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January 2, 2014

Molly Dwyer, Clerk
 United States Court of Appeals
 for the Ninth Circuit
 The James R Browning Courthouse
 95 7th Street
 San Francisco, CA 94119-3939

Re: *Courthouse News Service v. Michael Planet*, Case No. CV11-57187
 Argued & Submitted May 8, 2013
 Submission Vacated on Referral to Mediation May 13, 2013
 Returned from Mediation to Panel June 3, 2013
 Panel: Circuit Judges Noonan, Wardlaw & Murguia

Dear Ms. Dwyer:

In response to Appellee’s Rule 28(j) letter, we write to explain why the two decisions Appellee cites actually support Appellant Courthouse News Service.

Appellee’s view that *Sander v. State Bar*, 2013 Cal. LEXIS 10183, “confirms” access to judicial records involves a matter of state sovereignty governed by “state access law” – and subject to *Pullman* abstention – overlooks that *Sander* said exactly the opposite.

As *Sander* explained, “the common law right of public access” to non-judicial records – to which Appellee refers – differs from the “‘parallel, but distinct’ right of access based on the First Amendment” that supplanted the common law with respect to “‘judicial ... records.’” *Id.* at *14-15, 40-41 n.7 (citing *NBC Subsidiary (KNBC-TV) v. Superior Court*, 20 Cal. 4th 1178 (1999)). *Sander* did not involve court records, but rather held a public “interest in the activities of the State Bar in administering the bar exam and admissions” supported common law access to its records. *Id.* at *54-55.

As for *Beeman v. Anthem Prescription Mgt.*, 2013 Cal. LEXIS 10182, Appellee overlooks the passage undermining his point: “[M]erely because our provision is worded more expansively and has been interpreted as more protective than the First Amendment ... does not mean that it is broader than the First Amendment in all its applications.” *Id.* at *19. As *Sander* and *NBC Subsidiary* make clear, access to judicial records is an application where state law mirrors the First Amendment. And even where the state provision may be broader – such as the commercial speech in *Beeman* – California courts “look[] to First Amendment case law” to “inform [their] determination ... under article I.” *Id.* at *31, 48.

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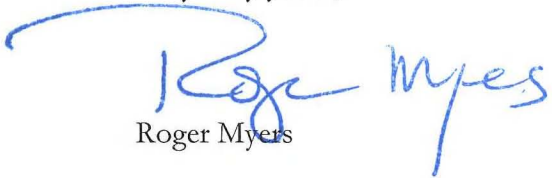
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Another decision issued after oral argument confirmed our point, in Reply 13 n.7, that the commercial speech doctrine does not apply to Courthouse News. In holding the “press and public’s right of access” to complaints recognized in *Courthouse News Service v. Jackson* “is distinguishable” from “commercial speech,” *Sullo & Bobbitt v. Abbott*, 2013 U.S. Dist. LEXIS 67387, *14-16 n.7 (N.D. Tex. May 13, 2013), rejected Appellee’s contrary reading of its prior decision. Answering Brief 20 n.4 & 32.

Very truly yours,

A handwritten signature in blue ink that reads "Roger Myers". The signature is written in a cursive style with a large, sweeping initial "R" that loops back over the first part of the name.

Roger Myers

cc: Robert A. Naeve, Esq.
Counsel for Appellee Michael Planet