

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

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

COURTHOUSE NEWS SERVICE,

Plaintiff/Appellant,

vs.

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

Defendant/Appellee.

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

**EXCERPTS OF RECORD
VOLUME II**

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

Attorneys for Plaintiff-Appellant
COURTHOUSE NEWS SERVICE

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1 Rachel Matteo-Boehm (SBN 195492)
 2 rachel.matteo-boehm@hro.com
 3 David Greene (SBN 160107)
 4 david.greene@hro.com
 5 Leila C. Knox (SBN 245999)
 6 leila.knox@hro.com
 7 HOLME ROBERTS & OWEN LLP
 8 560 Mission Street, Suite 250
 9 San Francisco, CA 94105-2994
 10 Telephone: (415) 268-2000
 11 Facsimile: (415) 268-1999

12 Attorneys for Plaintiff
 13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16 WESTERN DIVISION

17 Courthouse News Service,
 18 Plaintiff,
 19 v.

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

23 Defendant.

24 CASE NO. CV11-08083 R (MANx)

25 **PLAINTIFF'S NOTICE OF APPEAL**
 26 **TO THE UNITED STATES COURT**
 27 **OF APPEALS FOR THE NINTH**
 28 **CIRCUIT**

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NOTICE IS HEREBY GIVEN that Courthouse News Service, the plaintiff in the above-captioned matter, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Granting Defendant’s Motion to Dismiss and Abstain (“Order”) entered in this action on November 30, 2011. A copy of the Order is attached hereto as Exhibit 1.

Plaintiff’s Representation Statement is attached hereto as Exhibit 2 (Fed. R. App. Proc. 12(b); Circuit Rule 3-2(b)).

Dated: December 15, 2011

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

By: /s/ Rachel Matteo-Boehm
RACHEL MATTEO-BOEHM
Attorneys for Plaintiff Courthouse News
Service

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

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

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

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14 COURTHOUSE NEWS SERVICE,

15 Plaintiff,

16 v.

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

20 Defendant.
21

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
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

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July 23, 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

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 Superior Court somehow agreed to an "arrangement" by which "newly filed complaints were to be made available to Courthouse News' reporter after some processing but before the complaints had been fully processed, the result of which 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.

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

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

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

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

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

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

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

1 Rachel Matteo-Boehm (SBN 195492)
2 rachel.matteo-boehm@hro.com
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4 david.greene@hro.com
5 Leila C. Knox (SBN 245999)
6 leila.knox@hro.com
7 HOLME ROBERTS & OWEN LLP
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24 Defendant.

25 CASE NO. CV11-08083 R (MANx)
26 **PLAINTIFF COURTHOUSE NEWS
27 SERVICE'S OPPOSITION TO THE
28 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 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 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, California 92612
 8 Telephone: (949) 851-3939
 9 Facsimile: (949) 553-7539

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 21 SUPERIOR COURT,
 22 Defendant.

Case No. CV11-08083 R (MANx)

Assigned for all purposes to
 Hon. Manuel L. Real

**MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF DEFENDANT'S
 MOTION TO DISMISS AND
 ABSTAIN**

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

INTRODUCTION

1
2 Plaintiff Courthouse News Service (“CNS”), a purportedly widely read legal
3 news wire service, seeks broad declaratory and injunctive relief against Michael D.
4 Planet, in his official capacity as Executive Officer and Clerk of the Superior Court
5 of California, County of Ventura (“Mr. Planet” or the “Ventura Superior Court”).
6 The gravamen of CNS’s lawsuit rests on the misplaced notion that it has a
7 *constitutional* or common law right to “same-day access” to all newly filed
8 unlimited civil complaints. Specifically, CNS complains that “any delay in the
9 reporter’s ability to review a newly filed complaint necessarily creates delay in
10 [CNS’s] ability to inform interested persons of the factual and legal allegations in
11 those complaints” (Compl., ¶ 18 (emphasis added).) CNS further complains
12 that purportedly increasing access delays at Ventura Superior Court, and an alleged
13 “policy” that CNS (and every other member of the public) cannot have access to
14 new filings at that court until the requisite document processing is completed has
15 resulted in new filings being “as good as sealed,” in violation of the First and
16 Fourteenth Amendments to the U.S. Constitution, federal common law, and the
17 California Rules of Court. (*Id.*, ¶ 6.) Thus, CNS wants nearly instantaneous access
18 to all newly filed unlimited civil complaints.

19 CNS can cite to *no case* holding that the First Amendment protects a news
20 agency’s right to “same-day access” to newly filed complaints. Instead, it claims
21 that because certain other courts are able to extend the *courtesy* of “same-day
22 access”, this Court should make such access a constitutional mandate. But the law
23 does not countenance such a decree, and for good reason. *First*, CNS’s request that
24 this *federal* district court involve itself in the administration of the *state’s* judicial
25 system runs afoul of settled principles of federalism, comity, and institutional
26 competence—all of which urge this Court to exercise its discretion to abstain from
27 hearing the matter at all. *Second*, CNS’s first and second claims for relief for
28

1 *Missouri v. Jenkins*, 515 U.S. 70, 112-113, 115 S. Ct. 2038, 132 L. Ed. 2d 63
2 (1995) (O'Connor, J., concurring) ("Article III courts are constrained by the
3 inherent constitutional limitations on their powers. Unlike Congress, which enjoys
4 discretion in determining whether and what legislation is needed to secure the
5 guarantees of the Fourteenth Amendment, federal courts have no comparable
6 license and must always observe their limited judicial role.") (internal citations and
7 quotations omitted).

8 Whether a case is justiciable is governed, in part, by important separation of
9 powers principles. *See Flast v. Cohen*, 392 U.S. 83, 97, 88 S. Ct. 1942, 20 L. Ed.
10 2d 947 (1968). Thus, the Supreme Court has developed several related abstention
11 doctrines grounded in principles of comity and federalism to ensure that federal
12 courts do not improvidently resolve disputes and award relief that will intrude upon
13 the prerogatives of states to structure and fund their own governmental institutions.
14 *See Rizzo v. Goode*, 423 U.S. 362, 378-80, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976)
15 ("When a plaintiff seeks to enjoin the activity of a government agency, even within
16 a unitary court system, his case must contend with the well-established rule that the
17 Government has traditionally been granted the widest latitude in the dispatch of its
18 own internal affairs") (internal quotations and citations omitted).

19
20 **A. This Court Should Equitably Abstain From Hearing This Matter Pursuant To *O'Shea v. Littleton*.**

21 The Supreme Court first articulated the doctrine of equitable abstention in
22 *O'Shea v. Littleton*, 414 U.S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974). This
23 doctrine counsels federal courts to decline to exercise their equitable powers in
24 cases seeking to reform state institutions, because such suits offend traditional
25 notions of federalism by calling for "restructuring . . . state government
26 institutions" and "dictating state or local budget priorities." *O'Shea*, 414 U.S. at
27 500; *see also Horne v. Flores*, 129 S. Ct. 2579, 2593, 174 L. Ed. 2d 406, 557 U.S.

1 must be granted on a “same-day basis.” *Pullman* abstention is appropriate in this
2 circumstance because “federal courts owe deference to their state counterparts in
3 situations where public perceptions of the integrity of the state judicial system are
4 affected.” *Hughes v. Lipscher*, 906 F.2d 961, 967 (3d Cir. 1990); *see also*
5 *Almodovar v. Reiner*, 832 F.2d 1138, 1140 (9th Cir. 1987) (“the ‘sensitive social
6 policy’ prong . . . recognizes that abstention protects state sovereignty over matters
7 of local concern, out of considerations of federalism, and out of scrupulous regard
8 for the rightful independence of state governments”).

9 As for the second and third *Pullman* factors, resolution of at least *two*
10 unsettled questions of state law could obviate the need for this action in its entirety.
11 As noted above, Government Code section 68150(l) already provides that court
12 records of all types “shall be made *reasonably accessible* to all members of the
13 public for viewing and duplication” Cal. Gov’t Code § 8150(l) (emphasis
14 added). However, as CNS and other sponsors of SB 326 have already
15 acknowledged, the term, “‘reasonable access’ is not defined under existing law.”
16 (RJN, Ex. B at 2.)

17 Much the same can also be said of CNS’s third claim for relief for violation
18 of California Rule of Court 2.550. This Rule of Court provides that “court records
19 are presumed to be open,” and permits trial courts to seal a court record only when
20 “(1) There exists an overriding interest that overcomes the right of public access to
21 the record; (2) The overriding interest supports sealing the record; (3) A substantial
22 probability exists that the overriding interest will be prejudiced if the record is not
23 sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive
24 means exist to achieve the overriding interest.” Cal. R. Ct. 2.550(c) & (d); *see also*
25 Compl., ¶¶ 41-42 (quoting these provisions). It certainly is an open and unsettled
26 question whether these Rules of Court somehow recognize an enforceable right to
27 “same-day access” to newly filed unlimited civil complaints.
28

1 As explained in greater detail below (*see infra* Section III), the Eleventh
2 Amendment precludes a federal court from ruling on CNS's state-law claim. In any
3 event, a state court ruling requiring "same-day access" to newly filed unlimited
4 civil complaints pursuant to Government Code section 68150(l) or Rule of Court
5 2.550 would, of necessity, obviate the need for this Court to rule on the First
6 Amendment issues CNS presses here. *Pullman* abstention is warranted for this
7 reason. *See C-Y Dev. Co. v. Redlands*, 703 F.2d 375, 377-78 (9th Cir. 1983)
8 ("[T]he assumption which justifies abstention is that a federal court's erroneous
9 determination of a state law issue may result in premature or unnecessary
10 constitutional adjudication, and unwarranted interference with state programs and
11 statutes. A state law question that has the potential of at least altering the nature of
12 the federal constitutional questions is thus an essential element of *Pullman*
13 abstention.") (citation omitted); *Canton*, 498 F.2d at 845 ("With regard to elements
14 (2) and (3) [of the *Pullman* abstention test], it is crucial that the uncertainty in the
15 state law be such that construction of it by the state courts might obviate, or at least
16 delimit, decision of the federal (constitutional) question.").

17 **II. CNS'S FIRST AND SECOND CLAIMS FOR RELIEF FAIL TO**
18 **STATE A CLAIM FOR A CONSTITUTIONAL OR FEDERAL**
19 **COMMON LAW "RIGHT" OF SAME-DAY ACCESS TO NEWLY**
20 **FILED UNLIMITED CIVIL COMPLAINTS.**

21 Even if *O'Shea* and *Pullman* abstention doctrines could not be invoked here,
22 CNS's first and second claims for relief should be dismissed for failure to state a
23 claim as a matter of law. As noted above, CNS alleges that it has both a
24 constitutional and common-law right of access to court records, and that such
25 access must be timely. (Compl., ¶¶ 32, 37.) Ventura Superior Court does not
26 dispute either proposition; as discussed above, even the California Government
27 Code mandates "reasonable access" to all court records. Cal. Gov't Code
28 § 68150(l). But CNS then takes the unsupportable leap that timely access to court

1 records equates to “*same-day access*”. (Compl., ¶¶ 32, 37.) No such right exists
2 under the law.

3
4 **A. The First Claim For Relief Should Be Dismissed Because The First
Amendment Does Not Guarantee Same-Day Access.**

5 **1. First Amendment Public Rights Of Access To Court
6 Records Are Governed By “Experience And Logic.”**

7 In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-81, 100 S. Ct.
8 2814, 65 L. Ed. 2d 973 (1980), the Supreme Court held for the first time that the
9 First Amendment gave the press and public an affirmative *qualified* right of access
10 to criminal court proceedings. The Court identified two related criteria for
11 evaluating First Amendment right of access, *id.* at 588-89 (Brennan, Marshall, JJ,
12 concurring), which it later termed “considerations of experience and logic:” (1)
13 whether the place and process have historically been open to the press and general
14 public (i.e., “experience”); and (2) whether public access plays a significant
15 positive role in the functioning of the particular process in question (i.e., “logic”).
16 *Press-Enterprise Co. v. Superior Court*, 478 US 1, 8, 106 S. Ct. 2735, 92 L. Ed. 2d
17 1 (1986) (*Press-Enterprise II*). Both criteria must be satisfied to establish a
18 qualified right to access. CNS cannot satisfy either.

19 **2. Historic “Experience” Does Not Recognize A Right To
20 Same-Day Access To Court Records.**

21 **a. There Is No Historic Right To Same-Day Access As A
22 Matter Of Law.**

23 Since *Richmond*, the Supreme Court has revisited the First Amendment right
24 of access only in the context of *criminal* proceedings. See *Globe Newspaper Co. v.*
25 *Superior Court*, 457 U.S. 596, 606-11, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982)
26 (closing proceedings during testimony of underage rape victim unconstitutional);
27 *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508-13, 104 S. Ct. 819, 78
28 L. Ed. 2d 629 (1984) (closing voir dire in criminal case unconstitutional in light of

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

7 Attorneys for Defendant
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
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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.
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Case No. CV11-08083 R (MANx)

Assigned for all purposes to
Hon. Manuel L. Real

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS AND ABSTAIN**

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 21, 2011, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard in Courtroom 8 of the above-entitled
4 court, located at 312 N. Spring St., Los Angeles, California 90012, defendant
5 Michael D. Planet, in his official capacity as Executive Officer and Clerk of the
6 Superior Court of California, County of Ventura, will and hereby does move the
7 Court as follows:

- 8 1. To abstain and to dismiss Plaintiff Courthouse News Services (“CNS”)
9 Complaint for Injunctive and Declaratory Relief in its entirety pursuant
10 to the equitable abstention doctrine enunciated in *O’Shea v. Littleton*,
11 414 U.S. 488 (1974);
- 12 2. To abstain and to dismiss CNS’s Complaint for Injunctive and
13 Declaratory Relief in its entirety pursuant to the abstention doctrine
14 enunciated in *Railroad Comm’n of Texas v. Pullman Co.*, 312 U.S. 496
15 (1941);
- 16 3. To dismiss CNS’s First Claim for Relief for Violation of the First
17 Amendment to the United States Constitution, pursuant to 42 U.S.C. §
18 1983, because there is no mandatory, constitutional “right” to same-
19 day access to newly filed unlimited civil complaints;
- 20 4. To dismiss CNS’s Second Claim for Relief For Violation of Federal
21 Common Law, pursuant to 42 U.S.C. § 1983, because there is no
22 mandatory, common-law “right” to same-day access to newly filed
23 unlimited civil complaints; and
- 24 5. To dismiss CNS’s Third Claim for Relief for violation of California
25 Rule of Court 2.550 because it is barred by the Eleventh Amendment
26 to the United States Constitution.

27 The motion is based on this Notice of Motion, the concurrently filed
28 Memorandum of Points and Authorities and Request for Judicial Notice, and all

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other pleadings and papers filed herein, and any additional argument the Court may consider at the hearing on this motion.

Dated: October 20, 2011

Respectfully submitted,

JONES DAY

By: /s/ Robert A. Naeve

Robert A. Naeve

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

LAI-3151864

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

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

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12
13 COURTHOUSE NEWS SERVICE,

14 Plaintiff,

15 v.

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

19 Defendant.
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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](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_bill_20110901_9)
9 [_amended_asm_v95.pdf](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
10 of this document is attached hereto as Exhibit A.
- 11 2. The California Senate Judiciary Committee's May
12 3, 2011 Bill Analysis of Senate Bill 326 (as
13 amended April 25, 2011), available at
14 [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_cfa_20110502_142806_sen_](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0301-0350/sb_326_cfa_20110502_142806_sen_comm.html)
15 [comm.html](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
16 document is attached hereto as Exhibit B.
- 17 3. Letter from the Judicial Council of California,
18 Administrative Office of the Courts, to the Senate
19 Judiciary Committee, dated April 27, 2011. A true
20 and correct copy of this document is attached
21 hereto as Exhibit C.
- 22 4. Letter from the Judicial Council of California,
23 Administrative Office of the Courts, to the
24 Assembly Judiciary Committee, dated June 9,
25 2011. A true and correct copy of this document is
26 attached hereto as Exhibit D.
- 27 5. The Bill History of California Senate Bill 326, from
28 the 2011-2002 Regular Session, available at
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
this document is attached hereto as Exhibit E.
6. Letter from the Judicial Council of California,

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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.

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

Dated: October 20, 2011 JONES DAY

By: /s/ Robert Naeve
Robert A. Naeve

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

LAI-3151596

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

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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

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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.

