’Shea*
25 analysis, despite Defendant’s extensive discussion of it. Def’s Memorandum, at 14-
26 15. But, as discussed above, because the First Amendment sets the floor for the
27 access a state must allow the public to its court system, the Legislature can do no more
28 than grant the public and the media the same or greater access than what Courthouse
News seeks by the Complaint. A decision by this Court thus poses no threat of
inconsistency, uncertainty or confusion, even in the event the proposed legislation
were to ever become law.

1 In each of these elements, a *high degree* of intrusion upon the state court is
2 essential. Surely, any federal lawsuit against a court official raises the possibility of
3 *some* disruption to the operation of the court and *some* inquiry by the federal court
4 into the workings of the state court. And any federal court decision finding state court
5 policies invalid entails *some* continuing responsibility on the state court to comply.
6 But treating *O'Shea* as barring *all* such actions, regardless of the degree of intrusion,
7 transforms a narrow abstention doctrine into a grant to state court officers of
8 immunity, a protection the Supreme Court has repeatedly denied them. *See Pulliam*,
9 466 U.S. at 541-42 & n.20.

10 Thus *O'Shea* abstention has been confined to cases, typically class actions,
11 seeking as relief wide-ranging institutional reform of the judiciary.⁵ And it has been
12 rejected in cases in which major restructuring is not sought, such as where the court is
13 merely required to replace an existing rule or policy with a different one.⁶

14 *E.T. v. Cantil-Sakauye*, __ F.3d __, No. 10-15248, slip op. 17457 (9th Cir., Sept.
15 2011), decided last month, and as Defendant notes, subject to a pending motion
16 for rehearing en banc, is the only Ninth Circuit case that discusses *O'Shea* as an

17
18 ⁵ See, e.g., *Pompey v. Broward County*, 95 F.3d 1543, 1544-45 (11th Cir. 1996) (action
19 by five indigent fathers challenging numerous constitutional violations during court's
20 "Daddy Roundups"); *Luckey v. Miller*, 976 F.2d 673, 676 (11th Cir. 1992) (class
action that sought to substantially revamp Georgia's indigent defense system); *Parker*
21 v. *Turner*, 626 F.2d 1, 2 (6th Cir. 1980) (class action by indigent fathers seeking
institutional reform of juvenile courts); *Gardner v. Luckey*, 500 F.2d 712, 713 (5th Cir.
22 1974) ("sweeping class action" by prisoners to reform the Florida Public Defender
23 Office).

24 ⁶ See, e.g., *Family Division Trial Lawyers of the Superior Court-D.C. v. Moultrie*, 725
25 F.2d 695, 703-04 (D.C. Cir. 1984) (action by three attorneys who request assignments
of juvenile neglect cases seeking to change court's payment structure); *Mason v.*
26 *County of Cook*, 488 F. Supp. 2d 761, 765 (N.D. Ill. 2007) (proposed class action
challenging bond hearing procedures); *Lake v. Speziale*, 580 F. Supp. 1318, 1331 (D.
27 Conn. 1984) (class action to require judges to advise indigent defendants in civil
28 contempt proceedings of their right to counsel).

1 abstention doctrine, and is distinguishable from the present case on these grounds. In
2 *E.T.*, like in *O'Shea*, a proposed large class sought wholesale institutional reform and
3 a major re-structuring of a court system, namely a decrease in the caseloads of the
4 court-appointed attorneys in the Sacramento County dependency courts. *Id.* at 17460-
5 61. The Ninth Circuit held that abstention was required because the requested relief
6 would require the district court to seriously intrude upon and extensively audit the
7 operation of the court system. *Id.* at 17643. The Ninth Circuit distinguished its
8 previous decision in *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 699 (9th Cir.
9 1992) ("*LA Bar*"), in which the Bar sought an order that the court needed more judges.
10 *E.T.*, at 17464. In *LA Bar*, the Ninth Circuit concluded that it could grant the
11 requested relief even though it would require some "restructuring," and even though
12 its ruling would lead to subsequent federal actions "exploring the contours" of the
13 constitutional right the court would announce. 979 F.2d at 703. The *E.T.* court
14 characterized the relief sought in *E.T.* as far more intrusive than the relief sought in *LA*
15 *Bar*: the relief sought in *LA Bar* was "a simple increase in the number of judges"
16 while the relief in *E.T.* would involve "a substantial interference with the operation of
17 the program, including allocation of the judicial branch budget, establishment of
18 program priorities, and court administration," and potentially the "examination of the
19 administration of substantial number of individual cases." *E.T.*, at 17464.

