

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

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

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COURTHOUSE NEWS SERVICE,

*Plaintiff/Appellant,*

vs.

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

*Defendant/Appellee.*

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

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**EXCERPTS OF RECORD  
VOLUME I**

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## VOLUME 1

<b>Description</b>	<b>C.D. Cal. Docket #</b>	<b>Page #</b>
Order Granting Defendant's Motion To Dismiss And Abstain	38	1
Reporter's Transcript Of Proceedings	44	3

## VOLUME 2

<b>Description</b>	<b>C.D. Cal. Docket #</b>	<b>Page #</b>
Plaintiff's Notice Of Appeal To The United States Court Of Appeals For The Ninth Circuit	40	13
Excerpts Of Declaration Of Cheryl Kanatzar In Support Of Defendant's Opposition To Plaintiff's Motion For Preliminary Injunction	25-2	15
Excerpts Of Plaintiff Courthouse News Service's Opposition To the Motion To Dismiss And Abstain Of Defendant Michael Planet	24	19
Excerpts Of Memorandum Of Points And Authorities In Support Of Defendant's Motion To Dismiss And Abstain	21	21
Defendant's Notice Of Motion And Motion To Dismiss And Abstain	21-1	27
Defendant's Request For Judicial Notice In Support Of Motion To Dismiss And Abstain	22	30
Exhibits To Defendant's Request For Judicial Notice In Support Of Motion To Dismiss And Abstain	22-1	34

<b>Description</b>	<b>C.D. Cal. Docket #</b>	<b>Page #</b>
Notice Of Motion And Motion For Preliminary Injunction	3	58
Complaint For Injunctive And Declaratory Relief	1	60
District Court Civil Docket Sheet For Case No. 2:11-cv-08083-R MAN	--	122

JS-6

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10 OFFICER/CLERK OF THE VENTURA  
11 COUNTY SUPERIOR COURT

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

14 COURTHOUSE NEWS SERVICE,  
15 Plaintiff,  
16 v.  
17 MICHAEL PLANET, IN HIS  
18 OFFICIAL CAPACITY AS COURT  
19 EXECUTIVE OFFICER/CLERK OF  
20 THE VENTURA COUNTY  
21 SUPERIOR COURT,  
22 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to  
Hon. Manuel L. Real

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS AND ABSTAIN**

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1 A Motion to Dismiss and Abstain ("Motion") filed by Defendant Michael D.  
2 Planet, in his official capacity as Executive Officer and Clerk of the Superior Court  
3 of California, County of Ventura, came on for hearing on November 28, 2011, at  
4 10:00 a.m., before the Honorable Manuel L. Real. Rachel Matteo-Boehm and  
5 David Greene appeared on behalf of Plaintiff Courthouse News Service. Robert A.  
6 Naeve and Erica L. Reilley appeared on behalf of Defendant Michael D. Planet.

7 Having considered all the papers submitted, oral argument, and the Court's  
8 file in this matter, and good cause having been shown, the Court hereby ORDERS  
9 as follows:

10 (1) Defendant's Motion is GRANTED.

11 (2) The Court dismisses Plaintiff's Third Claim for Relief for violation of  
12 California Rule of Court 2.550 because it is barred by the Eleventh Amendment to  
13 the United States Constitution;

14 (3) The Court abstains and dismisses the remainder of Plaintiff's  
15 Complaint for Injunctive and Declaratory Relief under the equitable abstention  
16 doctrine enunciated in *O'Shea v. Littleton*, 414 U.S. 488 (1974), and its progeny;  
17 and

18 (4) The Court further abstains and dismisses the remainder of Plaintiff's  
19 Complaint under the abstention doctrine enunciated in *Railroad Commission of*  
20 *Texas v. Pullman Co.*, 312 U.S. 496 (1941).

21 IT IS SO ORDERED.

22  
23 Dated: November 30, 2011



24 Hon. Manuel L. Real  
25 U.S. District Court Judge

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE MANUEL L. REAL, JUDGE PRESIDING

- - -

COURTHOUSE NEWS SERVICE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CV 11-8083-R
	)	
MICHAEL PLANET, etc., et. al.,	)	
	)	MOTION FOR
Defendants.	)	PRELIM INJUNCTION
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, November 28, 2011

10:59 A.M.