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EXHIBIT B

BILL ANALYSIS

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

SB 326 (Yes)
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 (1993) 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 (Yes)
Page 2 of 7

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

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SB 326 (Yes)
Page 3 of 2

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:

The 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

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SB 326 (Yes)
Page 4 of 2

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. 69150.) 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

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SB 326 (Yee)
Page 5 of 7

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

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SB 326 (Yee)
Page 6 of 7

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

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SB 326 (Yee)
Page 7 of 7

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

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SB 326 (Yee)
Page 8 of 7

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

CURTIS L. CHILD
Director, Office of Governmental Affairs

April 27, 2011

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
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filing 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

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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 Kolpitke, 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 Kenney
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

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Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

August 8, 2011

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.

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

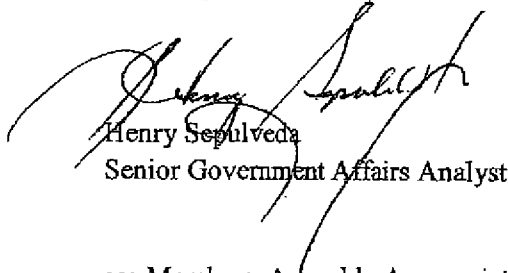
#460

August 8, 2011

Page 3

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

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1 Rachel Matteo-Boehm (SBN 195492)
2 rachel.matteo-boehm@hro.com
3 David Greene (SBN 160107)
4 david.greene@hro.com
5 Leila C. Knox (SBN 245999)
6 leila.knox@hro.com
7 HOLME ROBERTS & OWEN LLP
8 560 Mission Street, Suite 250
9 San Francisco, CA 94105-2994
10 Telephone: (415) 268-2000
11 Facsimile: (415) 268-1999

12 Attorneys for Plaintiff
13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 Courthouse News Service,
17 Plaintiff,
18 v.
19 Michael D. Planet, in his official capacity
20 as Court Executive Officer/Clerk of the
21 Ventura County Superior Court.
22 Defendants.

23 **CV11-08083 R(MAN)**
24 CASE NO. _____

25 **NOTICE OF MOTION AND
26 MOTION FOR PRELIMINARY
27 INJUNCTION**

28 Date: Nov. 7, 2011
Time: 10:00 am
Courtroom: _____
Judge: _____

- Documents filed herewith:
- 1) Memorandum of Points and Authorities
 - 2) Declaration of William Girdner
 - 3) Declaration of Christopher Marshall
 - 4) Declaration of Julianna Krolak
 - 5) Declaration of Karen Covell

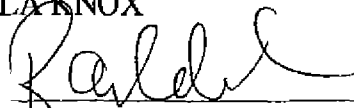
FILED
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
11 SEP 29 AM 11:55
CIT-79

1 **TO THE COURT, THE PARTIES AND ALL COUNSEL OF RECORD:**
2 **PLEASE TAKE NOTICE THAT** on November 7, 2011, at 10:00 a.m., in
3 Courtroom ___ of the United States District Court for the Central District of
4 California, _____ Division, at _____,
5 Plaintiff Courthouse News Service will and does move this court for a preliminary
6 injunction against Defendant Michael Planet, in his official capacity as Court
7 Executive Officer/Clerk of the Ventura County Superior Court, together with his
8 agents, assistants, successors, employees, and all persons acting in concert or
9 cooperation with them, or at his direction or under his control, prohibiting him
10 preliminarily, during the pendency of this action, from enforcing his policy of denying
11 Courthouse News Service access to new unlimited jurisdiction civil complaints filed
12 at the Ventura County Superior Court until after the "requisite processing" has been
13 completed, and further directed to provide Courthouse News Service with access to
14 new complaints no later than the end of the day on which they are filed, except in
15 those instances where the filing party is seeking a TRO or other immediate relief or
16 has properly filed the pleading under seal.

17 The motion is based on the complaint, the memorandum of points and
18 authorities, the declarations of William Girdner, Christopher Marshall, Julianna
19 Krolak, and Karen Covell, each filed herewith, any opposition papers and evidence
20 filed by Defendant, Plaintiff's reply papers and evidence submitted therewith, and any
21 argument or evidence presented at hearing, or as otherwise permitted by the Court.

22 Date: September 29, 2011

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

26 By: 
Rachel Matteo-Boehm
Attorneys for Plaintiff
COURTHOUSE NEWS SERVICE

COPY

1 Rachel Matteo-Boehm (SBN 195492)
2 rachel.matteo-boehm@hro.com
3 David Greene (SBN 160107)
4 david.greene@hro.com
5 Leila C. Knox (SBN 245999)
6 leila.knox@hro.com
7 HOLME ROBERTS & OWEN LLP
8 560 Mission Street, Suite 250
9 San Francisco, CA 94105-2994
10 Telephone: (415) 268-2000
11 Facsimile: (415) 268-1999

FILED
CLERK, U.S. DISTRICT COURT
SEP 29 2011
CENTRAL DISTRICT OF CALIFORNIA
BY

12 Attorneys for Plaintiff
13 COURTHOUSE NEWS SERVICE

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 Courthouse News Service,

17 Plaintiff,

18 v.

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

22 Defendant.

CASE NO. **CV11-08083** (MMX)

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

23 Plaintiff Courthouse News Service ("Courthouse News"), by and through its
24 undersigned attorneys, hereby alleges the following facts in support of its Complaint
25 for Injunctive and Declaratory Relief:

26 **JURISDICTION AND VENUE**

27 1. Courthouse News' claims arise under the First and Fourteenth
28 Amendments to the United States Constitution, the federal common law and the Civil
Rights Act, Title 42 U.S.C. § 1983 *et seq.* This Court has subject matter jurisdiction

1 under 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), and 2201 (declaratory
2 relief). This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the
3 state law claims brought pursuant to California Rule of Court 2.550. Defendant is
4 subject to personal jurisdiction in this judicial district at the time this action is
5 commenced.

6 2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)
7 because, on information and belief, Defendant resides in California, and in this
8 district, and because a substantial part of the events or omissions giving rise to
9 Courthouse News' claims occurred in this district.

10 **PRELIMINARY STATEMENT**

11 3. Plaintiff Courthouse News Service brings this action seeking injunctive
12 and declaratory relief against Defendant Michael Planet, in his official capacity as
13 Court Executive Officer/Clerk of the Superior Court of the State of California, County
14 of Ventura ("Ventura Superior"), to restrain the deprivation under color of state law of
15 Courthouse News' rights, privileges and immunities under 42 U.S.C. § 1983 *et seq.*,
16 the United States Constitution, federal common law, and the California Rules of
17 Court.

18 4. Courthouse News, a widely-read legal news wire service with thousands
19 of subscribers across the nation, seeks timely access to new civil unlimited jurisdiction
20 complaints filed with Ventura Superior. In recognition of the crucial role played by
21 the media to inform interested persons about new court cases, it has been a
22 longstanding tradition for both state and federal courts to provide reporters who visit
23 the court every day with access to new complaints at the end of the day on which they
24 are filed. This same-day access ensures that interested members of the public learn
25 about new civil litigation while the initiation of that litigation is still newsworthy.

26 5. In contrast, at Ventura Superior, same-day access is a rarity and delays in
27 access are rampant. During a four-week period between August 8 and September 2,
28 2011, Courthouse News was given same-day access to only small minority of new

1 civil unlimited complaints, with the vast majority of complaints delayed for days or
2 even weeks.

3 6. By denying Courthouse News timely access to newly-filed civil
4 unlimited jurisdiction complaints, these records are as good as sealed for an
5 appreciable amount of time after filing, in violation of the rights secured to
6 Courthouse News by the First and Fourteenth Amendments to the U.S. Constitution,
7 federal common law, and the California Rules of Court. Having failed in its efforts to
8 work cooperatively with Defendant to reach an amicable resolution to these delays,
9 Courthouse News thus brings this action challenging the legality of Defendant's
10 actions and seeking injunctive and declaratory relief.

11 **PARTIES**

12 7. Courthouse News Service is a California corporation with its principal
13 place of business located in Pasadena, California. Courthouse News is similar to other
14 news wire services, such as the Associated Press, except that Courthouse News
15 specializes in news reporting about civil lawsuits, from the date of filing through the
16 appellate level. Courthouse News' comprehensive and timely coverage of civil
17 litigation through its print, web site, and e-mailed publications has made it a go-to
18 source of information about the nation's civil courts. Courthouse News has
19 approximately 3,000 institutional and individual subscribers across the nation, and
20 many more readers of its freely available web site, www.courthousenews.com.

21 8. Defendant Michael Planet is the Court Executive Officer/Clerk of the
22 Superior Court of the State of California, County of Ventura ("Ventura Superior"),
23 and is sued in that official capacity. The Court Executive Officer/Clerk is responsible
24 for, among other things, the administration of court records. Acting in his official
25 capacity, Defendant, as well as those acting under his direction and supervision, is
26 directly involved with and/or responsible for the delays in access to newly-filed
27 complaints experienced by Courthouse News, which acts reflect the official policy of
28 the clerk's office as a whole. Defendant's actions, as alleged in this Complaint, are

1 under the color of California law and constitute state action within the meaning of the
2 Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. On
3 information and belief, Defendant resides in Ventura County, California and his
4 primary place of employment is located in Ventura County, California.

5 9. Defendant is sued in his official capacity only. Courthouse News seeks
6 relief against Defendant as well as his agents, assistants, successors, employees, and
7 all persons acting in concert or cooperation with him or at his direction or under his
8 control.

9 FACTUAL ALLEGATIONS

10 A. A Tradition Of Same-Day Access To New Civil Complaints

11 10. In recognition of the crucial role played by the media to inform interested
12 persons about new court cases, it has been a longstanding tradition for courts to
13 provide reporters who visit the court every day with access to that day's new civil
14 complaints at the end of the day on which they are filed. This same-day access
15 ensures that interested members of the public learn about new cases while they are
16 still newsworthy. Courts have traditionally and still do provide this same-day access,
17 in many instances before the complaints have been fully processed.

18 11. For example, at the Los Angeles Division of the United States District
19 Court for the Central District of California, a room is set up directly off the docketing
20 department with a set of pass-through boxes. At the end of each day, a staffer places
21 all of the civil complaints filed that day in the pass-through boxes so the media can
22 review them. These complaints are made available for review before they have been
23 processed. Reporters that cover the courthouse on a daily basis have a key to the
24 room where they review the complaints and then put them back in the pass-through
25 boxes. At the San Francisco Division of the U.S. District Court for the Northern
26 District of California, reporters go behind the counter and review new complaints filed
27 that same day, before they have been fully processed or posted on PACER. They are
28 also permitted access to the "transfer boxes" of new actions being sent to different

1 divisions of the court, and are provided with a copy of the intake log. Same-day
2 access to new civil complaints is also provided at the Southern and Eastern Districts of
3 California.

4 12. Similarly, at many of the state superior courts in California, reporters are
5 provided with same-day access to new civil complaints, a practice that is consistent
6 with other major state trial courts across the country. For example, at the San
7 Francisco, Los Angeles, and Santa Clara County superior courts, new filings are
8 available to news reporters after initial intake tasks, but well before full processing.
9 The Superior Courts in Alameda, Contra Costa, and Riverside counties also provide
10 same day access to the press, and while it is Courthouse News' understanding that
11 such access is provided after a certain amount of additional processing has been
12 completed, access is nevertheless provided on a same-day basis.

13 13. Courthouse News' experience at the Eighth Judicial District Court in Las
14 Vegas, Nevada, demonstrates that same-day access to new complaints can be provided
15 in both the traditional paper and e-filing environments. Prior to that court's transition
16 to mandatory e-filing in February 2010, court officials provided Courthouse News'
17 reporter with paper-filed complaints filed earlier that day, regardless of whether they
18 had been fully processed. Following the switch to mandatory e-filing, which included
19 e-filing of complaints, the court began requiring news reporters to review new
20 complaints at a computer terminal in the clerk's office, but this system resulted in
21 complaints not being available for viewing until the day *after* they were filed. The
22 reason for these delays was that new complaints did not appear on the computer
23 terminals until after they had been "accepted" by the clerk's office, and only after the
24 terminals had been updated to reflect the new filings. After Courthouse News brought
25 these delays to the attention of the court, the court adopted a new system: an electronic
26 in-box (or, more precisely, a feature called "Daily Documents") through which
27 reporters essentially see exactly what staffers in the clerk's office see as new
28 complaints flow in throughout the day. Complaints can be viewed on a computer

1 terminal as soon as they cross the electronic equivalent of the intake counter at the
2 clerk's office, even if court staff has not yet had a chance to review the complaint,
3 process it, and/or manually upload it for electronic viewing. Thus, in both the
4 traditional paper and new e-filing environments, the Eighth Judicial District Court has
5 provided Courthouse News' reporter with same-day access to new civil complaints
6 whether or not those complaints have been fully processed.

7 14. Through its experience covering civil litigation during the past twenty-
8 one years, Courthouse News has developed extensive personal knowledge of the
9 procedures that courts throughout the country currently use, and have used in the past,
10 to provide press access to new civil complaints. Attached as Exhibit 1 is a true and
11 correct copy of a summary of media access procedures used in state and federal courts
12 across the nation, which was prepared by Courthouse News Service (the "Access
13 Summary"). As demonstrated in the Access Summary, to make sure that new
14 complaints are accounted for, clerk's offices often couple same-day access procedures
15 with security procedures such as requiring reporters to provide collateral such as a
16 driver's license, instituting a check-out procedure, or setting aside a secure area for the
17 media to review the newly filed complaints.

18 **B. News Reporting Activities of Courthouse News**

19 15. Courthouse News' core news publications are its new litigation reports,
20 which are e-mailed to its subscribers and contain staff-written summaries of all
21 significant new civil complaints filed in a particular court. Decisions as to which new
22 civil complaints will receive coverage are made by the reporters after reviewing all of
23 the new filings. Although not all complaints are significant enough to merit coverage,
24 these reports provide coverage of many more civil actions than is typically found in a
25 daily newspaper. For larger courts, reports are e-mailed to subscribers each evening
26 and provide coverage of new complaints filed earlier that same day.

27 16. In all, Courthouse News publishes sixteen new litigation reports for its
28 California subscribers, which include daily coverage of new litigation filed in all four

1 federal district courts as well as the California Superior Courts for the counties of
2 Alameda, Contra Costa, Fresno, Kern, Los Angeles (downtown and Santa Monica
3 courthouses), Orange, Riverside, Sacramento, San Bernardino, San Diego, San
4 Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma,
5 Stanislaus, and Ventura. Courthouse News covers Ventura Superior as part of its
6 *Central Coast Report*. In addition, Courthouse News offers its subscribers alerts
7 about new civil filings, which are delivered by e-mail. For example, a subscriber can
8 sign up to receive an alert anytime a particular company is sued.

9 17. Nationwide, there are nearly 3,000 subscribers to Courthouse News' new
10 litigation reports, with approximately 740 in California alone. Courthouse News'
11 subscribers include lawyers and law firms, well-known media outlets such as the *Los*
12 *Angeles Times*, the *Los Angeles Business Journal*, the *Pacific Coast Business Times*,
13 the *San Jose Mercury News*, *Forbes*, and the *Boston Globe*, as well as several
14 universities and law libraries.

15 18. To produce this level of coverage, Courthouse News employs a
16 nationwide network of more than one hundred reporters who are assigned to cover one
17 or more individual courts. At most of the larger courts, Courthouse News' reporters
18 visit their assigned court near the end of each court day. The reporter reviews civil
19 complaints filed earlier that day and prepares an original summary of each complaint
20 or other case-initiating document that is of likely interest to Courthouse News'
21 subscribers for inclusion in the report. In California, Courthouse News only reviews
22 "unlimited jurisdiction" civil complaints – that is, complaints where the amount in
23 controversy usually exceeds \$25,000. Given the nature of this publication, any delay
24 in the reporter's ability to review a newly filed complaint necessarily creates a delay
25 in Courthouse News' ability to inform interested persons of the factual and legal
26 allegations in those complaints, and is especially problematic when there is an
27 intervening weekend and/or holiday, in which case a delay of even one court day
28 results in actual delays of three or even four calendar days.

1 19. In addition to its new litigation reports and alerts, Courthouse News
2 publishes a web site, www.courthousenews.com, which features news reports and
3 commentary about civil cases and appeals, and is updated throughout the day.
4 Readership of the web site has grown steadily. Just two years ago, in mid-2009, the
5 web site was receiving an average of 300,000 unique visitors each month. Since then,
6 readership has spiked almost threefold. In July 2011, the site had 938,000 unique
7 visitors; in August 2011, it had 800,000 unique visitors; and as of the date of this
8 filing, the site had 1.14 million unique visitors for September 2011. Reports from
9 www.courthousenews.com are frequently picked up by other news outlets and other
10 Internet content providers, and as a result, disseminated to a much broader audience.