20 The relief sought by Courthouse News is not nearly as intrusive on the court
21 system as that sought in either *O'Shea* or *E.T.* or any of the institutional reform cases.⁷
22 Indeed, it is not even as intrusive as the appoint-more-judges relief approved of in *LA*
23

24
25 ⁷ Nor does the relief in the instant case sought bear any relation to that sought in
26 another case upon which Defendant relies, *Ad Hoc. Comm'n on Judicial Admin v.*
27 *Massachusetts*, 488 F.2d 1241, 1245-46 (1st Cir. 1973), a pre-*O'Shea* case, decided
28 primarily on political question rather than *Younger* grounds. In *Ad Hoc Comm'n*, a
putative class asked the federal court to "order enlargement and restructuring of the
entire state court system." *Id.* at 1243.

1 *Bar.* Courthouse News does not seek any restructuring of Ventura Superior.
2 Courthouse News simply asks this Court to prohibit Defendant from affirmatively
3 obstructing same day access to complaints, access that, as alleged in the Complaint,
4 the media has traditionally been given in courts around the country, and which, as
5 alleged in the Complaint, Defendant simply lacks the will, not the ability, to do.
6 Complaint, ¶¶ 10-14 & Exh. 1, Prayer for Relief, ¶1.⁸

7 Most importantly, the hallmark of both *O'Shea* and *Younger* – the prospect that
8 the federal court's action will interfere with pending or future state adjudications – is
9 entirely absent in this case. The prohibition Courthouse News seeks will not interfere
10 with, interrupt, delay, disrupt, or affect the outcome of any pending or future matter in
11 Ventura Superior, or in any California state court.⁹

12 Nor are any of the other *O'Shea* factors present. The relief Courthouse News
13 seeks is eminently workable. As alleged in paragraphs 10-14 and Exhibit 1 to the
14 Complaint, numerous other courts across the country provide the public and/or the
15 press with same day access to complaints. Ventura Superior thus has numerous
16 models for compliance with the requested relief. Moreover, the relief sought by
17 Courthouse News has single and wholly objective criterion: do not obstruct same-day
18

19
20 ⁸ Nor does Courthouse News by its Complaint seek this Court to order Defendant to
21 expend funds. Complaint, Prayer for Relief ¶¶ 1-2.

22 ⁹ The present case is thus unlike *Kaufman v. Kaye*, 466 F.3d 83, 87 (2d Cir. 2006),
23 upon which Defendant also relies. In *Kaufman*, the plaintiff complained that his due
24 process rights were violated by the New York appellate court system's secret process
25 of assigning appellate judges to matters on a non-random basis. *Id.* at 86. The Second
26 Circuit abstained because if it declared that the assignment system was
27 unconstitutional, it would open the door to any party who did not like his assigned
28 panel to delay the appeal by way of a federal enforcement action. "Such challenges
would inevitably lead to precisely the kind of 'piecemeal interruptions of ... state
proceedings' condemned in *O'Shea*." *Id.* at 87 (omission in original). In contrast, any
future challenge to Ventura Superior's compliance with the injunction will not
interrupt any proceeding in that court.