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Federal Official Court Reporter  
3470 12th Street, Rm. 134  
Riverside, California 92501  
(951) 274-0844  
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Page

MOTION..... 4

1 Los Angeles, California; Monday, November 28, 2011; 10:59 A.M.

2 -oOo-

3 **THE CLERK:** Calling calendar item ten, CV-11-8083,  
4 Courthouse News Service vs. Michael Planet, et cetera, et al.

5 **MS. MATTEO-BOEHM:** Rachel Matteo-Boehm appearing on 10:59  
6 behalf of plaintiff Courthouse News Service.

7 **MR. GREEN:** David Green for Courthouse News Service.

8 **MR. NAEVE:** Robert Naeve and Erica Reilley on behalf  
9 of the defendants.

10 **THE COURT:** Counsel, anything to add to the documents 10:59  
11 which have been filed?

12 **MS. MATTEO-BOEHM:** Your Honor, just a very brief  
13 point in response to the reply filed in support of defendant's  
14 motion to dismiss.

15 Defendant complains that Courthouse News Service is 11:00  
16 seeking special access. That's not correct. We're seeking  
17 simply an end to the delays in access to newly filed complaints  
18 caused by the defendant's policy of not permitting access until  
19 after he's completed all of those administrative tasks  
20 associated with those documents. 11:00

21 But it's worth pointing out that in the Richmond  
22 Newspapers case, the U.S. Supreme Court recognized, Look, in  
23 the context of courtroom proceedings, there's limited seating;  
24 it's appropriate to give some of that seating to the press.  
25 For the same reason, as many courts currently do, it's 11:00

1 appropriate to set special procedures for members of the press  
2 who visit the court every day for the expressed purpose of  
3 reviewing newly filed complaints. Indeed, this is one of the  
4 alternatives to restricting access that should be considered in  
5 the third part of the First Amendment test.

11:01

6 **THE COURT:** All right.

7 **MR. NAEVE:** Our only point was that the  
8 First Amendment doesn't grant special access and that the  
9 access offered to the public has been offered to CNS. But  
10 other than that, we stand on our papers, Your Honor.

11:01

11 **THE COURT:** Both plaintiff and defendant agree that  
12 the Eleventh Amendment bars plaintiff's third cause of action.  
13 As such, plaintiff's third cause of action is dismissed.

14 As for plaintiff's first and second causes of action,  
15 the Court concludes that abstention is appropriate under both  
16 the O'Shea doctrine and the Pullman doctrine. The abstention  
17 doctrine, first articulated in O'Shea vs. Littleton, 414 U.S.  
18 488, 1974, counsels federal courts to decline to exercise their  
19 equitable powers in cases seeking to reform state institutions.  
20 Horne vs. Flores, 129 S.Ct. 2579, 2009. "Federalism concerns  
21 are heightened when a federal decree has the effect of  
22 dictating state and local budget priorities."

11:01

11:02

23 In E.T. v. Cantil-Sakauye, 657 F.3d 902, Ninth  
24 Circuit 2011, the Ninth Circuit recently noted that O'Shea's  
25 equitable restrain considerations are nearly absolute when the

11:02

1 state agency in question is a state court. Here, the relief  
2 CNS seeks for would interfere with the administration of the  
3 Ventura Superior Court's operations. The Ventura Clerk's  
4 Office would be required to make all new complaints available  
5 the same day they were filed. Failure to do so would require 11:02  
6 judicial proceedings to evaluate the constitutionality of each  
7 delay.

8 This would be a potentially significant disruption of  
9 the court's operations, and could possibly lead to a  
10 significant reallocation of court services. This Court 11:03  
11 hesitates to dictate state and local budget priorities. State  
12 and local governments have limited funds. When a federal court  
13 orders that money be appropriated for one program, the effect  
14 is often to take funds away from other important programs. The  
15 decision about how to allocate resources is better left to the 11:03  
16 elected representatives.

17 Under the Pullman doctrine, first articulated in  
18 Railroad Commission of Texas vs. Pullman Company, 312 U.S. 496,  
19 1941, "federal courts should abstain from decision when  
20 difficult and unsettled questions of state law must be resolved 11:03  
21 before a substantial federal constitutional question can be  
22 decided." Hawaii Housing Authority vs. Midkiff, 467 U.S. 229,  
23 1984.