11 20. Rounding out its coverage of civil litigation, Courthouse News also
12 offers four print publications. These include the *Four District Almanac* (which
13 includes reports on all four of California's federal district courts), the *Entertainment*
14 *Law Digest*, the *Environmental Law Report*, and the *Securities Law Report*.

15 **C. Delays In Access At The Ventura County Superior Court**

16 21. Courthouse News began covering new civil case filings at Ventura
17 Superior on a regular basis in 2001. As is the case with other California superior
18 courts it covers, Courthouse News currently visits Ventura Superior toward the end of
19 each court day and only reviews unlimited jurisdiction complaints. In Courthouse
20 News' estimation, an average of 15 new unlimited jurisdiction civil complaints are
21 filed each day. Since 2001, Courthouse News' Ventura Superior reporter has been
22 Julianna Krolak.

23 22. Initially, Ms. Krolak visited Ventura Superior only once and later twice
24 each week. During this time, and continuing through the present, the clerk's office
25 has maintained a "media bin" which contained the new civil complaints that clerk's
26 office staff anticipated would be of likely press interest. Other filings had to be
27 specifically requested from the clerk's office staff. Initially, and up until a few years
28 ago, Courthouse News' reporter did this by requesting a range of sequentially

1 numbered case files. Through these procedures, Ms. Krolak was able to see the large
2 majority of the new civil unlimited complaints filed since her prior visit.

3 23. Beginning in early 2008, however, the clerk's office made a series of
4 small and large changes that made Courthouse News' review of new civil complaints
5 less timely and more difficult. Most notably, March 2009, the clerk's office instituted
6 a new rule that limited Ms. Krolak to viewing only twenty-five complaints per day,
7 which meant that Courthouse News could no longer request to see a sequential range
8 of cases but was instead compelled to request individual complaints based on docket
9 information. Not only was this more cumbersome for both Courthouse News and
10 clerk's office staff alike, but not all of the complaints Ms. Krolak requested to see
11 were always made available for review. And even if the complaints were not
12 available for review, they still counted toward her per-day limit. The result was
13 delayed and incomplete access to new civil complaints.

14 24. As is its normal practice, Courthouse News brought these problems to the
15 attention of Defendant and his staff in an attempt to work them out cooperatively.
16 Through correspondence, discussions, and an in-person meeting, an arrangement was
17 worked out in June 2009 by which newly filed complaints were to be made available
18 to Courthouse News' reporter after some processing but before the complaints had
19 been fully processed, the result of which was that access became much more timely.
20 Unfortunately, staffers in the clerk's office soon began waiting until new complaints
21 had been fully processed before providing them to the press, the result of which was
22 delays in access.

23 25. In an effort to improve the quality of the Central Coast Report through
24 more timely reporting on new civil unlimited jurisdiction complaints, in November
25 2010, Courthouse News began covering Ventura Superior a daily basis. Prompted by
26 its change to daily coverage and the access problems it continued to experience,
27 Courthouse News once again initiated discussions with the clerk's office about the
28 possibility of adjusting its procedures so that Ms. Krolak could have same-day access

1 to newly filed unlimited jurisdiction civil complaints, as news reporters do in other
2 courts they visit on a daily basis.

3 26. Unfortunately, these discussions did not lead to any improvements in
4 access, and the delays got even worse. Accordingly, on June 20, 2011, Courthouse
5 News' counsel wrote to Defendant to request that Courthouse News' reporter be given
6 timely access to new unlimited civil filings and suggesting possible ways in which this
7 could be accomplished. A true and correct copy of that letter is attached as Exhibit 2.

8 27. By letter dated July 11, 2011, Defendant replied that his office "cannot
9 make any new filings available until the requisite processing is completed."
10 Defendant further stated that "While I appreciate the Courthouse News Services'
11 interest in same-day access, the Court cannot prioritize that access above other
12 priorities and mandates." A true and correct copy of Defendant's July 11, 2011, letter
13 is attached as Exhibit 3.

14 28. Courthouse News' counsel responded by letter dated August 2, 2011,
15 disputing Defendant's assertion that access could not be provided until after
16 "processing" and again providing examples of how other courts were able to provide
17 same-day access. A true and correct copy of that letter is attached as Exhibit 4.
18 Courthouse News has received no response to that letter.

19 29. From August 8, 2011, through September 2, 2011, Ms. Krolak tracked
20 the availability of newly filed complaints at the Ventura courthouse. During that
21 period, she reviewed 152 new unlimited civil complaints, on average fewer than 8
22 complaints per court day. Yet even with that relatively small number of complaints
23 being reviewed, the delays were significant. The following charts reflect the delays
24 between the date of filing and the date that Courthouse News' reporter was first
25 allowed to see the complaint:
26
27
28

COMPLAINTS REVIEWED

Delays Reported in Calendar Days

Case availability	Number of cases	Percentage
Same-day	9	6%
Next-day	21	14%
2-6 days	94	62%
7-14 days	23	15%
15-34 days	5	3%

COMPLAINTS REVIEWED

Delays Reported in Court Days

Case availability	Number of cases	Percentage
Same-day	9	6%
Next-day	28	18%
2-6 days	100	66%
7-14 days	12	8%
15-24 days	3	2%

COMPLAINTS REPORTED

Delays Reported in Calendar Days

Case availability	Number of cases	Percentage
Same-day	4	4%
Next-day	14	14%
2-6 days	60	60%
7-14 days	17	17%
15-34 days	5	5%

COMPLAINTS REPORTED

Delays Reported in Court Days

Case availability	Number of cases	Percentage
Same-day	4	4%
Next-day	18	18%
2-6 days	66	66%
7-14 days	9	9%
15-24 days	3	3%

30. As reflected in the above charts, 94 percent of new complaints were not available on the day they were filed, with delays stretching up to 34 calendar days.

1 **COUNT ONE**

2 **Violation of U.S. Const. Amend. I and 42 U.S.C. 1983**

3 31. Courthouse News incorporates the allegations of Paragraphs 1-30 herein.

4 32. Defendant's actions under color of state law, including without limitation
5 his policies that have led to delays in access to new civil unlimited complaints and his
6 denial of timely, same-day access to new civil unlimited complaints, deprive
7 Courthouse News, and by extension its subscribers, of their right of access to public
8 court records secured by the First Amendment to the U.S. Constitution.

9 33. The First Amendment requires that for anything more than a *de minimis*
10 denial of access to a court record, that there be an adversarial adjudicative process that
11 considers the propriety of the effective sealing of the record on a case-by-case basis.
12 Neither Defendant nor anyone at the clerk's office has the authority or ability to
13 conduct that process. Such authority lies only in a judge of the court. Defendant's
14 exercise of unguided discretion to effectively seal a court record without providing
15 any of the procedural or substantive protections required by the First Amendment
16 denies Courthouse News and the public of their constitutional rights of access to new
17 civil complaints.

18 34. Moreover, except as deemed permissible following the appropriate case-
19 by-case adjudication, there is no compelling or overriding interest sufficient to
20 overcome Courthouse News' presumptive right of access to new complaints under the
21 First Amendment. And even if an overriding or compelling interest did exist, there
22 are far less restrictive means of achieving any such interest, and Defendant's policies
23 are not narrowly tailored to serve that interest.

24 35. Courthouse News has no adequate and speedy remedy at law to prevent
25 or redress Defendant's unconstitutional actions, and will suffer irreparable harm as a
26 result of Defendant's violation of its First Amendment rights. Courthouse News is
27 therefore entitled to declaratory and both preliminary and permanent injunctive relief
28 to prevent further deprivation of the First Amendment rights guaranteed to it and its

1 subscribers.

2 **COUNT TWO**

3 **Violation of Federal Common Law and 42 U.S.C. § 1983**

4 36. Courthouse News incorporates the allegations of Paragraphs 1-35 herein.

5 37. Defendant's actions under color of state law, including without limitation
6 his policies that have led to delays in access to new civil unlimited complaints and his
7 denial of timely, same-day access to new civil unlimited complaints, deprive
8 Courthouse News and its subscribers of the presumption of access to court records
9 guaranteed by the federal common law.

10 38. There is no legitimate justification for a blanket rule for withholding all
11 new complaints that is sufficient to overcome the common law right of Courthouse
12 News and its subscribers to be able to timely review new case-initiating documents.

13 39. Courthouse News has no adequate and speedy remedy at law to prevent
14 or redress Defendant's actions, and will suffer irreparable harm as a result of
15 Defendants' violation of its common law right of access. This is so, in part, because
16 prolonged delays in access not only diminish the value of Courthouse News's reports
17 to its subscribers, but are also likely to result in a loss of subscribers or, at the very
18 least, a perception among subscribers that Courthouse News's news reporting
19 products are less useful and valuable than they have been in the past, leading to a loss
20 of goodwill. Courthouse News is therefore entitled to declaratory and both
21 preliminary and permanent injunctive relief to prevent further deprivation of the rights
22 guaranteed to it and its subscribers under the common law.

23 **COUNT THREE**

24 **Violation of California Rule of Court 2.550**

25 40. Courthouse News incorporates the allegations of Paragraphs 1-39 herein.

26 41. Defendant's actions under color of state law, including without limitation
27 his policies that have led to delays in access to new civil unlimited complaints and his
28 denial of timely, same-day access to new civil unlimited complaints, effectively seals

1 those records until the Ventura Superior Court, in its unguided discretion, determines
2 that the complaints may be made public. Such action violates California Rule of
3 Court 2.550, which requires that a court make specific, written findings before sealing
4 a record.

5 42. Even if Defendant had endeavored to comply with Rule of Court 2.550,
6 he would not have been able to make the required showing that: (1) There exists an
7 overriding interest that overcomes the right of public access to the record; (2) The
8 overriding interest supports sealing the record; (3) A substantial probability exists that
9 the overriding interest will be prejudiced if the record is not sealed; (4) The proposed
10 sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the
11 overriding interest.

12 43. Courthouse News has no adequate and speedy remedy at law to prevent
13 or redress Defendant's actions, and will suffer irreparable harm as a result of
14 Defendant's violation of California Rule of Court 2.550. This is so, in part, because
15 prolonged delays in access not only diminish the value of Courthouse News' reports
16 to its subscribers, but are also likely to result in a loss of subscribers or, at the very
17 least, a perception among subscribers that Courthouse News' news reporting products
18 are less useful and valuable than they have been in the past, leading to a loss of
19 goodwill. Courthouse News is therefore entitled to declaratory and both preliminary
20 and permanent injunctive relief to prevent further deprivation of the rights guaranteed
21 to it and its subscribers under Rule of Court 2.550.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Courthouse News Service prays for judgment against
24 Defendant Michael Planet, in his official capacity is the Court Executive Officer/Clerk
25 of the Superior Court of the State of California, County of Ventura ("Ventura
26 Superior"), as follows:

27 1. For preliminary and permanent injunctions against Defendant, including
28 his agents, assistants, successors, employees, and all persons acting in concert or

1 cooperation with him, or at his direction or under his control, prohibiting him
2 preliminarily, during the pendency of this action, and permanently thereafter, from
3 continuing his policies resulting in delayed access to new unlimited jurisdiction civil
4 complaints and denying Courthouse News timely access to new civil unlimited
5 jurisdiction complaints on the same day they are filed, except as deemed permissible
6 following the appropriate case-by-case adjudication.

7 2. For a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring
8 Defendant's policies that knowingly affect delays in access and a denial of timely,
9 same-day access to new civil unlimited complaints as unconstitutional under the First
10 and Fourteenth Amendments to the United States Constitution and in violation of the
11 federal common law and California Rule of Court 2.550, for the reason that that it
12 constitutes an effective denial of access to court records.

13 3. For an award of costs and reasonable attorneys' fees pursuant to 42
14 U.S.C. § 1988; and

15 4. For all other relief the Court deems just and proper.

16
17 Date: September 29, 2011

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

18
19
20
21 By: 

Rachel Matteo-Boehm
Attorneys for Plaintiff
COURTHOUSE NEWS SERVICE

EXHIBIT 1

Media Access to Courts Around the Nation

**Prepared By Courthouse News Service
September 2011**

Courts around the country have developed a variety of procedures to provide the media with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed, regardless of whether processing has been completed (or in federal courts that have adopted e-filing, the so-called "quality assurance" process is completed), and regardless of whether the complaint or petition has been made available for electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in courts throughout the nation.

Albuquerque

At the Second District Court of New Mexico (Bernalillo County), both paper and electronically filed civil complaints are made available to the media in a "review pile" on the day of filing, before they have been fully processed or made available to the public. Courthouse News' reporter has been granted behind-the-counter access to the "review pile" and provided with a small work space, where he can review virtually all new cases on a same-day basis and scan any newsworthy complaint using a portable scanner. Any complaint that does not make it to the review pile enters a -three- to four-day docketing process, during which Courthouse News Service's reporter can typically track down any case that needs to be seen.

Atlanta

At the Fulton County Superior Court in Atlanta, Georgia, new complaints are scanned immediately upon filing and made available at computer terminals at the courthouse, most within minutes of filing. In addition, complete docket information for civil cases is available from a publicly accessible website on the day the complaint is filed.

At the United States District Court for the Northern District of Georgia, where e-filing is voluntary, reporters review new civil actions on the same day they are filed. New complaints that are filed in paper form are scanned into a computerized press box before they go to docketing and are accessible on a computer terminal in the clerk's office. E-filed complaints are made available to

CNS's reporter, prior to any processing, via PACER by using a shell case number code to access an online press queue of new same-day filings.

Austin

At the Travis County District Courthouse in Austin, where e-filing is mandatory for civil cases, Courthouse News' reporter gets a list of all of the new civil petitions filed earlier that same day upon arriving at the courthouse. She then views newly filed petitions using a public access terminal at the courthouse. Before leaving the court, Courthouse News' reporter gets an updated copy of the list of newly filed petitions to see whether there are any that have been filed since her first review, which she also views using the court's public access terminal.

Beaumont

At the Jefferson County District Court in Beaumont, Texas, reporters are allowed behind the counter to access paper copies of petitions filed that day, before the cases are put through the docketing process. Reporters can make copies of newsworthy cases.

At the Beaumont Division of the United States District Court for the Eastern District of Texas, reporters have same-day access to the vast majority of newly filed actions regardless of whether docketing has been completed. Reporters review scanned copies of new complaints via PACER, and if a new case is not yet scanned and available on the court's computer system, reporters can request and are given a paper copy of the new action based on a listing of new filings in a red log book made available to the press.

Brooklyn

At the Kings County Supreme Court, newly filed cases are typically scanned into electronic form immediately after they are filed, and the paper copies are then placed in a designated media box for same day review. However, in the event that a new complaint is not scanned immediately, the court will provide Courthouse News' reporter with access to the unscanned document. Courthouse News' reporter has been provided with a media pass that allows her to remove the new filings from the media box and review them in a different area behind the counter in the clerk's office on the same day the complaints are filed. Courthouse News' reporter is free to make her own copies for a small fee.

At the United States District Court for the Eastern District of New York, parties file "press copies" of new complaints, which are placed into a press box that is made available to reporters throughout the day, thereby allowing them same-day access to the vast majority of new filings, even if the new filings have not been fully processed or posted to PACER.

Chicago

At the Cook County Circuit Court in Chicago, Courthouse News' reporter, or any other member of the media who is first to arrive at the courthouse, begins each visit by going behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. The reporter sees the vast majority of new complaints on the same day they are filed, regardless of whether the complaints have been fully processed. Reporters can stay as late as they like to review the new complaints.

At the United States District Court for the Northern District of Illinois, where electronic filing of initiating documents is mandatory, newly filed complaints are made available immediately upon filing through PACER, as well as the court's own independent website.

Cincinnati

At the Hamilton County Court of Common Pleas in Cincinnati, Ohio, new complaints are placed in the intake area for review by the media on the same day the complaints are filed. Complaints are made available after they have been date-stamped, but before any other processing occurs. Courthouse News' reporter sees between 30-60 complaints each day. If Courthouse News' reporter misses a complaint, he may request the file from the paper room staff the next day. Court employees will make copies of newsworthy complaints available upon request for 10 cents per page.

At the United States District Court for the Southern District of Ohio, many of the newly filed complaints are made available on the day of filing via PACER. However, for cases not available electronically, the court places a copy of new cases into a press box at the intake counter, where Courthouse News Service's reporter may review them until 4:00 p.m. when the court closes to the public. The reporter may request copies of new complaints for 50 cents per page.

Cleveland

At the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, Courthouse News' reporter has behind-the-counter access to new filings on the same day they are filed, regardless of whether they have been fully processed. Complaints are available as soon as they have been date-stamped. Court officials provide Courthouse News' reporter with desk space to set up a laptop and scanner, and allow him to disassemble the case file and scan the original filings. Use of the office copy machines is also permitted when necessary.

