

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE MANUEL L. REAL, JUDGE PRESIDING

- - -

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Monday, November 28, 2011
10:59 A.M.

THERESA A. LANZA, RPR, CSR
Federal Official Court Reporter
3470 12th Street, Rm. 134
Riverside, California 92501
(951) 274-0844
WWW.THERESALANZA.COM

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

APPEARANCES:

On Behalf of Plaintiff:

HOLME ROBERTS & OWEN LLP
BY: Rachel Matteo-Boehm
BY: David Green
560 Mission Street
25th Floor
San Francisco, California 94105-2994
415-268-1996

On Behalf of Defendants:

JONES DAY
BY: Erica L. Reilley
BY: Robert A. Naeve
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071
213-489-3939

I N D E X

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

Page

MOTION..... 4

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

2 -oOo-

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

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

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

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

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

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

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

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

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

11:01

6 **THE COURT:** All right.

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

11:01

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

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

11:01

11:02

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

11:02

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

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

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

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

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

11:04

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

11:04

11:05

11:05

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

23 Counsel to prepare the order.

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

25 (Proceedings concluded.)

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

CERTIFICATE

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

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

Date

1	6:2 administrative [2] - 4:19; 7:9 agency [1] - 6:1 agree [1] - 5:11 al [1] - 4:4 allocate [1] - 6:15 alternative [1] - 7:2 alternatives [1] - 5:4 Amendment [3] - 5:5, 8, 12 Angeles [1] - 4:1 appearing [1] - 4:5 appropriate [3] - 4:24; 5:1, 15 appropriated [1] - 6:13 area [3] - 7:1, 8, 11 articulated [2] - 5:17; 6:17 associated [1] - 4:20 Authority [1] - 6:22 available [2] - 6:4; 7:2 avoid [1] - 7:17	Clerk's [1] - 6:3 CNS [3] - 5:9; 6:2; 7:8 Code [1] - 7:12 Commission [1] - 6:18 Company [1] - 6:18 complains [1] - 4:15 complaint [2] - 6:25; 7:8 complaints [3] - 4:17; 5:3; 6:4 completed [1] - 4:19 concerns [1] - 5:20 concluded [1] - 7:25 concludes [1] - 5:15 considerations [1] - 5:25 considered [1] - 5:4 constitutional [2] - 6:21; 7:18 constitutionality [1] - 6:6 context [1] - 4:23 controversy [1] - 7:4 correct [1] - 4:16 counsel [2] - 4:10; 7:23 counsels [1] - 5:18 County [1] - 7:5 Court [6] - 4:22; 5:15; 6:10; 7:9, 18 court [5] - 