1 access. Nor will the relief Courthouse News seeks require this Court to audit or
2 monitor Ventura Superior beyond simply asking Defendant to justify his current
3 policy.¹⁰

4 Indeed, federal actions to enforce the public's First Amendment right of access
5 to state court records and proceedings will rarely raise the federalism and comity
6 concerns that underlie both *Younger* and *O'Shea*. In *The Hartford Courant Co. v.*
7 *Pellegrino*, 380 F.3d 83, 85-86 (2d Cir. 2004), a case strongly analogous to the instant
8 action, several media companies brought a § 1983 action challenging the practice of
9 the Connecticut state court system of sealing the docket sheets of certain cases so that
10 the public could not discover even the existence of the litigation from the court
11 records. In *Rivera-Puig v. Garcia-Rosario*, 983 F.2d 311, 322 (1st Cir. 1992), a
12 reporter challenged the constitutionality of a Puerto Rico court rule that closed all
13 criminal preliminary hearings. In both instances, the Court rejected the defendant
14 court system's claim that the *Younger* abstention applied, even though similar actions
15 had been filed in the state/commonwealth courts. *Hartford Courant*, 380 F.3d at 101;

16
17 ¹⁰ Defendant contends that, "most significantly," the injunction Courthouse News
18 seeks will require this Court to perform case-by-case adjudications of instances when
19 same day access could not be provided. Def's Memorandum, at 13. However,
20 Defendant both mischaracterizes the Complaint and misstates the abundant body of
21 First Amendment law on court access. As discussed above, *supra* at 3-4, the First
22 Amendment requires that *the court that is seeking to seal its own records* perform the
23 case-by-case adjudication to determine whether such closure is permissible. See
24 *Globe Newspaper Co.*, 457 U.S. at 608. Courthouse News seeks no more than that
25 here: that Defendant cease his policies preventing Courthouse News from accessing
26 the new complaints at the end of the day on which they are filed, except where there is
27 a determination *by the judges of his own court* that delay is necessary in accordance
28 with First Amendment standards. To be sure, under existing law, a party may contest
in federal court a state court's future determination that access should be delayed.
See, e.g., The Fort Wayne Journal-Gazette v. Baker, 788 F. Supp. 379, 382-83 (N.D.
Ind. 1992). But that would be a new federal lawsuit at some later point in time, not an
enforcement action in this one. These federal lawsuits are already permitted; a
decision by this Court will not create a new basis for federal lawsuits.

1 *Rivera-Puig*, 983 F.2d at 319-20. Despite the presence of federalism and comity
2 concerns, those courts held that federal court was an appropriate venue to the
3 infringement of the First Amendment right of court access in state courts. *Hartford*
4 *Courant*, 380 F.3d at 101; *Rivera-Puig*, 983 F.2d at 319-20.

5 Indeed, under current law, federal courts routinely entertain challenges by the
6 media to closure orders in ongoing state court litigation over federalism and comity
7 objections because access issues are at most collateral to the proceedings in which
8 they arise. As a federal court considering a challenge to a state court gag order found:

9 An injunction issuing from this Court against the enforcement of the gag
10 order ... would not prohibit in any way the pending prosecution itself
11 from going forward. Any interference with the state proceedings would
12 be minimal and therefore cannot justify the eschewal of the Court's
13 jurisdiction to protect the federal constitutional rights of the plaintiff.

14 *Connecticut Magazine v. Moraghan*, 676 F. Supp. 38, 41 (D. Conn. 1987) (citations
15 omitted). *See also FOCUS v. Allegheny Court of Common Pleas*, 75 F.3d 834, 843
16 (3rd Cir. 1996) (rejecting *Younger* abstention in federal court challenge to state court
17 gag order); *Fort Wayne Journal-Gazette*, 788 F. Supp. at 382-83 (rejecting *Younger*
18 abstention in federal court challenge to state court protective order).

19 **C. Pullman Abstention is Not Appropriate Because This Court Need Not**
20 **Decide A Single Issue of State Law**

21 Defendant also argues that this Court should abstain under the *Pullman*
22 abstention doctrine, which permits a federal court to wait for a state court to interpret
23 controlling, but ambiguous, state law authoritatively. *See Railroad Commission of*
24 *Texas v. Pullman*, 312 U.S. 496, 500-01, 61 S. Ct. 643, 85 L. Ed. 971 (1941); *see also*
25 *Wisconsin v. Constantineau*, 400 U.S. 433, 438, 91 S. Ct. 507, 510, 27 L. Ed. 2d 515
26 (1971) (holding that abstention is not appropriate when the federal claim is not
27 entangled with complicated unresolved state law issues). Unlike *Younger*, *Pullman*
28 abstention is entirely discretionary: a federal court may retain jurisdiction even if all

1 of the conditions for abstention are met. *Potrero Hills*, No. 10-15229, at 17317. In
2 this case, none of the conditions are met.