At the United States District Court for the Northern District of Ohio, new civil cases can be filed either in person or electronically. Both cases filed electronically and in person are made available on PACER on the same day they are filed. However, to view cases that are restricted from access via PACER or cases that have not yet been posted to PACER, Courthouse News' reporter visits the courthouse, where the court staff will print out a copy of any case he requests, even if docketing has not been completed and regardless of how those complaints were filed.

Columbus

At the United States District Court for the Southern District of Ohio in Columbus, the vast majority of new complaints are made available on PACER promptly upon filing. The court will also provide hard copies of any civil filings not available on PACER on a same-day basis, but the speed with which cases are posted to PACER generally makes this unnecessary.

Dallas

At the Dallas County District Court in Dallas, Texas, Courthouse News' reporter is provided with behind-the-counter access to new petitions as soon as they are filed and before any docketing has taken place. The court provides the reporter with a place to work, where staffers in the clerk's office provide him with access to the new petitions filed in paper form. As for e-filed petitions, Courthouse News Service's reporter views some on a computer terminal in the clerk's office. In many instances, however, petitions are not available on the terminal on a same-day basis, and the clerk's office provides him with paper printouts of those petitions so that he can see them same-day.

The United States District Court for the Northern District of Texas has developed a process that ensures reporters have same-day access to all new complaints, regardless of how far those complaints have progressed through the intake process. On his daily afternoon visits to the court, Courthouse News' reporter goes through a three-step process, described below. Leigh Lyon, Assistant Chief Deputy of Operations, Dallas Division of the Northern District of Texas, has informed us that she would be happy to speak with court officials in other jurisdictions about this system.

- First, Courthouse News' reporter checks a computer terminal in the clerk's office to view summaries of the day's new complaints that have already been made available on PACER. Courthouse News' reporter then uses his own internet connection to immediately download documents he needs to his laptop computer at the courthouse.
- Second, Courthouse News' reporter checks for complaints that have been scanned by the clerk's office, but are not yet available on PACER. These complaints have been assigned a bar code and case number, and are made available for electronic viewing at a public computer kiosk located in the clerk's office, where the media can then review the new complaints on the same day they are filed.
- Finally, for complaints that are so new they have not yet been scanned, Courthouse News' reporter views the paper versions of those new cases in their case folder and makes copies of newsworthy complaints.

Detroit

At the Wayne County Circuit Court, complaints are placed in a drawer in the intake area of the clerk's office immediately after they are filed. Upon arriving at the clerk's office at approximately 3:00 p.m., Courthouse News' reporter goes behind the counter and first double-checks the previous day's complaints, which are located in bundled folders behind the intake drawer, for any missed or last-minute filings from the day before. Then he turns to the intake drawer, where he is permitted to review the newly filed complaints while standing behind the counter. Most new complaints are in the drawer, but some are with the intake clerks, who will share the complaints with the reporter for review. The reporter is permitted to make his own copies of complaints using a copier located also behind the counter, as well as an alternate copier on the other side of the cashier station near the death certificates/marriage license area.

At the United States District Court for the Eastern District of Michigan, the court provides access to newly filed complaints electronically via PACER, both online and at computer terminals set up in the clerk's office.

Fort Worth

At the Tarrant County District Court in Fort Worth, most petitions appear on the court's online system the day they are filed, except those cases that are mailed in or filed by fax after the court closes at 5:00 p.m., which are then made available the following day. If any petition that was filed during court business hours is not available online the day it is filed, Courthouse News' reporter arranges for the petition to be immediately scanned and posted to the online access system. The end result is that Courthouse News' reporter is able to access almost all petitions filed during court hours on the same day they are filed.

Houston

The Harris County Civil District Courts in Houston provided same-day access for many years by permitting reporters to go behind the intake counters and review newly filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's website before they could be reviewed, which delayed their availability by a day or more – sometimes several days. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office failed to lead to a resolution, Courthouse News reluctantly filed suit under 42 U.S.C. § 1983. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, and finding that “the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional.” *Courthouse News Service v. Jackson, et al.*, 2009 WL 2163609, at *4 (S.D. Tex. July 20, 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's website the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in March 2010, the clerk's office became obligated not only to continue to provide same-day access to new civil filings, but to pay more than \$250,000 to Courthouse News to compensate it for the attorneys fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's website. Those petitions can be viewed, and

printouts can be made, free of charge by the media and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. Details about this program can be found on the Harris County District Clerk's website, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx> (see button: "Search Today's Filings").

At the United States District Court for the Southern District of Texas, where electronic filing is required for new cases, Courthouse News' reporter can view electronic versions of complaints that are already docketed and posted to PACER on the same day they are filed. For any new complaint that has not yet been fully docketed, the court will usually provide a hard copy regardless of how far along the complaint is in the docketing process, also on the same day they are filed.

Indianapolis

At the Marion County Circuit and Superior courts in Indianapolis, Indiana, reporters view the vast majority of new filings on a same-day basis in the clerk's office. Reporters are given stacks of the new filings, after they have been filed and date stamped but before they are fully processed or sent to the proper court division, and are allowed to go through them at tables in the public viewing area from 4:00 p.m. to 4:30 p.m. Reporters can then make copies themselves on court copy machines, which are then billed to Courthouse News Service monthly.

At the United States District Court for the Southern District of Indiana, reporters are provided with access to virtually all complaints filed on a same-day basis, even if docketing has not been completed. When Courthouse News' reporter arrives at the end of the day, the court staff gathers all of the civil cases filed throughout the day and allows the reporter to review the complaints. The court staff will then make copies at a rate of 50 cents per page.

Las Vegas

At the Eighth Judicial District Court in Las Vegas, Nevada, reporters saw the majority of new civil complaints on a same-day basis until the court switched to mandatory e-filing in February 2010. Following that switch, the court began requiring news reporters to review new complaints at a computer terminal in the clerk's office, but this system resulted in complaints not being available for

viewing until the day after they were filed. The reason for these delays was that new complaints did not appear on the computer terminals until after they had been "accepted" by the clerk's office, and only after the terminals had been updated to reflect the new filings. After Courthouse News brought these delays to the attention of the court, the court adopted a new system: an electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been fully processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), Courthouse News is now seeing new e-filed complaints on a same-day basis.

At the United States District Court for the District of Nevada, Courthouse News' reporter can view electronic versions of the majority of new complaints on a same-day basis on PACER. Complaints that are not made available on the day they are filed are usually made available on the following day.

Los Angeles

At the Downtown (Stanley Mosk Courthouse) branch of the Superior Court of California in Los Angeles, court staff upload the full text of newly filed complaints to the court's computer system after initial intake tasks, which include scanning and assigning a case number, have been completed. Reporters can then review the vast majority of new actions that are filed on a particular day at terminals located at the courthouse that are available to the general public, or on additional terminals located in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public view cases close at 4:30 p.m., but the press room remains open later and even the latest filings of the day are available and can be reviewed by 7:00 p.m. About 110 new civil, general jurisdiction cases are filed each day.

At the Santa Monica Courthouse of the same court, face pages of each day's newly filed complaints are made available for review at 3:30 p.m. on the same day the complaints are filed. Courthouse News' reporter then requests copies of those complaints for which she wants to see the full-text versions. The full text of late-filed complaints is made available at 4:30 p.m., when the filing room court closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Courthouse News' reporter can then request copies of any of those late-filed complaints, and they are generally provided right away.

At the United States District Court for the Central District of California, a room is set up directly off the docketing department with a set of pass-through boxes. Sometime between 4:30 and 5:00 p.m., a court staffer places a large majority of the civil complaints filed that day in the pass-through boxes so that the media can review them. Reporters that cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they want to look over the complaints and rulings, copy those of interest, and put the documents back in the pass-through boxes.

Louisville

At the Jefferson County Circuit Court in Louisville, Kentucky, the clerk's staff makes a copy of the front page of all complaints filed throughout the day and places the coversheets on a table in the public area of the office. Courthouse News' reporter then reviews the stack of coversheets and requests any complaints he determines to be newsworthy on the same day they are filed. The clerk's office will make copies for him at a rate of 25 cents per page.

The United States District Court for the Western District of Kentucky in Louisville has adopted an e-filing system requiring initiating documents to be filed electronically. Courthouse News' reporter is able to review newly filed complaints in exactly the same format as they are received in the clerk's office, prior to being docketed and before they are available to the public on PACER, by using a shell case number code to access an electronic press queue of new filings on PACER, both online and at public computer terminals at the courthouse.

Manhattan

At the New York County Supreme Court, where certain case types are required to be e-filed, new complaints are made available to reporters on the same day they are filed, whether they are filed in paper or electronic form. E-filed cases are posted online to a court website by the end of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically via an internal computer system on terminals set up throughout the courthouse. At 3:30 p.m., and then at regular intervals until 4:45 p.m., the paper versions of the new complaints are then placed by court officials in a secure area behind the counter where reporters are free to review them on a same-day basis.

At the United States District Court for the Southern District of New York, reporters are permitted to view new civil complaints three times a day – between 9:00 a.m. and 9:45 a.m., between 11:30 a.m. and 12:15 p.m., and between 3:45 p.m. and 4:30 p.m. – on the same day the complaints are filed.

Martinez

At the Contra Costa County Superior Court in Martinez, California, the court closes its doors to the public at 3:00 p.m. each day. However, those still in line at that time are allowed to remain in the clerk's office to complete their filings, and the clerk's staff continue their work at the court until at least 5:00 p.m. Although Courthouse News had previously experienced delays in access at this court, court staff recently implemented new access procedures after Courthouse News brought the issue of delays to the attention of both the court's head clerk and its presiding judge. Under those procedures, filed civil unlimited jurisdiction complaints are placed in a media bin at approximately 4:00 p.m. each day, and Courthouse News' reporter is permitted to remain at the court until 4:45 p.m. to review those complaints, the result of which is same-day access to the vast majority of newly filed unlimited jurisdiction complaints.

Miami

At the United States District Court for the Southern District of Florida, electronic filing of new civil complaints is mandatory, and new complaints that are filed before 5:00 p.m. appear on PACER on the same day they are filed. Cases filed after 5:00 p.m. appear on PACER the following day.

Milwaukee

At the Milwaukee County Court in Wisconsin, reporters have access to new complaints on the day they are filed, even if they have not yet been fully processed, and are permitted to go behind the counter. Reporters can request copies of complaints from court personnel for a small fee.

At the United States District Court for the Eastern District of Wisconsin, most new complaints are e-filed and available electronically through PACER on the same day they are filed. However, for those cases that are not immediately posted to PACER, court staff provides reporters with the original paper versions of the new complaints, also on the same day they are filed. Reporters are then able to make copies at a copy machine for a nominal fee.

Minneapolis/St. Paul

At both the Hennepin County District Court in Minneapolis and the Ramsey County District Court in St. Paul, where many of the new complaints are filed by mail, Courthouse News' reporter is permitted to go behind the counter to review the stack of original complaints on the same day they are filed and before they are docketed. Because the reporter visits Ramsey County only three times per week, she is unable to review all cases on the same day they are filed, but is able to search for and view the cases she has missed on a computer terminal at the courthouse the next time she visits the court. The reporter is able to make her own copies in Hennepin County, where Courthouse News has established a copy account. In Ramsey County, for cases the reporter reviews on the day of filing, the court staff will make copies of any complaint the reporter requests. For cases she reviews after the day of filing, the reporter is able to print a copy directly from the computer terminal.

At the United States District Court for District of Minnesota, reporters begin their visit by using a computer terminal at the courthouse to view an intake log of new cases. From there, reporters review complaints available on PACER using a public computer terminal in the clerk's office. If a complaint shown on the intake log of new cases is not yet available on PACER, the court will print out a copy for the reporter. The clerk charges 10 cents per page for any copies that reporters request.

Nashville

At the Davidson County Chancery Court in Nashville, Courthouse News' reporter reviews an intake log of the day's new filings on a public computer terminal at the courthouse. She then compiles a list of the relevant cases and presents the list to the court staff, who retrieve the requested cases and allow her to review the complaints regardless of whether the docketing process has been completed.

At the Davidson County Circuit Court, most new complaints are scanned throughout the day and are made available through a government website on the same day they are filed.

At the United States District Court for the Middle District of Tennessee, the clerk's staff are required to stay one hour after closing in order to scan all new filings and post them onto PACER on the day they are filed.

Oakland

Although the Alameda County Superior Court in Oakland, California, endeavors to make newly filed complaints available for viewing on its website on a same-day basis, it has implemented procedures to ensure that news reporters who visit the René C. Davidson courthouse can obtain same-day access to those complaints that would otherwise not be posted for electronic viewing on a same-day basis. Under those procedures, reporters are provided with access to a workstation behind the intake counter. The station is equipped with a computer connected to the Internet. Courthouse News' reporter first reviews the cases that are made available online. For those cases that are not available online by the end of the work day but are of media interest, court staffers scan and make those cases available on their website.

Oklahoma City

At the Oklahoma County Court, intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped, but have not been fully docketed – only indexed. A member of the clerk's staff then provides the petitions to Courthouse News' reporter, and the reporter is instructed to sign the back of each petition to ensure that she has seen them all. After she has completed her review of the petitions in the basket, Courthouse News' reporter is permitted to review any further petitions that have been filed, indexed and placed in the basket after 3:15 p.m. The reporter may request copies of petitions at a rate of \$1.00 for the first page and 50 cents for all subsequent pages.

Omaha

At the Douglas County District Court, where new complaints can be filed electronically or in paper form, new cases are immediately indexed and added to a statewide computer database that is updated on an hourly basis. Courthouse News' reporter reviews the index information for relevant cases on a courthouse computer terminal and downloads images as they become available. Downloads are free at the courthouse, but are also available online via the statewide Justice website for a fee.

Orlando

At the Ninth Judicial Circuit Court, Courthouse News' reporter reviews hard copies of newly filed complaints at a designated desk behind the counter. The staff places new complaints that have not undergone any processing (*i.e.*, docketed, jacketed or assigned a case number) near the reporter's desk each day for same-day viewing. Since some complaints have been docketed by the time Courthouse News' reporter arrives, these complaints are placed in a separate pile for the reporter's review before they are moved to a separate desk for scanning by 4:00 p.m. In addition, Courthouse News' reporter is permitted to review e-filed complaints and complaints that have been docketed and scanned by the time the reporter arrives on a same-day basis using one of the clerk's terminals located behind the counter.

At the United States District Court for the Middle District of Florida in Orlando, where electronic filing is mandatory, the court posts the majority of new civil filings to PACER on the same day they are filed.

Phoenix

At the Maricopa County Superior Court in Phoenix, Arizona, court staff recently implemented new procedures to ensure same-day access to civil complaints filed at its downtown location. Under the new procedures, court staff scan and upload for electronic viewing all complaints filed before 3:00 p.m., which are then made available on a designated press computer located in the Customer Service Center for Courthouse News' reporter to review and, if necessary, print. Complaints filed between 3:00 and 5:00 p.m. are immediately placed in a bin at a designated intake window in the Central Court Building, where Courthouse News' reporter may review those complaints between 4:00 and 5:00 p.m.

Pittsburgh

At the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, where the court has implemented an internally operated electronic filing system, nearly all of the day's new filings are available on-line on a same-day basis. Complaints not posted to the court's website on the day of filing are made available the following day.

In the United States District Court for the Western District of Pennsylvania, where electronic filing is mandatory, Courthouse News' reporter has been provided with an "MC" case number code for PACER that allows her to view the new filings before they are docketed.

Portland

At the Multnomah County Court in Portland, Courthouse News' reporter is given a stack of the current day's newly filed complaints, which she reviews at a cubicle behind the counter. The reporter can make any needed copies herself using her own portable scanner.

At the United States District Court for the District of Oregon, Courthouse News' reporter first searches for newly filed complaints through the court's "electronic in-box," which is available on a public access terminal at the courthouse and contains those complaints that the clerks have scanned but not yet processed and posted to PACER. She then searches for processed complaints on PACER, which are also available at a public access terminal at the courthouse. Finally, the clerks give Courthouse News' reporter paper copies of those complaints that have not yet been scanned and posted either to the electronic in-box or to PACER. The clerks will also review the court's record book with Courthouse News' reporter at the end of the day to make sure that no filings have been missed.

Riverside

At the Superior Court for the State of California, County of Riverside, new complaints are scanned and made available for electronic viewing via the court's website and at computer terminals in the courthouse. The press had been experiencing delays in access for years until a new clerk, formerly from the United States District Court for the Central District of California, came on board. The clerk found that same-day access could be achieved simply by shifting the schedules of the personnel who scan complaints so that they begin and end work later in the day, thus ensuring that the vast majority of new complaints would be made available for electronic viewing on a same-day basis.