24 In the Ninth Circuit, federal courts have the  
25 discretion to abstain under Pullman when: (1) the complaint 11:04

1 touches a sensitive area of social policy upon which federal  
2 courts ought not enter unless no alternative is available; (2)  
3 a determination of the state ground is capable of resolving the  
4 controversy; and, (3) the proper resolution of the state ground  
5 for the decision is uncertain. Smelt vs. County of Orange,  
6 447 F.3d 673, Ninth Circuit 2006.

11:04

7 Here, all three factors are present. First, the  
8 complaint touches a sensitive area of social policy. CNS is  
9 asking the Court to direct and oversee administrative  
10 operations of the Ventura Superior Court, a potentially  
11 sensitive area of state sovereignty. The second and third  
12 prongs are also present. Cal. Government Code § 68150(1)  
13 already provides that court records of all types shall be made  
14 reasonably accessible to all members of the public. However,  
15 the term "reasonable access" has not yet been defined by either  
16 the state courts or the California legislature. If reasonable  
17 access were defined to mean "same-day access," this would avoid  
18 the necessity of this Court deciding the federal constitutional  
19 issues, a determination that may be premature at this time.  
20 Thus, defendant's motion to abstain is granted.

11:04

11:05

11:05

21 Under those certain circumstances, the preliminary  
22 injunction is therefore denied.

23 Counsel to prepare the order.

24 **MR. NAEVE:** Thank you, Your Honor.

25 (Proceedings concluded.)

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CERTIFICATE

I hereby certify that pursuant to section 753, title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/S/ Theresa A. Lanza  
CSR, RPR  
Federal Official Court Reporter