5:2; 6:1, 10, 12; 7:13 court's [1] - 6:9 Court's [1] - 6:3 Courthouse [4] - 4:4, 6-7, 15 courtroom [1] - 4:23 courts [6] - 4:25; 5:18; 6:19, 24; 7:2, 16 CV-11-8083 [1] - 4:3	delays [1] - 4:17 denied [1] - 7:22 determination [2] - 7:3, 19 dictate [1] - 6:11 dictating [1] - 5:22 difficult [1] - 6:20 direct [1] - 7:9 discretion [1] - 6:25 dismiss [1] - 4:14 dismissed [1] - 5:13 disruption [1] - 6:8 doctrine [4] - 5:16; 6:17 documents [2] - 4:10, 20	granted [1] - 7:20 GREEN [1] - 4:7 Green [1] - 4:7 ground [2] - 7:3
2	2 [1] - 7:2 2006 [1] - 7:6 2009 [1] - 5:20 2011 [2] - 4:1; 5:24 229 [1] - 6:22 2579 [1] - 5:20 28 [1] - 4:1			H
3	3 [1] - 7:4 312 [1] - 6:18			Hawaii [1] - 6:22 heightened [1] - 5:21 hesitates [1] - 6:11 Horne [1] - 5:20 Housing [1] - 6:22
4	414 [1] - 5:17 447 [1] - 7:6 467 [1] - 6:22 488 [1] - 5:18 496 [1] - 6:18	B		I
6	657 [1] - 5:23 673 [1] - 7:6 68150(1) [1] - 7:12	bars [1] - 5:12 behalf [2] - 4:6, 8 better [1] - 6:15 BOEHM [2] - 4:5, 12 Boehm [1] - 4:5 brief [1] - 4:12 budget [2] - 5:22; 6:11	context [1] - 4:23 controversy [1] - 7:4 correct [1] - 4:16 counsel [2] - 4:10; 7:23 counsels [1] - 5:18 County [1] - 7:5 Court [6] - 4:22; 5:15; 6:10; 7:9, 18 court [5] - 5:2; 6:1, 10, 12; 7:13 court's [1] - 6:9 Court's [1] - 6:3 Courthouse [4] - 4:4, 6-7, 15 courtroom [1] - 4:23 courts [6] - 4:25; 5:18; 6:19, 24; 7:2, 16 CV-11-8083 [1] - 4:3	important [1] - 6:14 indeed [1] - 5:3 injunction [1] - 7:22 institutions [1] - 5:19 interfere [1] - 6:2 issues [1] - 7:19 item [1] - 4:3
9	902 [1] - 5:23	C		J
A	A.M [1] - 4:1 absolute [1] - 5:25 abstain [3] - 6:19, 25; 7:20 abstention [2] - 5:15 access [9] - 4:16-18; 5:4, 8-9; 7:15, 17 accessible [1] - 7:14 action [3] - 5:12 add [1] - 4:10 administration [1] -	Cal [1] - 7:12 calendar [1] - 4:3 California [2] - 4:1; 7:16 Cantil [1] - 5:23 Cantil-Sakaue [1] - 5:23 capable [1] - 7:3 case [1] - 4:22 cases [1] - 5:19 caused [1] - 4:18 causes [1] - 5:14 certain [1] - 7:21 cetera [1] - 4:4 Circuit [4] - 5:24; 6:24; 7:6 circumstances [1] - 7:21 CLERK [1] - 4:3	David [1] - 4:7 decided [1] - 6:22 deciding [1] - 7:18 decision [3] - 6:15, 19; 7:5 decline [1] - 5:18 decree [1] - 5:21 defendant [2] - 4:15; 5:11 defendant's [3] - 4:13, 18; 7:20 defendants [1] - 4:9 defined [2] - 7:15, 17 delay [1] - 6:7	judicial [1] - 6:6
				L
				law [1] - 6:20 lead [1] - 6:9 left [1] - 6:15 legislature [1] - 7:16 limited [2] - 4:23; 6:12 Littleton [1] - 5:17 local [3] - 5:22; 6:11 Look [1] - 4:22 Los [1] - 4:1
				M
				MATTEO [2] - 4:5, 12 Matteo [1] - 4:5 MATTEO-BOEHM [2] - 4:5, 12 Matteo-Boehm [1] - 4:5 mean [1] - 7:17 members [2] - 5:1; 7:14 Michael [1] - 4:4 Midkiff [1] - 6:22 Monday [1] - 4:1 money [1] - 6:13
				E
				E.T [1] - 5:23 effect [2] - 5:21; 6:13 either [1] - 7:15 elected [1] - 6:16 Eleventh [1] - 5:12 end [1] - 4:17 enter [1] - 7:2 equitable [2] - 5:19, 25 Erica [1] - 4:8 et [2] - 4:4 evaluate [1] - 6:6 exercise [1] - 5:18 expressed [1] - 5:2
				F
				F.3d [2] - 5:23; 7:6 factors [1] - 7:7 failure [1] - 6:5 federal [8] - 5:18, 21; 6:12, 19, 21, 24; 7:1, 18 federalism [1] - 5:20 filed [5] - 4:11, 13, 17; 5:3; 6:5 First [2] - 5:5, 8 first [4] - 5:14, 17; 6:17; 7:7 Flores [1] - 5:20 funds [2] - 6:12, 14
				G
				government [1] - 7:12 governments [1] - 6:12 grant [1] - 5:8

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