St. Louis

At the St. Louis City Circuit Court in Missouri, Courthouse News' reporter goes to the intake window where cases are filed and clerk's office staff members hand the reporter a stack of new cases filed that same day. Courthouse News' reporter

works at the counter next to the intake window; however, members of the media can also work at a table near the window. Staff members in the clerk's office will provide members of the media with copies of newsworthy new cases free of charge.

At the United States District Court for the Eastern District of Missouri, where new complaints must be electronically filed, each case is assigned a case number upon filing by the attorney and is immediately made available on PACER, even if it has not been fully reviewed and processed. Courthouse News' reporter is able to view the new complaints on a computer terminal in the clerk's office and print out copies for a small fee.

San Francisco

At the Superior Court of California for the County of San Francisco, news reporters are allowed behind the counter into the stacks to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. The number of new filings per day varies, but often exceeds 50. Courthouse News views new complaints regardless of whether they have been fully processed. San Francisco Superior has established a written protocol for members of the press. The key provisions are quoted below:

If media personnel want to review files already on the shelves, they can pull these files themselves and return them to the shelves.

All new filings will be held in a Media Box during the day. Between 3:00 and 4:30 each day, this box will be available to the media for viewing in the Records department, whether or not the cases have been entered in the computer. At 4:00 PM, when the office closes to the public, media personnel may ask to view any additional filings that may have come in since 3:00 PM. The Records supervisor or an assigned clerk will retrieve those files for the media to view. Any member of the media viewing new filings must return them to the box for eventual return to the Records supervisor or assigned clerk.

Media personnel may come in anytime before 3:00 PM to view new filings. However, they will only be viewing cases newly filed up until that time.

Copy machine from the second floor Media Room will be moved to Room 103 and located behind the Records department. This machine belongs to Courthouse News Service, but has been made available to all media personnel for their use.

At the San Francisco Division of the United States District Court for the Northern District of California, reporters go behind the counter and review actions filed that same day, regardless of whether the complaints have been fully docketed or posted on PACER. They are also permitted access to "transfer boxes" of new actions being sent to different divisions of the court, and are provided with a copy of the intake log. Reporters are permitted to make copies of cases they determine to be newsworthy using a portable scanner.

San Jose

At the Santa Clara County Superior Court in San Jose, California, the court recently implemented new procedures to ensure that reporters receive same-day access to the vast majority of each day's new civil unlimited jurisdiction complaints. Under those procedures, civil unlimited complaints are made available to Courthouse News' reporter upon receipt of the filing fee, the assignment of a case number, and the assignment of a first status conference date, even though processing of the new complaint is far from over at this juncture. Complaints that are filed over the counter by 3:30 p.m. are made available to Courthouse News' reporter on the same day they are filed. All unlimited jurisdiction complaints that are in the drop box by 4:00 p.m. are also made available to Courthouse News on the same day they are filed. Unlimited jurisdiction complaints that are filed over the counter between 3:30 p.m. and the clerk's office closing at 4:00 p.m. have been designated as a staff priority, and the court endeavors to make them available for review on the same day they are filed. Courthouse News' reporter is permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases. The court makes copies of complaints as requested by the reporter.

At the San Jose Division of the United States District Court for the Northern District of California, clerks print out a list of all new complaints filed earlier that day. Reporters go behind the counter, obtain complaints from individual clerks' desks, report on and scan any newsworthy complaints, and then return the complaints to the clerks' desks.

Seattle

At the King County Superior Court, Courthouse News' reporter is provided with a docket report of new cases two times per day – once at 11:00 a.m. and again at 3:00 p.m. The 11:00 a.m. list includes all cases that have been filed from 3:00 p.m. on the previous day through 11:00 a.m. on the current day, while the 3:00 p.m. list includes new cases that have been filed from 11:00 a.m. to 3:00 p.m. that day. The reporter reviews each list to find relevant cases, then searches for and views new complaints on a computer terminal at the courthouse. She is able to print out relevant complaints for 15 cents per page.

Tampa

At the Hillsborough County Circuit Court, new complaints that are hand-filed in the main courthouse are made available for review by reporters at the end of the day they are filed. Most complaints are scanned by court staff and made available on the court's public access terminals for review. Those complaints that are not scanned and available on the public access terminals by 4:00 p.m. are provided in paper form for news reporters, who have until the court closes at 5:00 p.m. to review those late-filed complaints.

Wilmington

At the United States District Court for the District of Delaware, new complaints can be filed either in paper form or electronically. Courthouse News' reporter can view e-filed complaints on PACER almost immediately after they are filed by using a shell case number code to access an online press queue of new electronic filings. The reporter also visits the court on a daily basis and is able to review the vast majority of new complaints filed in paper form on the same day those complaints are filed. Court staff will make copies of paper-filed cases for 10 cents per page.

EXHIBIT 2



Holme Roberts & Owen LLP
Attorneys at Law

SAN FRANCISCO

June 20, 2011

BOULDER

Michael Planet
Court Executive Officer
Ventura County Superior Court
800 South Victoria Ave.
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

As you may recall, we represent Courthouse News Service, a nationwide news service for lawyers and the news media. Over the past two years, Courthouse News has written to and met with various officials at this Court regarding delays in access to newly filed civil unlimited complaints. Although your office has undertaken to decrease the amount of time between the filing of a complaint and its availability to members of the news media, news reporters are rarely permitted to see any new civil complaints on the same day they are filed. Rather, delays in access range anywhere from one day to several weeks.

DUBLIN

LONDON

It appears that the Court is not currently releasing newly filed complaints for press review until after a certain amount of processing has been completed. However, as explained below, the press's right of access to court records is not dependent on a court having completed processing. Indeed, the delays at this Court are effectively denials of access, and are contrary to the fundamentally public nature of adjudicative court records and the media's legitimate interest in timely access to those records.

LOS ANGELES

We therefore respectfully ask that you address these delays immediately by adopting simple procedures to ensure that members of the media have access to new complaints on the same day they are filed.

SALT LAKE CITY

About Courthouse News Service

Courthouse News Service is a 21-year-old, Pasadena-based legal news service for lawyers and the news media. It 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, and in California it focuses only on unlimited jurisdiction civil cases.

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com
560 Mission Street, 25th Floor San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

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The majority of Courthouse News' nearly 3,000 subscribers nationwide are lawyers and law firms, including numerous prominent California firms. In addition, other news outlets are increasingly looking to Courthouse News to provide them with information about newsworthy new civil filings. Courthouse News' media subscribers include such well-known entities as the *Los Angeles Times*, the *Los Angeles Business Journal*, the *San Jose Mercury News*, and *Forbes*, all of which puts Courthouse News in a position similar to that of a pool reporter. Courthouse News' core news publications are its new litigation reports, which are e-mailed to subscribers daily and contain coverage of all significant new civil complaints. Its website, www.courthousenews.com, also features news reports and commentary about civil cases and appeals, and receives an average of 850,000 unique visitors each month.

Access to Court Records at Ventura County Superior Court

Courthouse News' reporter Julianna Krolak has covered the Ventura County Superior Court since 2003. Until recently, Ms. Krolak visited the court twice each week to review new civil unlimited jurisdiction complaints. In recognition of the growing importance of this Court, starting in November 2010, Ms. Krolak began visiting the Court on a daily basis.

Up until early 2008, Ms. Krolak was able to review the vast majority of new complaints filed since her prior visit. This was achieved through a combination of a media bin procedure (which, at the time, contained complaints that the Court determined would be of interest to the press) as well as the clerk's office's practice of providing Ms. Krolak with all additional complaints falling within a specific number range, since cases are numbered sequentially. In general, these procedures allowed Ms. Krolak to review all of the newsworthy unlimited jurisdiction complaints filed since her previous visit without imposing any apparent burden on court staff.

Beginning in 2008, however, media access at the Court began to deteriorate on a number of fronts. Among other things, the clerk's office began limiting the number of files that members of the media could request to 25 each day, and only permitted reporters to request five at a time, which meant Ms. Krolak had to wait in line - usually for at least 30 minutes, and sometimes more than an hour - to ask for each batch of five cases. Each requested case counted toward her 25-file limit, even if the complaint was not made available for

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review, and Court staff sometimes counted every case in the media bin toward Ms. Krolak's 25-case quota. Since there were often more than 50 potentially newsworthy civil unlimited cases filed in any given week, the 25-file limit frequently prevented Ms. Krolak from reviewing and reporting on all of the week's newsworthy filings, thereby resulting in significant delays in access to newly filed civil complaints.

Courthouse News' Northern California Bureau Chief, Chris Marshall, attempted at various times to resolve these issues with Supervisor Linda Daniels, as well as Records Manager Peggy Yost, but these efforts proved unsuccessful. Thereafter, in April 2009, we wrote to you. We subsequently spoke on the phone, together with Deputy Court Executive Officer Cheryl Kanatzar, about potential solutions to the access problems. In June 2009, Ms. Kanatzar, as well as Ms. Yost and Ms. Daniels, met in person with Mr. Marshall to further discuss potential solutions. The solution ultimately devised by the Court involved placing newly filed civil unlimited jurisdiction complaints directly into the media bin for review only after minimal processing. Ms. Krolak would be permitted access to all of the complaints contained in the media bin, as well as up to 25 additional complaints, per visit, from the shelves. Of the additional 25 complaints that Ms. Krolak would be permitted to request, she could only access five complaints at a time.

While these procedures initially worked reasonably well to provide Ms. Krolak with timely access to newly filed complaints, access again quickly deteriorated, as it seemed that the clerks were waiting until newly filed complaints were fully processed before placing them in the media bin (contrary to the agreement that new complaints would be placed in the bin after just minimal processing). The deterioration of the media bin procedure led to a backlog of newly filed unlimited civil jurisdiction complaints that Ms. Krolak needed to review, and she therefore had to request numerous additional complaints as part of her daily reporting activities. On many of her visits, she found that she had to request up to 25 complaints (her limit for cases that were not contained in the media bin) in order to see the entire flow of newly filed unlimited civil jurisdiction complaints, standing in a new and lengthy line for each group of five complaints she wished to review. Even with respect to those 25 additional complaints she requested, many were not available, with delays in access ranging for the most part from one to three days, but sometimes significantly longer.

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As noted, late last year, Courthouse News began covering the Court on a daily basis. Given the ongoing delays and problems with the media bin procedure, Mr. Marshall contacted Ms. Kanatzar by letter in February 2011 in an attempt to come up with mutually agreeable procedures that would provide same-day access to all newly filed unlimited civil jurisdiction complaints, and Ms. Kanatzar spoke with Mr. Marshall by phone in early March 2011 to discuss options. While Ms. Kanatzar indicated a desire to improve on the delays, the message conveyed to Courthouse News was that the clerk's office would not provide same-day access to newly filed unlimited jurisdiction civil complaints. At best, the Court would attempt to provide next-day access. Mr. Marshall was disappointed to hear this, but agreed to wait and see what solution the Court came up with to resolve delays. Subsequently, Ms. Kanatzar left Mr. Marshall a voice mail message advising him that beginning on March 14, 2011, the clerks would reprioritize how cases are processed, and Courthouse News should begin seeing complaints within two days of filing.

Over the past three months, Courthouse News has monitored the availability of complaints to determine what effect, if any, the new procedures would have in terms of delays in access. Unfortunately, things have gone from bad to worse, with same-day access to new complaints a rare occurrence.¹ Rather, actual delays in access are anywhere between one day and several weeks after filing for virtually all civil unlimited jurisdiction complaints filed in this Court.

There Is A Right Of Access, And Timely Access, To All New Civil Court Filings

As we have related to you in our previous correspondence and discussions, the press has a presumptive, constitutional right of timely access to newly filed complaints, which necessarily means same-day access. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1208 & n.25 (1999) (recognizing First Amendment right of access to civil litigation documents submitted to a court as a basis for adjudication); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (even short delays in access constitute "a total restraint on the public's first amendment right of access even though the restraint is limited in time"); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d

¹ During one recent four-week period, only one complaint out of 145 was available for review on the same day it was filed.

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893, 897 (7th Cir. 1994) (“[i]n light of values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous”); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”); *Courthouse News Service v. Jackson*, 2009 U.S. Dist. LEXIS 62300, at *10-11, 14 (S.D. Tex. 2009) (“the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional”).

Likewise, once a record has been filed or lodged with the court, Rule of Court 2.550(c) provides that the record is “presumed to be open” to public inspection. The Rule of Court thus recognizes that the public character of new complaints comes not from the court’s taking any particular action with respect to a complaint, but from a person’s invoking the power of the judiciary by submitting it to the court. See also *Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986) (the right of access springs into being the moment a person “undertake[s] to utilize the judicial process”); *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993) (“By submitting pleadings and motions to the court for decision, one ... exposes oneself [to] public scrutiny.”) (quotation omitted; emph. added).

In light of this right of access, it is not appropriate for this Court to deny media requests to examine newly filed complaints on the ground that the Court has not yet completed its administrative tasks associated with the processing of those complaints (tasks that vary from court to court, but can include such items as inputting information about the complaint into a computer system, formal acceptance, scanning, and/or posting the complaint online for remote viewing). As you can see from the enclosed city-by-city survey, courts around the country have implemented a variety of procedures to ensure that the press has access to *all new* civil complaints at the end of the day on which those complaints are filed, regardless of whether they have been fully processed and/or other administrative procedures have been completed. Indeed, given the media’s role as “surrogates for the public,” see, e.g., *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980), it is appropriate to provide news reporters who visit the Court every day with procedures for obtaining same-day access to new filings, so that those reporters may in turn disseminate information about those filings to interested persons, thereby keeping the public informed as to what transpires in the courts.

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With these considerations in mind, Courthouse News once again respectfully requests that the Court adopt procedures to ensure that reporters who visit the court every day (which would include but not necessarily be limited to Courthouse News) can review new unlimited civil complaints at the end of the day they are filed, even if they have not been fully processed. As the enclosed survey demonstrates, there are a variety of specific ways this can be accomplished, but fundamentally, what we are asking for is for Ms. Krolak to simply be allowed to see the day's new unlimited civil filings at the end of each court day.

We thank you for your attention to this important matter, and look forward to hearing from you.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge
Courthouse News Service

Media Access to Courts Around the Nation

Prepared By Courthouse News Service
June 2011

Courts around the country have developed a variety of procedures to provide the media with access to new civil case initiating documents (complaints or petitions, depending on the jurisdiction) on the same day they are filed, regardless of whether processing has been completed (or in federal courts that have adopted e-filing, the so-called "quality assurance" process is completed), and regardless of whether the complaint or petition has been made available for electronic viewing. Courthouse News Service has prepared the following summary of some of these same-day access procedures adopted in courts throughout the nation.

Albuquerque

At the Second District Court of New Mexico (Bernalillo County), both paper and electronically filed civil complaints are made available to the media in a "review pile" on the day of filing, before they have been fully processed or made available to the public. Courthouse News' reporter has been granted behind-the-counter access to the "review pile" and provided with a small work space, where he can review the new cases and scan any newsworthy complaint using a portable scanner. Any complaint that does not make it to the review pile enters a 3 - 4 day docketing process, during which Courthouse News Service's reporter can typically track down any case that needs to be seen.

Atlanta

At the Fulton County Superior Court in Atlanta, Georgia, new complaints are scanned immediately upon filing and made available at computer terminals at the courthouse, most within minutes of filing. In addition, complete docket information for civil cases is available from a publicly accessible web site on the day the complaint is filed.

At the United States District Court for the Northern District of Georgia, where e-filing is voluntary, reporters review new civil actions on the same day they are filed. New complaints that are filed in paper form are scanned into a computerized press box before they go to docketing and are accessible on a computer terminal in the Clerk's office. E-filed complaints are made available to CNS's reporter, prior to any processing, via PACER by using a shell case number code to access an online press queue of new same-day filings.

Austin

At the Travis County District Courthouse in Austin, where e-filing is mandatory for civil cases, Courthouse News' reporter gets a list of all of the new civil petitions filed earlier that same day upon arriving at the courthouse. She then views newly filed petitions using a public access terminal at the courthouse. Before leaving the court, Courthouse News' reporter gets an updated copy of the list of newly filed petitions to see whether there are any that have been filed since her first review, which she also views using the court's public access terminal.

Beaumont

At the Jefferson County District Court in Beaumont, Texas, reporters are allowed behind the counter to access paper copies of petitions filed that day, before the cases are put through the docketing process. Reporters can make copies of newsworthy cases.