\_\_\_\_\_  
Date

<b>1</b>	6:2 <b>administrative</b> [2] - 4:19; 7:9 <b>agency</b> [1] - 6:1 <b>agree</b> [1] - 5:11 <b>al</b> [1] - 4:4 <b>allocate</b> [1] - 6:15 <b>alternative</b> [1] - 7:2 <b>alternatives</b> [1] - 5:4 <b>Amendment</b> [3] - 5:5, 8, 12 <b>Angeles</b> [1] - 4:1 <b>appearing</b> [1] - 4:5 <b>appropriate</b> [3] - 4:24; 5:1, 15 <b>appropriated</b> [1] - 6:13 <b>area</b> [3] - 7:1, 8, 11 <b>articulated</b> [2] - 5:17; 6:17 <b>associated</b> [1] - 4:20 <b>Authority</b> [1] - 6:22 <b>available</b> [2] - 6:4; 7:2 <b>avoid</b> [1] - 7:17	<b>Clerk's</b> [1] - 6:3 <b>CNS</b> [3] - 5:9; 6:2; 7:8 <b>Code</b> [1] - 7:12 <b>Commission</b> [1] - 6:18 <b>Company</b> [1] - 6:18 <b>complains</b> [1] - 4:15 <b>complaint</b> [2] - 6:25; 7:8 <b>complaints</b> [3] - 4:17; 5:3; 6:4 <b>completed</b> [1] - 4:19 <b>concerns</b> [1] - 5:20 <b>concluded</b> [1] - 7:25 <b>concludes</b> [1] - 5:15 <b>considerations</b> [1] - 5:25 <b>considered</b> [1] - 5:4 <b>constitutional</b> [2] - 6:21; 7:18 <b>constitutionality</b> [1] - 6:6 <b>context</b> [1] - 4:23 <b>controversy</b> [1] - 7:4 <b>correct</b> [1] - 4:16 <b>counsel</b> [2] - 4:10; 7:23 <b>counsels</b> [1] - 5:18 <b>County</b> [1] - 7:5 <b>Court</b> [2] - 4:22; 5:15; 6:10; 7:9, 18 <b>court</b> [5] - 5:2; 6:1, 10, 12; 7:13 <b>court's</b> [1] - 6:9 <b>Court's</b> [1] - 6:3 <b>Courthouse</b> [4] - 4:4, 6-7, 15 <b>courtroom</b> [1] - 4:23 <b>courts</b> [8] - 4:25; 5:18; 6:19, 24; 7:2, 16 <b>CV-11-8083</b> [1] - 4:3	<b>delays</b> [1] - 4:17 <b>denied</b> [1] - 7:22 <b>determination</b> [2] - 7:3, 19 <b>dictate</b> [1] - 6:11 <b>dictating</b> [1] - 5:22 <b>difficult</b> [1] - 6:20 <b>direct</b> [1] - 7:9 <b>discretion</b> [1] - 6:25 <b>dismiss</b> [1] - 4:14 <b>dismissed</b> [1] - 5:13 <b>disruption</b> [1] - 6:8 <b>doctrine</b> [4] - 5:16; 6:17 <b>documents</b> [2] - 4:10, 20	<b>granted</b> [1] - 7:20 <b>GREEN</b> [1] - 4:7 <b>Green</b> [1] - 4:7 <b>ground</b> [2] - 7:3
<b>2</b>			<b>H</b>	
2 [1] - 7:2 2006 [1] - 7:6 2009 [1] - 5:20 2011 [2] - 4:1; 5:24 229 [1] - 6:22 2579 [1] - 5:20 28 [1] - 4:1			<b>Hawaii</b> [1] - 6:22 <b>heightened</b> [1] - 5:21 <b>hesitates</b> [1] - 6:11 <b>Horne</b> [1] - 5:20 <b>Housing</b> [1] - 6:22	
<b>3</b>			<b>I</b>	
3 [1] - 7:4 312 [1] - 6:18			<b>important</b> [1] - 6:14 <b>indeed</b> [1] - 5:3 <b>injunction</b> [1] - 7:22 <b>Institutions</b> [1] - 5:19 <b>Interfere</b> [1] - 6:2 <b>issues</b> [1] - 7:19 <b>item</b> [1] - 4:3	
