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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:

We write on behalf of Appellant Courthouse News Service to respond to Appellee's citation of supplemental authority in his response to our Rule 28(j) letter concerning *Sprint Communications v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013).

In his response, Appellee cited *Vasquez v. Rackauckas*, 734 F.3d 1025 (9th Cir. 2013). It is curious Appellee cited this decision, since it rejected the assertion "that the district court should have abstained from hearing Plaintiffs' case under more general principles of comity, equity, and federalism, unmoored from any particular abstention doctrine heretofore endorsed by the Supreme Court or our court." *Id.* at 1036.

This is significant because it is exactly what Appellee is attempting to do here – i.e., unmoor his theory of "equitable abstention" from the *O'Shea* branch of *Younger* abstention to avoid the limitations on *Younger* abstention imposed in *Sprint*.

Although *Vasquez* did not decide whether appellate authority could ever be cobbled together to "state the contours of an abstention doctrine that a district court might follow," *id.* at 1037, *Sprint* made clear abstention is allowed only within the "'narrow limits'" the Supreme Court itself has "recognized." 187 L. Ed. 2d at 510, 513.

That is one reason why Appellee's citation to footnote 8 in *Vasquez* is unavailing. Even if it could be read to suggest abstention might be allowed if an injunction is sought against "state court administrators," *Sprint* subsequently explained abstention is barred where, as here, enjoining a state court clerk would not "interfer[e] with ... 'civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their ***judicial*** functions." 187 L. Ed. 2d at 513.

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Moreover, footnote 8 cannot be read as Appellee infers. Indeed, the case it cites – *E.T. v. Cantil-Sakauye*, 682 F.3d 1121 (9th Cir. 2011) – anticipated the limitations imposed in *Sprint* by distinguishing *LA. County Bar Ass'n v. Eu*, 979 F.2d 697 (9th Cir. 1992), on the ground that, unlike *Eu*, the injunction sought by *E.T.* could interfere with "a substantial number of individual cases." 682 F.3d at 1124.

Very truly yours,

Roger Myers

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