At the Beaumont Division of the United States District Court for the Eastern District of Texas, reporters have same-day access to newly filed actions regardless of whether docketing has been completed. Reporters review scanned copies of new complaints via PACER, and if a new case is not yet scanned and available on the court's computer system, reporters can request and are given a paper copy of the new action based on a listing of new filings in a red log book made available to the press.

Brooklyn

At the Kings County Supreme Court, newly filed cases are typically scanned into electronic form immediately after they are filed, and the paper copies are then placed in a designated media box for same day review. However, in the event that a new complaint is not scanned until the following day, the paper copy remains in the press box until Courthouse News' reporter has reviewed it. Courthouse News' reporter has been provided with a media pass that allows her to remove the new filings from the media box and review them in a different area behind the counter in the clerk's office on the same day the complaints are filed. Courthouse News' reporter is free to make her own copies for a small fee.

At the United States District Court for the Eastern District of New York, parties file "press copies" of new complaints, which are placed into a press box that is made available to reporters throughout the day, thereby allowing them same-day access to the vast majority of new filings, even if the new filings have not been fully processed or posted to PACER.

Chicago

At the Cook County Circuit Court in Chicago, Courthouse News' reporter, or any other member of the media who is first to arrive at the courthouse, begins each visit by going behind the counter to pick up the day's new complaints, and then brings them to a press room located in the same building. The reporter sees complaints on the same day they are filed, regardless of whether the complaints have been fully processed. Reporters can stay as late as they like to review the new complaints.

At the United States District Court for the Northern District of Illinois, where newly filed complaints are available on a same-day basis, the court had previously provided the media with a special case number code for the PACER web site that granted reporters access to a press queue where the new complaints were posted before they had even been assigned a case number or appeared on the public PACER website. However, the Court is now making newly-filed civil complaints immediately available on PACER, as well as the court's own independent website, making access to the press queue unnecessary.

Cincinnati

At the Hamilton County Court of Common Pleas in Cincinnati, Ohio, new complaints are placed in the intake area for review by the media on the same day the complaints are filed. Complaints are made available after they have been date-stamped, but before any other processing occurs. Courthouse News' reporter sees between 30-60 complaints each day. If Courthouse News' reporter misses a complaint, he may request the file from the paper room staff the next day. Court employees will make copies of newsworthy complaints available upon request for 10 cents per page.

At the United States District Court for the Southern District of Ohio, many of the newly filed complaints are made available on the day of filing via PACER. However, for cases not available electronically, the court places a copy of new cases into a press box at the intake counter, where Courthouse News Services' reporter may review them until 4:00 p.m. when the court closes to the public. The reporter may request copies of new complaints for 50 cents per page.

Cleveland

At the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, Courthouse News' reporter has behind-the-counter access to new filings on the same day they are filed, regardless of whether they have been fully processed. Complaints are available as soon as they have been date-stamped. Court officials provide Courthouse News' reporter with desk space to set up a laptop and allow him use of the office copy machines.

At the United States District Court for the Northern District of Ohio, new civil cases can be filed either in person or electronically. Both cases filed electronically and in person are made available on PACER on the same day they are filed. However, to view cases that are restricted from access via PACER or cases that have not yet been posted to PACER, Courthouse News' reporter visits the courthouse, where the court staff will print out a copy of any case he requests, even if docketing has not been completed and regardless of how those complaints were filed.

Columbus

At the Franklin County Court of Common Pleas in Columbus, Ohio, Courthouse News' reporter has same-day access to new civil complaints after they have been date-stamped and before processing. Courthouse News' reporter works at a desk behind the intake counter. Complaints that are filed before the reporter arrives to the courthouse are placed in an "outbox" tray where CNS's reporter is able to review them on the same day they are filed. Once the reporter has finished reviewing those cases, a member of the court staff retrieves complaints that have been filed since the reporter's arrival directly from the various tellers and makes them available for immediate review. Copies are available for a nominal fee.

At the United States District Court for the Southern District of Ohio in Columbus, all new complaints are made available on PACER promptly upon filing. The court will also provide

hard copies of any civil filings not available on PACER on a same-day basis, but the speed with which cases are posted to PACER generally makes this unnecessary.

Dallas

At the Dallas County District Court in Dallas, Texas, Courthouse News' reporter is provided with behind-the-counter access to new petitions as soon as they are filed and before any docketing has taken place. The court provides the reporter with a place to work, where staffers in the clerk's office provide him with access to the new petitions filed in paper form. As for e-filed petitions, Courthouse News Service's reporter views some on a computer terminal in the clerk's office. In many instances, however, petitions are not available on the terminal on a same-day basis, and the clerk's office provides him with paper printouts of those petitions so that he can see them same-day.

The United States District Court for the Northern District of Texas has developed a process that ensures reporters have same-day access to all new complaints, regardless of how far those complaints have progressed through the intake process. On his daily afternoon visits to the court, Courthouse News' reporter goes through a three-step process, described below. Leigh Lyon, Assistant Chief Deputy of Operations, Dallas Division of the Northern District of Texas, has informed us that she would be happy to speak with court officials in other jurisdictions about this system. Ms. Lyon can be reached at (214) 753-2186.

- First, Courthouse News' reporter checks a computer terminal in the clerk's office to view summaries of the day's new complaints that have already been made available on PACER. Courthouse News' reporter then uses his own internet connection to immediately download documents he needs to his laptop computer at the courthouse.
- Second, Courthouse News' reporter checks for complaints that have been scanned by the clerk's office, but are not yet available on PACER. These complaints have been assigned a bar code and case number, and are made available for electronic viewing at a public computer kiosk located in the clerk's office, where the media can then review the new complaints on the same day they are filed.
- Finally, for complaints that are so new they have not yet been scanned, Courthouse News' reporter views the paper versions of those new cases in their case folder and makes copies of newsworthy complaints.

Detroit

At the Wayne County Circuit Court, complaints are placed in a drawer in the intake area of the clerk's office immediately after they are filed. Upon arriving at the clerk's office at approximately 3 p.m., Courthouse News' reporter goes behind the counter and first double-checks the previous day's complaints, which are located in bundled folders behind the intake drawer, for any missed or last-minute filings from the day before. Then he turns to the intake drawer, where he is permitted to review the newly filed complaints while standing behind the counter. Most new complaints are in the drawer, but some are with the intake clerks, who will share the complaints with the reporter for review. The reporter is permitted to make his own

copies of complaints using a copier located also behind the counter, as well as an alternate copier on the other side of the cashier station near the death certificates/marriage license area.

At the United States District Court for the Eastern District of Michigan, the court provides copies, on a same-day basis, of all newly filed complaints in a media box located in a public area, but only after the complaints have been fully docketed. Courthouse News' reporter can either visit the courthouse to view complaints or he can view the new filings electronically on PACER, which is just as timely as the hard copy press box.

Fort Worth

At the Tarrant County District Court in Fort Worth, most petitions appear on the court's on-line system the day they are filed, except those cases that are filed electronically after 5:00 p.m., when the court is closed, which are made available the following day. If any petition that was filed during court business hours is not available online the day it is filed, court staff either make a copy for Courthouse News' reporter or arranges for the petition to be immediately scanned and posted to the on-line access system. The end result is that Courthouse News' reporter is able to access all petitions filed during court hours on the same day they are filed.

Houston

The Harris County Civil District Courts in Houston provided same-day access for many years by permitting reporters to go behind the intake counters and review newly-filed petitions. In 2008, the clerk began requiring reporters to wait until new petitions had been processed and posted on the clerk's web site before they could be reviewed, which delayed their availability by a day or more – sometimes several days. After repeated attempts by Courthouse News to negotiate a solution with the clerk's office failed to lead to a resolution, Courthouse News reluctantly filed suit under 42 U.S.C. § 1983. In July 2009, the U.S. District Court for the Southern District of Texas issued a preliminary injunction ordering the clerk to provide same-day access to civil petitions, and finding that “the 24 to 72 hour delay in access is effectively a denial of access and is, therefore, unconstitutional.” *Courthouse News Service v. Jackson, et al.*, 2009 WL 2163609, at *4 (S.D. Tex. July 20, 2009). In accordance with that injunction order, the clerk's office began scanning new petitions and posting them to the clerk's web site the same day they are filed. Pursuant to a stipulated permanent injunction entered by the court in March 2010, the clerk's office became obligated not only to continue to provide same-day access to new civil filings, but to pay more than \$250,000 to Courthouse News to compensate it for the attorneys fees it incurred in litigating the case. The stipulated permanent injunction did not specify the particular manner in which same-day access must be provided, and the clerk's office has chosen to comply with the order by continuing its practice of posting new petitions on the clerk's web site. Those petitions can be viewed, and printouts can be made, free of charge by the media and other interested parties on the day of filing. After that, petitions can still be viewed without charge, but printouts can be made only if they have not been certified. Once they are certified – which usually occurs the day after filing – there is a fee to print out copies of the petitions. Details about this program can be found on the Harris County District Clerk's web site, at <http://www.hcdistrictclerk.com/Edocs/Public/search.aspx> (see button: “Search Today's Filings”).

At the United States District Court for the Southern District of Texas, where electronic filing is required for new cases, Courthouse News' reporter can view electronic versions of complaints that are already docketed and posted to PACER on the same day they are filed. For any new complaint that has not yet been fully docketed, the Court will usually provide a hard copy regardless of how far along the complaint is in the docketing process, also on the same day they are filed.

Indianapolis

At the Marion County Circuit and Superior Courts in Indianapolis, Indiana, reporters view all new filings on a same-day basis in the clerk's office. Reporters are given stacks of the new filings, before they are processed or sent to the proper court division, and are allowed to go through them at tables in the public viewing area from 4:00 p.m. to 4:30 p.m. Reporters can then make copies themselves on court copy machines, which are then billed to Courthouse News Service monthly.

At the United States District Court for the Southern District of Indiana, reporters are provided with access to all complaints filed on a same-day basis, even if docketing has not been completed. When Courthouse News' reporter arrives at the end of the day, the court staff gathers all of the civil cases filed throughout the day and allows the reporter to review the complaints. The court staff will then make copies at a rate of 50 cents per page.

Las Vegas

At the Eighth Judicial District Court in Las Vegas, Nevada, reporters saw the majority of new civil complaints on a same-day basis until the court switched to mandatory e-filing in February 2010. Following that switch, the court began requiring news reporters to review new complaints at a computer terminal in the clerk's office, but this system resulted in complaints not being available for viewing until the day after they were filed. The reason for these delays was that new complaints did not appear on the computer terminals until after they had been "accepted" by the clerk's office, and only after the terminals had been updated to reflect the new filings. After Courthouse News brought these delays to the attention of the court, the court adopted a new system: an electronic in-box, through which complaints can be viewed on a computer terminal as soon as they cross the electronic version of the intake counter at the clerk's office, even if they have not yet been fully processed. Through this system, which is similar to the electronic in-box access procedures in place at numerous federal district courts (many of which are described in this survey), Courthouse News is now seeing new e-filed complaints on a same-day basis.

At the United States District Court for the District of Nevada, Courthouse News' reporter can view electronic versions of the majority of new complaints on a same-day basis on PACER. Complaints that are not made available on the day they are filed are usually made available on the following day.

Los Angeles

At the Downtown (Stanley Mosk Courthouse) branch of the Superior Court of California in Los Angeles, reporters can review all new actions that are filed on a particular day through the court's computer system, which includes terminals for the general public and additional terminals in a designated press room. Both the filing room – including the intake and processing areas – and the area in which the general public view cases close at 4:30 p.m., but the press room remains open later and even the latest filings of the day are available and can be reviewed by 7:00 p.m. About 90 new civil, general jurisdiction cases are filed each day.

At the Santa Monica Courthouse of the same court, face pages of each day's newly-filed complaints are made available for review at 3:30 p.m. on the same day the complaints are filed. Courthouse News' reporter then requests copies of those complaints for which she wants to see the full-text versions. The full text of late-filed complaints is made available at 4:30 p.m., when the filing room court closes its doors to the public but where the courthouse employees continue to work until 5:00 p.m. Courthouse News' reporter can then request copies of any of those late-filed complaints, and they are generally provided right away.

At the United States District Court for the Central District of California, a room is set up directly off the docketing department with a set of pass-through boxes. At 4:45 p.m., a messenger places all of the civil complaints filed that day in the pass-through boxes so that the media can review them. Inside the reviewing room is a copy machine maintained by the press. Reporters that cover the courthouse on a daily basis have a key to the room, which is otherwise locked, and they can stay as long as they want to look over the complaints and rulings, copy those of interest, and put the documents back in the pass-through boxes.

Louisville

At the Jefferson County Circuit Court in Louisville, Kentucky, the clerk's staff makes a copy of the front page of all complaints filed throughout the day and places the coversheets on a table in the public area of the office. Courthouse News' reporter then reviews the stack of coversheets and requests any complaints he determines to be newsworthy on the same day they are filed. The clerk's office will make copies for him at a rate of 25 cents per page.

The United States District Court for the Western District of Kentucky in Louisville has adopted an e-filing system requiring initiating documents to be filed electronically. The court has provided the media with an "MC" case number code. Using this code at a designated computer terminal in the clerk's office, reporters can review newly filed complaints in exactly the same format as they are received in the clerk's office, prior to being docketed and before they are available to the public on PACER. If a reporter needs a copy of a complaint, he requests the copy from court staff at a rate of 50 cents per page.

Manhattan

At the New York County Supreme Court, where certain case types are required to be e-filed, new complaints are made available to reporters on the same day they are filed, whether they are filed in paper or electronic form. E-filed cases are posted online to a court website by the end

of the day they are filed, while new complaints filed in paper form are indexed and scanned shortly after being filed, and made available electronically via an internal computer system on terminals set up throughout the courthouse. At 4:00 p.m., and then at regular intervals until 5:00 p.m., the paper versions of the new complaints are then placed by court officials in a secure area behind the counter where reporters are free to review them on a same-day basis.

At the United States District Court for the Southern District of New York, reporters are permitted to view new civil complaints three times a day – between 9:00 a.m. and 9:45 a.m., between 11:30 a.m. and 12:15 p.m., and between 3:35 p.m. and 4:30 p.m. – on the same day the complaints are filed.

Miami

In Miami-Dade County Circuit Court, the clerk's office closes to the general public at 4 p.m., but security personnel remain until 6:45 p.m., allowing Courthouse News Service's reporter to review new filings. The reporter is permitted to go behind the intake counter and pull same day complaints directly from each intake clerks' desk from 4:45 p.m. until the office closes at 6:45 p.m. The complaints that Courthouse News' reporter reviews have been assigned a case number and checked for all required documentation and payment, but have not been entered into the court's computer system. If the reporter needs copies she is able to make her own copies at a Court copy machine for \$1 per page.

At the United States District Court for the Southern District of Florida, electronic filing of new civil complaints is mandatory, and new complaints that are filed before 5 p.m. appear on PACER on the same day they are filed. Cases filed after 5 p.m. appear on PACER the following day.

Milwaukee

At the Milwaukee County Court in Wisconsin, reporters have access to new complaints on the day they are filed, even if they have not yet been fully processed, and are permitted to go behind the counter. Reporters can request copies of complaints from court personnel for a small fee.

At the United States District Court for the Eastern District of Wisconsin, most new complaints are e-filed and available electronically through PACER on the same day they are filed. However, for those cases that are not immediately posted to PACER, court staff provides reporters with the original paper versions of the new complaints, also on the same day they are filed. Reporters are then able to make copies at a copy machine for a nominal fee.

Minneapolis/St. Paul

At both the Hennepin County District Court in Minneapolis and the Ramsey County District Court in St. Paul, where many of the new complaints are filed by mail, Courthouse News' reporter is permitted to go behind the counter to review the stack of original complaints on the same day they are filed and before they are docketed. Because the reporter visits Ramsey County only three times per week, she is unable to review all cases on the same day they are

filed, but is able to search for and view the cases she has missed on a computer terminal at the courthouse the next time she visits the court. The reporter is able to make her own copies in Hennepin County, where Courthouse News has established a copy account. In Ramsey County, for cases the reporter reviews on the day of filing, the court staff will make copies of any complaint the reporter requests. For cases she reviews after the day of filing, the reporter is able to print a copy directly from the computer terminal.

At the United States District Court for District of Minnesota, reporters begin their visit by using a computer terminal at the courthouse to view an intake log of new cases. From there, reporters review complaints available on PACER using a public computer terminal in the clerk's office. If a complaint shown on the intake log of new cases is not yet available on PACER, the court will print out a copy for the reporter. The Clerk charges 10 cents per page for any copies that reporters request.

Nashville

At the Davidson County Chancery Court in Nashville, Courthouse News' reporter reviews an intake log of the day's new filings on a public computer terminal at the courthouse. She then compiles a list of the relevant cases and presents the list to the court staff, who retrieve the requested cases and allow her to review the complaints regardless of whether the docketing process has been completed.