<b>4</b>	<b>B</b>		<b>J</b>	
414 [1] - 5:17 447 [1] - 7:6 467 [1] - 6:22 488 [1] - 5:18 496 [1] - 6:18	<b>bars</b> [1] - 5:12 <b>behalf</b> [2] - 4:6, 8 <b>better</b> [1] - 6:15 <b>BOEHM</b> [2] - 4:5, 12 <b>Boehm</b> [1] - 4:5 <b>brief</b> [1] - 4:12 <b>budget</b> [2] - 5:22; 6:11	<b>Erica</b> [1] - 4:8 <b>et</b> [2] - 4:4 <b>evaluate</b> [1] - 6:6 <b>exercise</b> [1] - 5:18 <b>expressed</b> [1] - 5:2	<b>judicial</b> [1] - 6:6	
<b>6</b>	<b>C</b>		<b>L</b>	
657 [1] - 5:23 673 [1] - 7:6 68150(1) [1] - 7:12	<b>Cal</b> [1] - 7:12 <b>calendar</b> [1] - 4:3 <b>California</b> [2] - 4:1; 7:16 <b>Cantil</b> [1] - 5:23 <b>Cantil-Sakauye</b> [1] - 5:23 <b>capable</b> [1] - 7:3 <b>case</b> [1] - 4:22 <b>cases</b> [1] - 5:19 <b>caused</b> [1] - 4:18 <b>causes</b> [1] - 5:14 <b>certain</b> [1] - 7:21 <b>cetera</b> [1] - 4:4 <b>Circuit</b> [4] - 5:24; 6:24; 7:6 <b>circumstances</b> [1] - 7:21 <b>CLERK</b> [1] - 4:3	<b>F.3d</b> [2] - 5:23; 7:6 <b>factors</b> [1] - 7:7 <b>failure</b> [1] - 6:5 <b>federal</b> [8] - 5:18, 21; 6:12, 19, 21, 24; 7:1, 18 <b>federalism</b> [1] - 5:20 <b>filed</b> [5] - 4:11, 13, 17; 5:3; 6:5 <b>First</b> [2] - 5:5, 8 <b>first</b> [4] - 5:14, 17; 6:17; 7:7 <b>Flores</b> [1] - 5:20 <b>funds</b> [2] - 6:12, 14	<b>law</b> [1] - 6:20 <b>lead</b> [1] - 6:9 <b>left</b> [1] - 6:15 <b>legislature</b> [1] - 7:16 <b>limited</b> [2] - 4:23; 6:12 <b>Littleton</b> [1] - 5:17 <b>local</b> [9] - 5:22; 6:11 <b>Look</b> [1] - 4:22 <b>Los</b> [1] - 4:1	
<b>9</b>			<b>M</b>	
902 [1] - 5:23			<b>MATTEO</b> [2] - 4:5, 12 <b>Matteo</b> [1] - 4:5 <b>MATTEO-BOEHM</b> [2] - 4:5, 12 <b>Matteo-Boehm</b> [1] - 4:5 <b>mean</b> [1] - 7:17 <b>members</b> [2] - 5:1; 7:14 <b>Michael</b> [1] - 4:4 <b>Midkiff</b> [1] - 6:22 <b>Monday</b> [1] - 4:1 <b>money</b> [1] - 6:13	
<b>A</b>				
<b>A.M</b> [1] - 4:1 <b>absolute</b> [1] - 5:25 <b>abstain</b> [3] - 6:19, 25; 7:20 <b>abstention</b> [2] - 5:15 <b>access</b> [9] - 4:16-18; 5:4, 8-9; 7:15, 17 <b>accessible</b> [1] - 7:14 <b>action</b> [3] - 5:12 <b>add</b> [1] - 4:10 <b>administration</b> [1] -		<b>David</b> [1] - 4:7 <b>decided</b> [1] - 6:22 <b>deciding</b> [1] - 7:18 <b>decision</b> [3] - 6:15, 19; 7:5 <b>decline</b> [1] - 5:18 <b>decree</b> [1] - 5:21 <b>defendant</b> [2] - 4:15; 5:11 <b>defendant's</b> [3] - 4:13, 18; 7:20 <b>defendants</b> [1] - 4:9 <b>defined</b> [2] - 7:15, 17 <b>delay</b> [1] - 6:7	<b>G</b>	
		<b>government</b> [1] - 7:12 <b>governments</b> [1] - 6:12 <b>grant</b> [1] - 5:8		