3 Three conditions must be met before a federal court may even consider a
4 *Pullman* abstention: (1) the complaint touches a sensitive area of state social policy
5 upon which the federal courts ought not to enter unless no alternative to its
6 adjudication is open; (2) a definitive ruling on an issue of state law would terminate
7 the controversy; and (3) the possibly determinative issue of state law is doubtful.
8 *Ripplinger v. Collins*, 868 F.2d 1043, 1048 (9th Cir. 1989).

9 In the Ninth Circuit, the first *Pullman* factor “will almost never be present” in
10 First Amendment cases “because the guarantee of free expression is always an area of
11 particular federal concern” upon which a federal court should rule. *Ripplinger*, 868
12 F.2d at 1048; *see Hartford Courant*, 380 F.3d at 100 (denying *Pullman* abstention on
13 these grounds in court access case).¹¹ Indeed, constitutional challenges based on First
14 Amendment rights “are the kind of cases that the federal courts are particularly well-
15 suited to hear.” *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003); *accord Wolfson v.*
16 *Brammer*, 616 F.3d 1045, 1066 (9th Cir. 2010).

17 Nor are the second and third *Pullman* factors present. There is no uncertain
18 question of state law that can resolve this case. Indeed, the California Supreme Court
19 has already issued its definitive ruling on the rights of access to courts, and in so doing
20 adopted the First Amendment analysis developed by the U.S. Supreme Court. *NBC*
21 *Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1181, 1197-1226 &
22 n.13, 86 Cal. Rptr. 2d 778 (1999) (construing Cal. Code Civ. Proc. § 124 as
23 incorporating First Amendment protections).¹² California thus does not have its own
24

25 _____
26 ¹¹ The First Amendment right of access to courts is included in the right of free
27 speech. *Richmond Newspapers*, 448 U.S. at 580; *Rivera-Puig*, 983 F.2d at 322-23.
28 ¹² The Judicial Council then incorporated the First Amendment requirements
described in *NBC Subsidiary* into its rule of court governing restrictions on access to
court records. Cal. Rule of Court 2.550.

1 body of court access law that does not track the federal right; to the extent a state court
2 would be interpreting Government Code § 68150(1)'s requirement of "reasonable
3 access" to trial court records, the state court would be interpreting federal law. *See*
4 *Hartford Courant*, 380 F.3d at 100 (denying *Pullman* abstention in court access case
5 because resolution of the state law would "not illuminate what should happen").

6 Finally, abstention is improvident because Courthouse News would suffer even
7 further delay of a determination on its First Amendment question while its grievances
8 are heard in state court, thus exacerbating the very constitutional injury that
9 Courthouse News has asked this court to remedy. *Porter*, 319 F.3d at 492-93.

10 **III.**

11 **DEFENDANT'S ATTEMPT TO AVOID ADJUDICATION OF HIS DELAYS
12 IN ACCESS UNDER THE FIRST AMENDMENT AND COMMON LAW HAS
13 NO MERIT, AND HIS MOTION TO DISMISS COURTHOUSE NEWS' FIRST
14 AND SECOND CLAIMS FOR RELIEF SHOULD BE DENIED**

15 Conceding as he must that the First Amendment and common law both provide
16 a right of access to civil court records and that such access must be timely, Def's
17 Memorandum, at 18, Defendant nevertheless asks this Court to dismiss Courthouse
18 News' First Amendment and common law claims (the First and Second Causes of
19 Action) for failure to state a claim. Defendant's sole basis for dismissal of these
20 claims is his contention that neither the First Amendment nor the common law
21 "guarantee" a right of same-day access to new civil complaints. As explained below,
22 Defendant's motion to dismiss these claims is not well taken and should be denied for
at least two separate and independent reasons.