At the Davidson County Circuit Court, most new complaints are scanned throughout the day and are made available through a government website on the same day they are filed.

At the United States District Court for the Middle District of Tennessee, the clerk's staff are required to stay one hour after closing in order to scan all new filings and post them onto PACER on the day they are filed.

Oakland

Although the Alameda County Superior Court in Oakland, California, endeavors to make newly-filed complaints available for viewing on its web site on a same-day basis, it has implemented procedures to ensure that news reporters who visit the René C. Davidson courthouse can obtain same-day access to those complaints that would otherwise not be posted for electronic viewing on a same-day basis. Under those procedures, reporters are provided with access to a workstation behind the intake counter. The station is equipped with a computer connected to the Internet. Courthouse News' reporter first reviews the cases that are made available online. For those cases that are not available online by the end of the work day but are of media interest, court staffers scan and make those cases available on their web site.

Oklahoma City

At the Oklahoma County Court, intake clerks place all of the day's new petitions into a central basket by 3:15 p.m. Petitions placed in the basket have been date stamped, but have not been fully docketed – only indexed. A member of the clerk's staff then provides the petitions to Courthouse News' reporter, and the reporter is instructed to sign the back of each petition to

ensure that she has seen them all. After she has completed her review of the petitions in the basket, Courthouse News' reporter is permitted to review any further petitions that have been filed, indexed and placed in the basket after 3:15 p.m. The reporter may request copies of petitions at a rate of \$1.00 for the first page and 50 cents for all subsequent pages.

Omaha

At the Douglas County District Court, new complaints are filed in paper form and then added to an internal computer database that is updated live when a new case is received and indexed. Courthouse News' reporter reviews the index information for relevant cases on a courthouse computer terminal and a filing clerk retrieves the complaints he requests before they have been fully processed or scanned. Courthouse News' reporter can review the new complaints on the day of filing in the public area of the clerk's office and is free to make copies on public machines.

Orlando

At the Ninth Judicial Circuit Court, Courthouse News' reporter reviews hard copies of newly filed complaints at a designated desk behind the counter. The staff places new complaints that have not undergone any processing (*i.e.*, docketed, jacketed or assigned a case number) near the reporter's desk each day for same-day viewing. Since some complaints have been docketed by the time Courthouse News' reporter arrives, these complaints are placed in a separate pile for the reporter's review before they are moved to a separate desk for scanning by 4 p.m. In addition, Courthouse News' reporter is permitted to review e-filed complaints and complaints that have been docketed and scanned by the time the reporter arrives on a same-day basis using one of the Clerk's terminals located behind the counter.

At the United States District Court for the Middle District of Florida in Orlando, where electronic filing is mandatory, the court posts the majority of new civil filings to PACER on the same day they are filed.

Palm Beach

In the Palm Beach County Circuit Court, members of the press review new civil cases at the intake counter at 4 p.m. on the day they are filed. The new cases are given to the press as a stack of folders.

Phoenix

At the Maricopa County Superior Court in Phoenix, Arizona, court staff recently implemented new procedures to ensure same-day access to civil complaints filed at its downtown location. Under the new procedures, court staff scan and upload for electronic viewing all complaints filed before 3 p.m., which are then made available on a designated press computer located in the Customer Service Center for Courthouse News' reporter to review and, if necessary, print. Complaints filed between 3 and 5 p.m. are immediately placed in a bin at a designated intake window in the Central Court Building, where Courthouse News' reporter may review those complaints between 4 and 5 p.m.

Pittsburgh

At the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, where the Court has implemented an internally operated electronic filing system, nearly all of the day's new filings are available on-line on a same-day basis. Complaints not posted to the court's website on the day of filing are made available the following day.

In the United States District Court for the Western District of Pennsylvania, where electronic filing is mandatory, Courthouse News' reporter has been provided with an "MC" case number code for PACER that allows her to view the new filings before they are docketed.

Portland

At the Multnomah County Court in Portland, Courthouse News' reporter is given a stack of the current day's newly filed complaints, which she reviews at a cubicle behind the counter. The reporter can make any needed copies herself using her own portable scanner.

At the United States District Court for the District of Oregon, Courthouse News' reporter first searches for newly filed complaints through the court's "electronic in-box," which is available on a public access terminal at the courthouse and contains those complaints that the clerks have scanned but not yet processed and posted to PACER. She then searches for processed complaints on PACER, which are also available at a public access terminal at the courthouse. Finally, the clerks give Courthouse News' reporter paper copies of those complaints that have not yet been scanned and posted either to the electronic in-box or to PACER. The clerks will also review the court's record book with Courthouse News' reporter at the end of the day to make sure that no filings have been missed.

Riverside

At the Superior Court for the State of California, County of Riverside, new complaints are scanned and made available for electronic viewing via the Court's web site and at computer terminals in the courthouse. The press had been experiencing delays in access for years until a new clerk, formerly from the United States District Court for the Central District of California, came on board. The clerk found that same-day access could be achieved simply by shifting the schedules of the personnel who scan complaints so that they begin and end work later in the day, thus ensuring that new complaints would be made available for electronic viewing on a same-day basis.

St. Louis

At the St. Louis City Circuit Court in Missouri, Courthouse News' reporter goes to the intake window where cases are filed and clerk's office staff members hand the reporter a stack of new cases filed that same day. Courthouse News' reporter works at the counter next to the intake window; however, members of the media can also work at a table near the window. Staff members in the clerk's office will provide members of the media with copies of newsworthy new cases free of charge.

At the United States District Court for the Eastern District of Missouri, where new complaints must be electronically filed, each case is assigned a case number upon filing by the attorney and is immediately made available on PACER, even if it has not been fully reviewed and processed. Courthouse News' reporter is able to view the new complaints on a computer terminal in the clerk's office and print out copies for a small fee.

San Francisco

At the Superior Court of California for the County of San Francisco, news reporters are allowed behind the counter into the stacks to review unlimited numbers of new filings after providing a driver's license and filling out a temporary name tag. The number of new filings per day varies, but often exceeds 50. Courthouse News views new complaints regardless of whether they have been fully processed. San Francisco Superior has established a written protocol for members of the press. The key provisions are quoted below:

If media personnel want to review files already on the shelves, they can pull these files themselves and return them to the shelves.

All new filings will be held in a Media Box during the day. Between 3:00 and 4:30 each day, this box will be available to the media for viewing in the Records department, whether or not the cases have been entered in the computer. At 4:00 PM, when the office closes to the public, media personnel may ask to view any additional filings that may have come in since 3:00 PM. The Records supervisor or an assigned clerk will retrieve those files for the media to view. Any member of the media viewing new filings must return them to the box for eventual return to the Records supervisor or assigned clerk.

Media personnel may come in anytime before 3:00 PM to view new filings. However, they will only be viewing cases newly filed up until that time.

Copy machine from the second floor Media Room will be moved to Room 103 and located behind the Records department. This machine belongs to Courthouse News Service, but has been made available to all media personnel for their use.

At the San Francisco Division of the United States District Court for the Northern District of California, reporters go behind the counter and review actions filed that same day, regardless of whether the complaints have been fully docketed or posted on PACER. They are also permitted access to the so-called "transfer boxes" of new actions being sent to different divisions of the court, and are provided with a copy of the intake log. Reporters are permitted to make copies of cases they determine to be newsworthy using a portable scanner.

San Jose

At the Santa Clara County Superior Court in San Jose, California, the Court recently implemented new procedures to ensure that reporters receive same-day access to the vast

majority of each day's new civil unlimited jurisdiction complaints. Under those procedures, civil unlimited complaints are made available to Courthouse News' reporter upon receipt of the filing fee, the assignment of a case number, and the assignment of a first status conference date, even though processing of the new complaint is far from over at this juncture. Complaints that are filed over the counter by 3:30 p.m. are made available to Courthouse News' reporter on the same day they are filed. All unlimited jurisdiction complaints that are in the drop box by 4:00 p.m. are also made available to Courthouse News on the same day they are filed. Unlimited jurisdiction complaints that are filed over the counter between 3:30 p.m. and the clerk's office closing at 4:00 p.m. have been designated as a staff priority, and the court endeavors to make them available for review on the same day they are filed. Courthouse News' reporter is permitted to remain at the court until 4:30 p.m., one half-hour after closing, to review late-filed cases. The court makes copies of complaints as requested by the reporter.

At the San Jose Division of the United States District Court for the Northern District of California, clerks print out a list of all new complaints filed earlier that day. Reporters go behind the counter, obtain complaints from individual clerks' desks, report on and scan any newsworthy complaints, and then return the complaints to the clerks' desks.

Seattle

At the King County Superior Court, Courthouse News' reporter is provided with a docket sheet print-out of new cases two times per day – once at 11 a.m. and again at 3 p.m. The 11 a.m. list includes all cases that have been filed from 3 p.m. on the previous day through 11 a.m. on the current day, while the 3 p.m. list includes new cases that have been filed from 11 a.m. to 3 p.m. that day. The reporter reviews each list to find relevant cases, then searches for and views new complaints on a computer terminal at the courthouse. She is able to print out relevant complaints for 15 cents per page.

Tampa

At the Hillsborough County Circuit Court, new complaints that are hand-filed in the main courthouse are made available for review by reporters at the end of the day they are filed. Most complaints are scanned by court staff and made available on the court's public access terminals for review. Those complaints that are not scanned and available on the public access terminals by 4 p.m. are provided in paper form for news reporters, who have until the court closes at 5 p.m. to review those late-filed complaints.

EXHIBIT 3



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*

July 11, 2011

Rachel Matteo-Boehm
Holme Roberts and Owen LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105

Re: *Media Access to New Complaints*

Dear Ms. Matteo-Boehm:

I am writing in response to your June 20, 2011 letter regarding media access to new complaints at the Ventura Superior Court.

As you have noted, the Court has met and spoken with you and representatives of Courthouse News Service several times over the past couple of years to both explain the Court's serious resource shortages as a result of budget reductions, and steps that could reasonably be taken to make new complaints available to the media. The budget recently signed by the Governor imposes even more drastic reductions to the Courts, which makes it even more difficult to provide same-day access to new filings.

While I appreciate the Courthouse News Services' interest in same-day access, the Court cannot prioritize that access above other priorities and mandates. Further, the Court must ensure the integrity of all filings, including new filings, and cannot make any filings available until the requisite processing is completed. We will continue to make every effort to make new filings available as early as is practicable given the demands on limited court resources.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Planet".

Michael D. Planet
Executive Officer

MDP/vjb

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

Exhibit 3
Page 52

ER 114

EXHIBIT 4



Holme Roberts & Owen LLP
Attorneys at Law

SAN FRANCISCO

August 2, 2011

BOULDER

Michael Planet
Court Executive Officer
Ventura County Superior Court
800 South Victoria Ave.
Ventura, CA 93009

COLORADO SPRINGS

Re: Media Access to New Complaints

Dear Mr. Planet:

DENVER

On behalf of Courthouse News Service, we write to briefly respond to your assertion, in your July 11, 2011 letter, that budgetary difficulties prevent the Ventura County Superior Court from providing the media with timely, same-day access to newly-filed civil unlimited jurisdiction complaints.

DUBLIN

Respectfully, our experience working with other courts shows that providing prompt media access to new civil complaints – fundamentally, the simple act of letting reporters *see* the new complaints that, because they are newly-filed, are already centrally located in the intake area – need not involve any extra expense or staff time beyond the *de minimis* effort of handing a stack of complaints to a reporter (and even that *de minimis* effort can be eliminated if a credentialed reporter is simply allowed to go behind the counter to pick up the stack, as reporters do at the federal district court in San Francisco, for example).

LONDON

Indeed, it has been our experience that providing prompt access is largely a matter of will on the part of the court and its leaders.

LOS ANGELES

For example, at the San Francisco Superior Court and Santa Clara County Superior Court, new filings are placed in a media box, available to news reporters for viewing whether or not those complaints have been fully docketed. In the past, in San Francisco, reporters gathered the complaints from the intake window and put them in the box, actually saving some work for the court. Courthouse News has also observed that the *de minimis* staff effort required to administer this type of “review box” is much less than the substantial effort involved when staff are required to track down fully processed complaints for press review, as is currently the case in Ventura County. State courts in Alameda, Los Angeles and Riverside also provide same day access to the press. All four federal courts in California provide the media with same-day access to new civil complaints without undue expenditures of staff time or expense.

SALT LAKE CITY

Rachel Matteo-Boehm 415.268.1996 rachel.matteo-boehm@hro.com
560 Mission Street, 25th Floor San Francisco, California 94105-2994 tel 415.268.2000 fax 415.268.1999

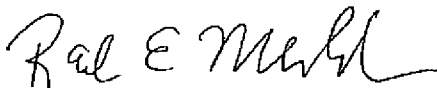
#64769 v1.pdf
Exhibit 4
Page 53

Holme Roberts & Owen LLP
Attorneys at Law

Michael Planet
August 2, 2011
Page 2

At bottom, press access only results in increased costs where the court imposes the requirement of complete processing before providing access. But newly filed complaints become public records upon filing, and this status is not contingent on the court having first completed processing. We must therefore respectfully but firmly disagree with your assertion that providing timely access can only be accomplished at a monetary cost to the Court.

Sincerely,



Rachel Matteo-Boehm

cc: The Honorable Vincent O'Neill, Jr., Presiding Judge
Courthouse News Service

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Manuel Real and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

CV11- 8083 R (MANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

Unless otherwise ordered, the United States District Judge assigned to this case will hear and determine all discovery related motions.

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ORIGINAL

Name & Address:
Rachel Matteo-Boehm (SBN 195492)
David Greene (SBN 160107)
Leila C. Knox (SBN 245999)
Holme Roberts & Owen LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Tel: 415/268-2000; Fax: 415/268-1999

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COURTHOUSE NEWS SERVICE,

CASE NUMBER

PLAINTIFF(S)

CV11-08083 R (MANX)

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

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): Michael Planet, in his official capacity as Court Executive Officer/Clerk of the
Ventura County Superior Court

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Rachel Matteo-Boehm, whose address is Holme Roberts & Owen LLP, 560 Mission St., 25th Fl., San Francisco, CA 94105-2994. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SEP 29 2011

Clerk, U.S. District Court

Dated: _____

By: _____

Deputy Clerk
(Signature)
(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

COURTESY COPY
 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
 CIVIL COVER SHEET

(a) PLAINTIFFS (Check box if you are representing yourself) <input type="checkbox"/> Courthouse News Service	DEFENDANTS MICHAEL PLANET, in his official capacity as Court Executive Officer of the Ventura County Superior Court
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Rachel Matteo-Boehm; David Greene, Leila Knox HOLME ROBERTS & OWEN LLP 560 Mission Street, 25 th Floor San Francisco, CA 94105-2994 415-268-2000	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:50%;">Citizen of This State</td> <td style="width:50%;">PTF DEF</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td>Incorporated or Principal Place of Business in this State</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>Incorporated and Principal Place of Business in Another State</td> </tr> <tr> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Citizen of Another State	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 2	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF														
<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1														
Citizen of Another State	Incorporated or Principal Place of Business in this State														
<input type="checkbox"/> 2	<input type="checkbox"/> 2 <input type="checkbox"/> 2														
Citizen or Subject of a Foreign Country	Incorporated and Principal Place of Business in Another State														
<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 5 <input type="checkbox"/> 5														
Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)
 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Rescinded 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
 CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ injunction

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
First and Fourteenth Amendments to the United States Constitution and Civil Rights Act - 42 U.S.C. Sec. 1983

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 430 Commerce/KCC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Rack-rent Influenced and Control Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 930 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condensation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 27 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 Criminal <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Abtition Regs <input type="checkbox"/> 660 Occupational Safety & Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Engr. Ret. Inc. Security Act SOCIAL SECURITY <input type="checkbox"/> 810 Copyrights <input type="checkbox"/> 810 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA (1948) <input type="checkbox"/> 62 Black Lung (923) <input type="checkbox"/> 63 DWOC/WW 405(a) <input type="checkbox"/> 64 SSID Title XVI <input type="checkbox"/> 65 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV 11-08083
 AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: Los Angeles County	California County outside of this District; State, if other than California; or Foreign Country
---	---

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: Ventura County	California County outside of this District; State, if other than California; or Foreign Country
---	---

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: Ventura County	California County outside of this District; State, if other than California; or Foreign Country
---	---

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Katherine

Date: Sept. 28, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HBA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

(MANx), APPEAL, CLOSED, DISCOVERY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:11-cv-08083-R -MAN**

Courthouse News Service v. Michael Planet
Assigned to: Judge Manuel L. Real
Referred to: Magistrate Judge Margaret A. Nagle
Case in other court: 9th CCA, 11-57187
Cause: 42:1983 Civil Rights Act

Date Filed: 09/29/2011
Date Terminated: 11/30/2011
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Courthouse News Service

represented by **David Allen Greene**
Bryan Cave LLP
560 Mission Street Suite 250
San Francisco, CA 94105-2994
415-268-2000
Fax: 415-268-1999
Email: david.greene@bryancave.com
ATTORNEY TO BE NOTICED

Leila Christine Knox
Bryan Cave LLP
560 Mission Street Suite 250
San Francisco, CA 94105-2994
415-268-2000
Fax: 415-268-1999
Email: leila.knox@bryancave.com
ATTORNEY TO BE NOTICED

Rachel E Matteo-Boehm
Bryan Cave LLP
560 Mission Street Suite 250
San Francisco, CA 94105-2994
415-268-2000
Fax: 415-268-1999
Email: rachel.matteo-
boehm@bryancave.com
ATTORNEY TO BE NOTICED

V.