<p><b>motion</b> [2] - 4:14; 7:20  <b>MR</b> [4] - 4:7; 5:7; 7:24  <b>MS</b> [2] - 4:5, 12  <b>must</b> [1] - 6:20</p>	<p><b>powers</b> [1] - 5:19  <b>preliminary</b> [1] - 7:21  <b>premature</b> [1] - 7:19  <b>prepare</b> [1] - 7:23  <b>present</b> [2] - 7:7, 12  <b>press</b> [2] - 4:24; 5:1  <b>priorities</b> [2] - 5:22; 6:11  <b>procedures</b> [1] - 5:1  <b>Proceedings</b> [1] - 7:25  <b>proceedings</b> [2] - 4:23; 6:6  <b>program</b> [1] - 6:13  <b>programs</b> [1] - 6:14  <b>prongs</b> [1] - 7:12  <b>proper</b> [1] - 7:4  <b>provides</b> [1] - 7:13  <b>public</b> [2] - 5:9; 7:14  <b>Pullman</b> [4] - 5:16; 6:17, 25  <b>purpose</b> [1] - 5:2</p>	<p><b>S</b></p> <p><b>S.Ct</b> [1] - 5:20  <b>Sakayue</b> [1] - 5:23  <b>same-day</b> [1] - 7:17  <b>seating</b> [2] - 4:23  <b>second</b> [2] - 5:14; 7:11  <b>seeking</b> [3] - 4:16; 5:19  <b>seeks</b> [1] - 6:2  <b>sensitive</b> [3] - 7:1, 8, 11  <b>Service</b> [4] - 4:4, 6-7, 15  <b>services</b> [1] - 6:10  <b>set</b> [1] - 5:1  <b>shall</b> [1] - 7:13  <b>significant</b> [2] - 6:8, 10  <b>simply</b> [1] - 4:17  <b>Smelt</b> [1] - 7:5  <b>social</b> [2] - 7:1, 8  <b>sovereignty</b> [1] - 7:11  <b>special</b> [3] - 4:16; 5:1, 8  <b>stand</b> [1] - 5:10  <b>state</b> [11] - 5:19, 22; 6:1, 11, 20; 7:3, 11, 16  <b>substantial</b> [1] - 6:21  <b>Superior</b> [2] - 6:3; 7:10  <b>support</b> [1] - 4:13  <b>Supreme</b> [1] - 4:22</p>	<p>6:17, 25; 7:21  <b>unless</b> [1] - 7:2  <b>unsettled</b> [1] - 6:20</p>
<p><b>N</b></p>	<p><b>Q</b></p>	<p><b>T</b></p>	<p><b>V</b></p>
<p><b>NAEVE</b> [3] - 4:8; 5:7; 7:24  <b>Naeve</b> [1] - 4:8  <b>nearly</b> [1] - 5:25  <b>necessity</b> [1] - 7:18  <b>new</b> [1] - 6:4  <b>newly</b> [2] - 4:17; 5:3  <b>News</b> [4] - 4:4, 6-7, 15  <b>Newspapers</b> [1] - 4:22  <b>Ninth</b> [4] - 5:23; 6:24; 7:6  <b>noted</b> [1] - 5:24  <b>November</b> [1] - 4:1</p>	<p><b>R</b></p> <p><b>Rachel</b> [1] - 4:5  <b>Railroad</b> [1] - 6:18  <b>reallocation</b> [1] - 6:10  <b>reason</b> [1] - 4:25  <b>reasonable</b> [2] - 7:15  <b>reasonably</b> [1] - 7:14  <b>recently</b> [1] - 5:24  <b>recognized</b> [1] - 4:22  <b>records</b> [1] - 7:13  <b>reform</b> [1] - 5:19  <b>Reilley</b> [1] - 4:8  <b>relief</b> [1] - 6:1  <b>reply</b> [1] - 4:13  <b>representatives</b> [1] - 6:16  <b>require</b> [1] - 6:5  <b>required</b> [1] - 6:4  <b>resolution</b> [1] - 7:4  <b>resolved</b> [1] - 6:20  <b>resolving</b> [1] - 7:3  <b>resources</b> [1] - 6:15  <b>response</b> [1] - 4:13  <b>restrain</b> [1] - 5:25  <b>restricting</b> [1] - 5:4  <b>reviewing</b> [1] - 5:3  <b>Richmond</b> [1] - 4:21  <b>Robert</b> [1] - 4:8</p>	<p><b>W</b></p> <p><b>Ventura</b> [3] - 6:3; 7:10  <b>visit</b> [1] - 5:2  <b>vs</b> [6] - 4:4; 5:17, 20; 6:18, 22; 7:5</p>	
<p><b>O</b></p>	<p><b>U</b></p>	<p><b>U</b></p>	<p><b>§</b></p>
<p><b>O'Shea</b> [2] - 5:16  <b>O'Shea's</b> [1] - 5:24  <b>offered</b> [2] - 5:9  <b>Office</b> [1] - 6:4  <b>often</b> [1] - 6:14  <b>one</b> [2] - 5:3; 6:13  <b>oOo</b> [1] - 4:2  <b>operations</b> [3] - 6:3, 9; 7:10  <b>Orange</b> [1] - 7:5  <b>order</b> [1] - 7:23  <b>orders</b> [1] - 6:13  <b>ought</b> [1] - 7:2  <b>oversee</b> [1] - 7:9</p>	<p><b>§</b> [1] - 7:12</p>	<p><b>tasks</b> [1] - 4:19  <b>ten</b> [1] - 4:3  <b>term</b> [1] - 7:15  <b>test</b> [1] - 5:5  <b>Texas</b> [1] - 6:18  <b>therefore</b> [1] - 7:22  <b>third</b> [4] - 5:5, 12-13; 7:11  <b>three</b> [1] - 7:7  <b>touches</b> [2] - 7:1, 8  <b>types</b> [1] - 7:13</p>	<p><b>worth</b> [1] - 4:21</p>
<p><b>P</b></p>	<p><b>papers</b> [1] - 5:10  <b>part</b> [1] - 5:5  <b>permitting</b> [1] - 4:18  <b>plaintiff</b> [2] - 4:6; 5:11  <b>plaintiffs</b> [3] - 5:12  <b>Planet</b> [1] - 4:4  <b>point</b> [2] - 4:13; 5:7  <b>pointing</b> [1] - 4:21  <b>policy</b> [3] - 4:18; 7:1, 8  <b>possibly</b> [1] - 6:9  <b>potentially</b> [2] - 6:8; 7:10</p>	<p><b>U.S</b> [4] - 4:22; 5:17; 6:18, 22  <b>uncertain</b> [1] - 7:5  <b>under</b> [4] - 5:15;</p>	