23 **A. Defendant's Motion Should Be Denied Because The First And Second
24 Claims For Relief Are Grounded Not Just In The Denial Of Same-Day
25 Access In Particular, But Also The Overall Delays In General**

26 As a preliminary matter, Courthouse News' Complaint alleges a violation of the
27 First Amendment and the common law right of access not just from the denial of
28 same-day access in particular, but also because of delays in access in general – delays

1 that, as set forth in the Complaint, commonly last for multiple days or weeks and have
2 recently stretched up to 34 calendar days. Complaint, ¶¶ 29, 30.¹³

3 So long as a complaint contains “sufficient factual matter to state a facially
4 plausible claim to relief,” dismissal under Federal Rule of Civil Procedure 12(b)(6) is
5 “proper only where there is no cognizable legal theory.” *Shroyer v. New Cingular
6 Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*,
7 250 F.3d 729, 732 (9th Cir. 2001)). Moreover, “a complaint should not be dismissed
8 for legal insufficiency except where there is failure to state a claim on which *some*
9 relief, not limited by the request in the complaint, can be granted.” *Doe v. United
10 States Dep’t of Justice*, 753 F.2d 1092, 1104 (D.C. Cir. 1985) (quoting *Norwalk Core
11 v. Norwalk Redevelopment Agency*, 395 F.2d 920, 925-26 (2d Cir. 1968)). *Accord*,
12 *e.g.*, *Massey v. Banning Unified School Dist.*, 256 F. Supp. 2d 1090, 1092 (C.D. Cal.
13 2003) (“It need not appear that plaintiff can obtain the specific relief demanded as
14 long as the court can ascertain from the face of the complaint that some relief can be
15 granted.”) (quoting *Doe*, 753 F.2d at 1104).

16 As Courthouse News will demonstrate as this case proceeds, under the
17 particular facts and circumstances of this case, it is entitled to injunctive and
18 declaratory relief that would require Defendant to refrain from his policy of denying
19 its reporter, who visits Ventura Superior at the end of each court day for the specific
20 purpose of viewing newly filed unlimited civil complaints, with access at the end of
21 each court day to the approximately 15 unlimited civil complaints that are filed each
22 day with that court. However, the Complaint is not so limited. As such, Defendant is
23 not entitled to dismissal.

24
25
26 ¹³ As noted above, although Ventura Superior is not the only California superior court
27 where Courthouse News has recently been encountering delays, the extent of those
28 delays, and Defendant’s resistant attitude to working cooperatively with Courthouse
News to resolve them, make Ventura Superior one of the worst courts in the state in
terms of delayed access to new complaints.

1 **B. Whether A Denial Of Same Day Access Violates The First Amendment**
2 **And Common Law Rights Of Access Is A Factual Inquiry To Be**
3 **Determined On A Case-By-Case Basis, And Is Not An Appropriate Basis**
4 **For Dismissal Under FRCP 12(b)(6)**

5 Determining whether there has been a violation of the First Amendment and/or
6 common law right of access involves a two-step process. The first step is to determine
7 whether a right of access attaches in the first instance. In the case of the First
8 Amendment right of access, courts use the two-prong inquiry first employed by the
9 Supreme Court in *Richmond Newspapers*, which examines the considerations of
10 “tradition” and “logic” to determine whether a constitutional right of access exists.
11 448 U.S. at 564-76; *accord, e.g., Press-Enterprise II*, 478 U.S. at 8-10. In the case of
12 the common law right of access, in the Ninth Circuit, the right has been recognized as
13 applying to all court files except for that very narrow range of records that, for policy
14 reasons, have “traditionally been kept secret.” *Kamakana v. City & County of*
15 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Times Mirror Co v. United States*, 873
16 F.2d 1210 (9th Cir. 1989).

17 Once it is determined that the First Amendment and common law right of
18 access attach to a particular document or class of documents – in this case, unlimited
19 jurisdiction civil complaints filed in a state court – the inquiry shifts to whether the
20 party seeking to restrict access can do so. In order to deny access, the strict standards
21 for overcoming that right of access, as set forth in section I(A) above, must be met.¹⁴
22 The same scrutiny is applied where a court seeks to deny access temporarily; as

23

24 ¹⁴ In the case of the common law right of access, the presumption of access can be
25 overcome only on the basis of ““articulable facts, known to the court, not on the basis
26 of unsupported hypothesis or conjecture.”” *Valley Broad. Co. v. United States District*
27 *Court*, 798 F.2d 1289, 1293 (9th Cir. 1986) (quoting and adopting the rule of *United*
28 *States v. Edwards*, 672 F.2d 1289, 1294 (7th Cir. 1982) and rejecting a less rigorous
 requirement). Moreover, the party seeking to restrict access must have a *compelling*
 reason to do so; a “good cause” showing will not suffice. *Kamakana*, 447 F.3d at
 1180.