Defendant

Michael Planet
*in his official capacity as Court
Executive Officer/Clerk of the Ventura*

represented by **Robert A Naeve**
Jones Day
3161 Michelson Drive Suite 800

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County Superior Court

Irvine, CA 92612
949-851-3939
Fax: 949-553-7539
Email: rnaeve@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Erica Lynn Reilley
Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071
213-489-3939
Fax: 213-243-2539
Email: elreilley@jonesday.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/29/2011	<u>1</u>	COMPLAINT against Defendant Michael Planet. Case assigned to Judge Manuel L. Real for all further proceedings. Discovery referred to Magistrate Judge Margaret A. Nagle.(Filing fee \$ 350 Paid.), filed by Plaintiff Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011		21 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to Defendant Michael Planet. (et) (Entered: 09/29/2011)
09/29/2011	<u>2</u>	NOTICE of Interested Parties filed by Plaintiff Courthouse News Service, identifying Other Affiliate William Girdner, President, Courthouse News Service for Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011	<u>3</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction filed by Plaintiff Courthouse News Service. Motion set for hearing on 11/7/2011 at 10:00 AM before Judge Manuel L. Real. (et) (mg). (Entered: 09/29/2011)
09/29/2011	<u>4</u>	MEMORANDUM of Points and Authorities in Support of MOTION for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011	<u>5</u>	DECLARATION of KAREN COVEL in Support of Motion for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011	<u>6</u>	DECLARATION of JULIANNA KROLAK in Support of Motion for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011	<u>7</u>	DECLARATION of WILLIAM GIRNER in Support of Motion for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (et) (amar). (Entered: 09/29/2011)
09/29/2011	<u>8</u>	DECLARATION of CHRISTOPHER MARSHALL in Support of Motion for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (et)

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		(amar). (Entered: 09/29/2011)
09/29/2011	<u>9</u>	ORDER RE: NOTICE TO COUNSEL by Judge Manuel L. Real, (pj) (Entered: 09/29/2011)
09/29/2011	<u>10</u>	PROOF OF SERVICE filed by Plaintiff Courthouse News Service, re Memorandum in Support of Motion <u>4</u> , Declaration of Christopher Marshall <u>8</u> , MOTION for Preliminary Injunction <u>3</u> , Declaration of William Girner <u>7</u> , Declaration of Julianna Krolak <u>6</u> , Declaration of Karen Covell <u>5</u> served on 9/29/11. (et) (amar). (Entered: 09/30/2011)
10/06/2011	<u>11</u>	PROOF OF SERVICE filed by plaintiff Courthouse News Service, re Memorandum in Support of Motion <u>4</u> , Declaration (Motion related) <u>8</u> , Complaint - (Discovery), Complaint - (Discovery) <u>1</u> , Summons Issued, MOTION for Preliminary Injunction <u>3</u> , Certificate/Notice of Interested Parties <u>2</u> , Declaration (Motion related) <u>7</u> , Declaration (Motion related) <u>6</u> , Declaration (Motion related) <u>5</u> , Order <u>9</u> <i>Michael D. Planet</i> served on 10/04/11. (Matteo-Boehm, Rachel) (Entered: 10/06/2011)
10/10/2011	<u>12</u>	EX PARTE APPLICATION to Continue Hearing on Plaintiff's Motion for Preliminary Injunction from November 7, 2011 to January 17, 2012 filed by Defendant Michael Planet. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order) (Naeve, Robert) (Entered: 10/10/2011)
10/11/2011	<u>13</u>	OPPOSITION to EX PARTE APPLICATION to Continue Hearing on Plaintiff's Motion for Preliminary Injunction from November 7, 2011 to January 17, 2012 <u>12</u> filed by Plaintiff Courthouse News Service. (Attachments: # <u>1</u> Proposed Order)(Matteo-Boehm, Rachel) (Entered: 10/11/2011)
10/11/2011	<u>14</u>	PROOF OF SERVICE Executed by Plaintiff Courthouse News Service, upon Attorney General's Office on behalf of Plaintiff Michael Planet, in his Official Capacity as Court Executive Officer/Clerk of the Ventura County Superior Court Michael Planet served on 9/29/2011, answer due 10/20/2011. Service of the Summons and Complaint were executed upon Yolanda Sagarminaga in compliance with Federal Rules of Civil Procedure by personal service. Original Summons returned. (Matteo-Boehm, Rachel) (Entered: 10/11/2011)
10/11/2011	<u>15</u>	PROOF OF SERVICE Executed by Plaintiff Courthouse News Service, upon Defendant Michael Planet served on 10/4/2011, answer due 10/25/2011. Service of the Summons and Complaint were executed upon Michael Planet, in his Official Capacity as Court Executive Officer/Clerk of the Ventura County Superior Court in compliance with Federal Rules of Civil Procedure by personal service. Original Summons returned. (Matteo-Boehm, Rachel) (Entered: 10/11/2011)
10/11/2011	<u>16</u>	SUPPLEMENT to EX PARTE APPLICATION to Continue Hearing on Plaintiff's Motion for Preliminary Injunction from November 7, 2011 to January 17, 2012 <u>12</u> <i>Declaration of Erica L. Reilley</i> filed by Defendant Michael Planet. (Attachments: # <u>1</u> Exhibit)(Naeve, Robert) (Entered: 10/11/2011)
10/12/2011	<u>17</u>	NOTICE of Change of Attorney Information for attorney Erica Lynn Reilley counsel for Defendant Michael Planet. Adding Erica L. Reilley as attorney as

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		counsel of record for Defendant Michael Planet for the reason indicated in the G-06 Notice. Filed by Defendant Michael Planet (Reilley, Erica) (Entered: 10/12/2011)
10/13/2011	<u>18</u>	ORDER DENYING CONTINUANCE OF HEARING ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION by Judge Manuel L. Real: denying <u>12</u> Ex Parte Application to Continue. (bp) (Entered: 10/13/2011)
10/14/2011	<u>19</u>	Joint STIPULATION to Continue Hearing on Plaintiff's Motion for Preliminary Injunction from November 7, 2011 to November 21, 2011 Re: MOTION for Preliminary Injunction <u>3</u> filed by Defendant Michael Planet. (Attachments: # <u>1</u> Proposed Order CONTINUING HEARING ON PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION FROM NOVEMBER 7, 2011 TO NOVEMBER 21, 2011)(Reilley, Erica) (Entered: 10/14/2011)
10/14/2011	<u>20</u>	ORDER by Judge Manuel L. Real, re Stipulation to Continue, <u>19</u> Defendant's Opposition to Plaintiff's motion for Preliminary Injunction 10/31/2011; Reply on Motion for Preliminary Injunction 11/7/2011; Motion set for hearing on 11/21/2011 at 10:00 AM before Judge Manuel L. Real.) (pj) (Entered: 10/14/2011)
10/20/2011	<u>21</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>and Abstain</i> filed by Defendant Michael Planet. Motion set for hearing on 11/21/2011 at 10:00 AM before Judge Manuel L. Real. (Attachments: # <u>1</u> Notice, # <u>2</u> Proposed Order) (Reilley, Erica) (Entered: 10/20/2011)
10/20/2011	<u>22</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> filed by Defendant Michael Planet. (Attachments: # <u>1</u> Exhibit) (Reilley, Erica) (Entered: 10/20/2011)
10/25/2011	<u>23</u>	PROOF OF SERVICE OF SERVICE filed by plaintiff Courthouse News Service, served on Order re Notice to Counsel. (Matteo-Boehm, Rachel) (Entered: 10/25/2011)
10/31/2011	<u>24</u>	OPPOSITION to MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> filed by Plaintiff Courthouse News Service. (Attachments: # <u>1</u> Proposed Order)(Matteo-Boehm, Rachel) (Entered: 10/31/2011)
10/31/2011	<u>25</u>	Opposition to Plaintiff's Motion for Preliminary Injunction Opposition re: MOTION for Preliminary Injunction <u>3</u> filed by Defendant Michael Planet. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Declaration, # <u>4</u> Declaration)(Reilley, Erica) (Entered: 10/31/2011)
10/31/2011	<u>26</u>	Objections to Evidence in opposition to re: MOTION for Preliminary Injunction <u>3</u> filed by Defendant Michael Planet. (Attachments: # <u>1</u> Proposed Order)(Reilley, Erica) (Entered: 10/31/2011)
11/07/2011	<u>27</u>	REPLY in Support of MOTION for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (Matteo-Boehm, Rachel) (Entered: 11/07/2011)
11/07/2011	<u>28</u>	DECLARATION of William Girdner in Support of MOTION for Preliminary Injunction <u>3</u> (<i>Supplemental</i>) filed by Plaintiff Courthouse News Service. (Matteo-Boehm, Rachel) (Entered: 11/07/2011)

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11/07/2011	<u>29</u>	DECLARATION of Julianna Krolak in Support of MOTION for Preliminary Injunction <u>3</u> (<i>Supplemental</i>) filed by Plaintiff Courthouse News Service. (Matteo-Boehm, Rachel) (Entered: 11/07/2011)
11/07/2011	<u>30</u>	NOTICE OF LODGING filed re MOTION for Preliminary Injunction <u>3</u> (Attachments: # <u>1</u> Proposed Order)(Matteo-Boehm, Rachel) (Entered: 11/07/2011)
11/07/2011	<u>31</u>	RESPONSE filed by Plaintiff Courthouse News Serviceto Objection/Opposition (Motion related) <u>26</u> (Matteo-Boehm, Rachel) (Entered: 11/07/2011)
11/07/2011	<u>32</u>	Objections in support re: MOTION for Preliminary Injunction <u>3</u> filed by Plaintiff Courthouse News Service. (Attachments: # <u>1</u> Proposed Order) (Matteo-Boehm, Rachel) (Entered: 11/07/2011)
11/07/2011	<u>33</u>	REPLY in Support of MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> filed by Defendant Michael Planet. (Reilley, Erica) (Entered: 11/07/2011)
11/08/2011	<u>34</u>	NOTICE OF ERRATA filed by Defendant Michael Planet. correcting Reply (Motion related) <u>33</u> , MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> (Attachments: # <u>1</u> Supplement Corrected Reply In Support Of Motion to Dismiss and Abstain)(Naeve, Robert) (Entered: 11/08/2011)
11/14/2011	<u>35</u>	OPPOSITION to MOTION for Preliminary Injunction <u>3</u> <i>Defendant's Responses to Courthouse News Service's Objections to the Declarations of J. Camacho, C. Kanatzar, R. Sherman, and K. Dalton-Koch Submitted by Defendant in Opposition to Courthouse News' Motion for Preliminary Injunction</i> filed by Defendant Michael Planet. (Reilley, Erica) (Entered: 11/14/2011)
11/17/2011	<u>36</u>	MINUTE ORDER IN CHAMBERS by Judge Manuel L. Real: re: MOTION for Preliminary Injunction <u>3</u> and MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> previously scheduled for November 21, 2011 at 10:00 A.M. is hereby continued to NOVEMBER 28, 2011 at 10:00 A.M. for hearing. IT IS SO ORDERED. (kti) (Entered: 11/17/2011)
11/28/2011	<u>37</u>	NOTICE OF LODGING filed re MOTION to Dismiss Case <i>and Abstain</i> <u>21</u> (Attachments: # <u>1</u> Proposed Order)(Reilley, Erica) (Entered: 11/28/2011)
11/28/2011	<u>39</u>	MINUTES OF motion for preliminary injunction <u>3</u> and motion to dismiss and to abstain <u>21</u> . Motion Hearing held before Judge Manuel L. Real: The Court DENIES plaintiffs motion for preliminary injunction, and GRANTS defendants motion to dismiss and to abstain, for reasons as stated on the record Defendant shall submit a proposed order. Court Reporter: Theresa Lanza. (kti) (Entered: 12/01/2011)
11/30/2011	<u>38</u>	ORDER GRANTING DEFENDANTS MOTION TO DISMISS AND ABSTAIN by Judge Manuel L. Real: <u>21</u> (MD JS-6. Case Terminated) (pj) (Entered: 11/30/2011)
12/15/2011	<u>40</u>	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Courthouse News Service. Appeal of Order on Motion to Dismiss Case <u>38</u> (Appeal fee FEE NOT PAID.) (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Matteo-Boehm, Rachel)

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		(Entered: 12/15/2011)
12/15/2011	<u>41</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 11-57187 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals <u>40</u> as to Plaintiff Courthouse News Service. (dmap) (Entered: 12/15/2011)
01/03/2012	<u>42</u>	NOTICE of Change of Attorney Information for attorney Rachel E Matteo-Boehm counsel for Plaintiff Courthouse News Service. Changing firm name to Bryan Cave LLP. Filed by plaintiff Courthouse News Service (Matteo-Boehm, Rachel) (Entered: 01/03/2012)
01/03/2012	<u>43</u>	APPEAL FEE PAID: re Notice of Appeal to 9th Circuit Court of Appeals <u>40</u> as to Plaintiff Courthouse News Service; Receipt Number: LA0033328 in the amount of \$455. (dmap) (Entered: 01/04/2012)
01/04/2012	<u>44</u>	TRANSCRIPT for proceedings held on Monday, 11-28-11; 10:59 AM. Court Reporter Theresa Lanza, phone number www.theresalanza.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 1/25/2012. Redacted Transcript Deadline set for 2/4/2012. Release of Transcript Restriction set for 4/3/2012. (Lanza, Theresa) (Entered: 01/04/2012)
01/04/2012	<u>45</u>	NOTICE OF FILING TRANSCRIPT filed for proceedings Monday, 11-28-11; 10:59 AM (Lanza, Theresa) (Entered: 01/04/2012)
01/09/2012	<u>46</u>	TRANSCRIPT DESIGNATION AND ORDERING FORM For Dates: 11/28/2011; Court Reporter: Theresa Lanza; Court of Appeals Case Number: 11-57187; Re: <u>40</u> (Matteo-Boehm, Rachel) (Entered: 01/09/2012)
01/09/2012	<u>47</u>	TRANSCRIPT ORDER for date of proceedings 11/28/2011 to 11/28/2011 re: Court of Appeal case number 11-57187, as to Plaintiff Courthouse News Service Court Reporter Theresa Lanza. Civil Appeal, Court will contact Leila Knox at leila.knox@bryancave.com with any questions regarding this order. Transcript portion requested: Other: 11/28/2011 Hearing on Motion to Dismiss/Preliminary Injunction. Civil case appeal. (Matteo-Boehm, Rachel) (Entered: 01/09/2012)

PACER Service Center			
Transaction Receipt			
05/18/2012 10:29:35			
PACER Login:	bc0092	Client Code:	51115-00220-F.Pahn 016409
Description:	Docket Report	Search Criteria:	2:11-cv-08083-R -MAN End date: 5/18/2012
Billable Pages:	5	Cost:	0.50

CERTIFICATE OF SERVICE

On May 29, 2012, I caused a copy to be served of the within document:

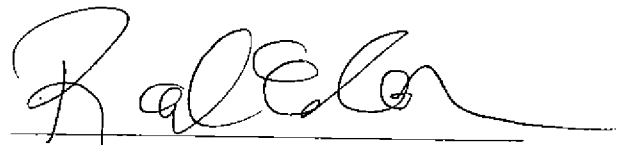
EXCERPT OF RECORD, VOLUMES I & II

by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States, and mailed to the address as set forth below:

Robert A. Naeve, Esq.
maeve@jonesday.com
Erica L. Reilley, Esq.
elreilley@jonesday.com
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612

Attorneys for Defendants/Respondents

I certify that I am a member of the Bar of this Court at whose direction the service was made. Executed this 29th day of May, 2012, at San Francisco, California.



Rachel Matteo-Boehm