1 numerous state and federal courts have previously recognized, all but *de minimis*
2 delays in access are the functional equivalent of access denials. *E.g., Associated*
3 *Press*, 705 F.2d at 1147 (district court's withholding of newly filed documents for 48
4 hours after filing as part of a procedure designed to protect the defendant's Sixth
5 Amendment right to a fair trial was "a total restraint on the public's first amendment
6 right of access even though the restraint is limited in time"); *Globe Newspaper Co. v.*
7 *Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay
8 impermissibly burdens the First Amendment"); *Jackson*, 2009 U.S. Dist. LEXIS
9 62300, at *11 ("the 24 to 72 hour delay in access is effectively an access denial and is,
10 therefore, unconstitutional"); *NBC Subsidiary*, 20 Cal. 4th at 1220 & n.42 (even
11 temporary denials of access warrant "exacting First Amendment scrutiny"); *In re*
12 *Estate of Hearst*, 67 Cal. App. 3d 777, 785, 136 Cal. Rptr. 821 (1977) (even
13 temporary limitations on public access to court records require a "sufficiently strong
14 showing of necessity").

15 Defendant conflates this two-part analysis by denying the existence of any
16 "First Amendment" right of "same day access." Having conceded the First
17 Amendment right of access to civil records, the extent to which access may be
18 temporarily denied is an issue for the second part of the analysis. But Defendant
19 disclaims any need to perform that second part of the analysis at all. Such an end run
20 around the First Amendment is not permitted, and does not support dismissal.

21 **C. Defendant's Other Arguments In Support Of His Motion To Dismiss Lack**
22 **Merit**

23 Although no further analysis is needed to conclude that Defendant's motion to
24 dismiss Courthouse News' first and second claims for relief should be denied, certain
25 other arguments advanced by Defendant in connection with his motion lack merit and
26 warrant a response:

27 **A tradition of same-day access in other courts** – In paragraphs 10-14 of its
28 Complaint and the Access Summary attached as Exhibit 1 thereto, Courthouse News

1 provided examples of some, but not all, of the state and federal courts around the
2 nation that have traditionally and continue to provide reporters who visit each court
3 day with access to newly filed cases at the end of the court day on which they are
4 filed. In an effort to avoid this reality, Defendant characterizes these access practices
5 as mere “courtesies” and takes issue with what he refers to as a “deficient sampling,”
6 arguing that this “does not constitute a ‘tradition’ of anything, much less warrant
7 imposition of a right to ‘same-day access.’” Def’s Memorandum, at 21. Setting aside
8 the fact that for the purposes of this motion, the allegations in the Complaint must be
9 taken as true, Courthouse News has two main responses.

10 First, the tradition of daily, same-day access that Courthouse News describes
11 has not occurred in a vacuum. Quite appropriately, it is one that has developed in
12 those courts that reporters from various media outlets actually visit on a daily basis to
13 review the new civil actions. For the purposes of the Complaint and Access
14 Summary, Courthouse News focused only on those larger courts that its reporters visit
15 on a daily basis.

16 Second, while some courts have, in recent years, imposed administrative tasks
17 between the filing of a new complaint and its being made available to the press that
18 have resulted in delays in access, many courts still do provide this same-day access.
19 Moreover, the fact that delays in access have recently become a problem in some
20 courts does not change the historical provision of same-day access to reporters who
21 visit the court every day, a tradition that Courthouse News has been able to observe
22 firsthand throughout its twenty-one year history. Complaint, ¶¶ 10, 14.

23 **Defendant’s suggestion that same-day courts are predominantly e-filing
24 courts is wrong** – Defendant also complains that many of the courts providing same-
25 day access “employ e-filing systems that dramatically reduce the processing burdens
26 on clerk office staff,” suggesting that because Ventura Superior is not an e-filing
27 court, this somehow excuses the access delays occurring at his court. Def’s
28 Memorandum, at 9-10, 21. There are two problems with this. First, Defendant

1 misstates the facts. While federal courts are indeed e-filing courts, in many of those
2 courts – including this Court and the Northern District of California – the case-
3 initiating document, *i.e.*, the complaint, is filed in *paper form*. *See* Complaint, ¶ 11 &
4 Exh. 1. Similarly, there are numerous examples of state courts, both in California and
5 throughout the nation, that provide same-day access to new complaints that are not e-
6 filed but are rather filed in the traditional paper form. In California, these superior
7 courts include the San Francisco, Los Angeles, Alameda, Santa Clara, Contra Costa,
8 and the Riverside County superior courts. Complaint, ¶¶ 11-12 & Exh. 1.¹⁵

9 Second, contrary to Defendant’s suggestion, e-filing is not the cure for access
10 delays. Courthouse News has observed that in many instances, e-filing has led to
11 access *delays* where none existed before. *See* Complaint, ¶ 13 & Exh. 1 (describing
12 the delays in access that followed mandatory e-filing at the Eighth Judicial District
13 Court in Las Vegas, Nevada).

14 ***Edwards* does not entitle Ventura Superior to continue its practice of**
15 ***delayed access*** – Contrary to Defendant’s suggestion, *United States v. Edwards*, 823
16 F.2d 111 (5th Cir. 1987), does *not* stand for the proposition, as he alleges, that there is
17 “no recognized right of ‘same day access’” to court records. Rather, in *Edwards*, the
18 Fifth Circuit held that the trial court did not err, *under the facts and circumstances in*
19 *that particular case*, in delaying release of closed hearing transcripts concerning juror
20 misconduct until after the jury had reached its verdict. In *Edwards*, a criminal trial
21 was underway and the Court was forced to weigh the First Amendment interests at
22 stake with the “paramount interest in maintaining an impartial jury and its inherent
23 vulnerability.” *Id.* at 119. Here, there is no “paramount” interest in delaying access
24 that even approaches the interest in protecting an impartial jury, and the Sixth

25
26
27
28 ¹⁵ At the Los Angeles, Alameda, and Riverside County Superior Courts, complaints
are scanned immediately on intake and made available for viewing in electronic form.
In Santa Clara, Contra Costa, and San Francisco Counties, complaints are made
available for viewing in their as-filed paper form. Complaint, Exh. 1.

1 Amendment rights of a defendant, and even assuming *arguendo* that Defendant were
2 to attempt to articulate such an interest, that inquiry is the second part of the First
3 Amendment and common law analysis and would not support dismissal under Rule
4 12(b)(6).

5 The differences between *Edwards* and the present situation are further
6 confirmed by the Southern District of Texas' discussion of that case in *Jackson*.
7 Distinguishing *Edwards*, the Southern District explained:

8 Defendants attempt to analogize the 24 to 72 hour delay in access
9 in this case to the district court's refusal to release transcripts of closed
10 proceedings prior to the jury verdict in *Edwards*. In *Edwards*, the Fifth
11 Circuit held that the district court did not err in its decision because it
12 reasonably restricted access given the paramount interest in maintaining
13 an impartial jury. ... The Fifth Circuit went on to state that the trial court
14 should avoid unnecessary delay in releasing the record of closed
15 proceedings following the trial. *Id.* The Court is unpersuaded by
16 Defendants' argument and finds that the delay in access to newly-filed
17 petitions in this case is not a reasonable limitation on access.

18 *Jackson*, 2009 U.S. Dist. LEXIS 62300, at *12-13 (2009).

19 **The press has a legitimate interest in timely access to new civil case filings –**
20 Defendant contends that the press and public do not have legitimate interest in timely
21 access to newly filed civil case-initiating documents. Def's Memorandum, at 22
22 ("The public's interest in being on 'watch' at the case-initiation stage of a civil case is
23 far less pronounced, *if it exists at all*, than in pending criminal proceedings").
24 Defendant's view ignores the many authorities noted above that recognize the public
25 interest in ensuring timely access to civil proceedings in general, as well as those
26 authorities noting the public interest to civil complaints in particular. *E.g.*, *Jackson*,
27 2009 U.S. Dist. LEXIS 62300, at *14 ("There is an important First Amendment
28 interest in providing timely access to new case-initiating documents."); *In re NVIDIA*,

1 2008 WL 1859067, at *3 (N.D. Cal. 2008) (“[W]hen a plaintiff invokes the Court’s
2 authority by filing a complaint, the public has a right to know who is invoking it, and
3 toward what purpose, and in what manner.”); *In re Eastman Kodak Co.*, 2010 WL
4 2490982 at *1 (S.D.N.Y. 2010) (a complaint “is a pleading essential to the Court’s
5 adjudication of the matter as well as the public’s interest in monitoring the federal
6 courts.”).

7 **IV.**

8 **GIVEN DEFENDANT’S ASSERTION OF ELEVENTH AMENDMENT
9 IMMUNITY, COURTHOUSE NEWS CONSENTS TO THE DISMISSAL OF
10 ITS STATE LAW CLAIM, AND THAT CLAIM ONLY**

11 The Eleventh Amendment grants a state defendant the power to assert a
12 sovereign immunity defense, barring a state law claim against it in federal court,
13 should it choose to do so. *Wisconsin Dep’t of Corrections v. Schacht*, 524 U.S. 381,
14 389, 118 S. Ct. 2047, 2052, 141 L. Ed. 2d 364, 372 (1998). Defendant having now
15 asserted sovereign immunity over the state law claim included in the Complaint,
16 Courthouse News consents to the dismissal of the Third Cause of Action.

17 Defendant’s assertion of sovereign immunity does not, however, affect the
18 viability of the First or Second Cause of Action, which are both federal law claims. *Id.*
19 at 389-90. *See Papasan v. Allen*, 478 U.S. 265, 277-78, 106 S. Ct. 2932, 92 L. Ed. 2d
20 209 (1986) (holding that sovereign immunity does not bar claims for prospective relief
21 against state defendants when such relief is based on ongoing violations of the
22 plaintiff’s federal law rights).

23 **CONCLUSION**

24 Defendant’s motion to dismiss and abstain boils down to his positions that he
25 should not be required to comply with the substantive and procedural requirements of
26 the First Amendment right of access, and that his lack of compliance should not be
27 subject to adjudication by a federal court. Neither one has any merit.

28 Accordingly, Plaintiff Courthouse News Service respectfully requests that
Defendant’s motion to dismiss and abstain be denied as to Courthouse News Service’s

1 First and Second Causes of Action for violations of the First Amendment and
2 common law. Defendant having now asserted sovereign immunity over the state law
3 claim, Courthouse News consents to the dismissal of the Third Cause of Action, and
4 respectfully requests that it be given 30 days to amend its Complaint accordingly.

5 Date: October 31, 2011

6 HOLME ROBERTS & OWEN LLP
7 RACHEL MATTEO-BOEHM
DAVID GREENE
LEILA KNOX

8 By: /s/ Rachel Matteo-Boehm

9 Rachel Matteo-Boehm
10 Attorneys for Plaintiff

11 COURTHOUSE NEWS SERVICE

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, **Tapa E. Tualualelei**, declare as follows:

I am over the age of 18 years and not a party to or interested in the within entitled cause. I am an employee of Jones Day and my business address is 555 California Street, 26th Floor, San Francisco, California 94104-1500.

On **July 30, 2012**, I served a true and correct copy of the within document(s):

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD

by placing it in a sealed envelope with postage thereon fully prepaid, in the **United States mail** at San Francisco, California to the person(s) at the address(es) set forth below:

Rachel Matteo-Boehm
Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000

Lucy A. Dalglish
Gregg P. Leslie
Kristen Rasmussen
The Reporters Committee for
Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
Telephone: (703) 807-2100

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this **30th day of July, 2012**, at San Francisco, California.



Tapa E. Tualualelei