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

18 COURTHOUSE NEWS SERVICE,

19 Plaintiff,

20 v.

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

25 Defendant.

Case No. 2:11-cv-08083-R-MAN

**[PROPOSED] ORDER
GRANTING DEFENDANT'S
MOTION TO DISMISS
AMENDED COMPLAINT**

Date: August 4, 2014

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

26 This is a civil action between Plaintiff Courthouse News Service ("CNS")
27 against defendant Michael Planet in his official capacity as the Court Executive
28 Officer of the Superior Court of California, County of Ventura ("VSC"). The
Amended Complaint contains a single claim for relief for injunctive and declaratory
relief arising from an alleged violation of the First Amendment to the United States

1 Constitution. The Amended Complaint asks this Court to find that CNS has a
2 constitutional right to review unlimited civil complaints on the same day they are
3 received by VSC’s clerks, even before these complaints are processed, filed, and
4 entered into the court’s official records – a so-called right of “same-day access.”

5 On August 4, 2014, this Court heard and considered VSC’s motion to dismiss
6 the Amended Complaint. The question presented by this case is not whether a
7 qualified First Amendment right of access could ever apply to civil complaints.
8 Rather, the question presented is whether the First Amendment enshrines a right of
9 access to civil complaints on the same day they are received by a court. In other
10 words, “the issue is not whether the public will gain access, but when” the qualified
11 First Amendment right of access might apply. *See United States v. Inzunza*, 303 F.
12 Supp. 2d 1041, 1048 (S.D. Cal. 2004). This is “an important question of first
13 impression” about which the Ninth Circuit took “no position” when it remanded
14 this case to this Court for further proceedings. *Courthouse News Service v. Planet*,
15 --- F.3d ----, 2014 WL 1345504, at *10, *14 (9th Cir. Apr. 7, 2014).

16 Having considered all the papers submitted, oral argument, and the Court’s
17 file in this matter, and good cause having been shown, the Court hereby GRANTS
18 VSC’s Motion to Dismiss for the following reasons.

19 (1) Neither the Supreme Court nor the Ninth Circuit has ever ruled on the
20 scope of the First Amendment right of access in the context of records in civil
21 cases. *Nixon v. Warner Comm’cns, Inc.*, 435 U.S. 589, 608-10 (1978); *Perry v.*
22 *Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012).

23 (2) Most circuit courts, including the Ninth Circuit, rely upon the
24 “experience and logic” test enunciated in *Press-Enterprise Co. v. Superior Court*,
25 464 U.S. 501 (1984) to determine the extent of the right of access to judicial
26 documents in criminal proceedings. *See, e.g., United States v. Higuera-Guerrero*,
27 518 F.3d 1022, 1026 (9th Cir. 2008); *Oregonian Publ’g Co. v. United States Dist.*
28

1 *Court*, 920 F.2d 1462, 1465 (9th Cir. 1990). Federal courts recognize that “the
2 First Amendment guarantee of access has been extended only to particular judicial
3 records and documents.” *Stone v. University of Maryland Medical System Corp.*,
4 855 F.2d 178, 180 (4th Cir. 1988)

5 (3) This Court finds that the qualified First Amendment right of access
6 extends only to certain “judicial records”; that “the mere filing of a paper or
7 document with the court is insufficient to render that paper a judicial document
8 subject to the right of public access,” *United States v. Amodeo*, 44 F.3d 141, 145
9 (2d Cir. 1995); and that complaints become “judicial records” only when they
10 “come before the court in the course of an adjudicatory proceeding” and are
11 “relevant to that adjudication,” *In re Providence Journal Co.*, 293 F.3d 1, 9 (1st Cir.
12 2002). Hence, this Court finds as a matter of law that unlimited civil complaints do
13 not qualify as “judicial documents” on the day VSC receives them for filing.

14 (4) This Court further finds that there is no “experience” of same-day
15 access under the first prong of the *Press-Enterprise* test. For more than a century,
16 federal and state courts have recognized that there is no same-day right of access to
17 complaints filed in civil cases. *E.g.*, *In re Reporters Comm. for Freedom of Press*,
18 773 F.2d 1325 (D.C. Cir. 1985); *Schmedding v. May*, 85 Mich. 1 (1891); *Cowley v.*
19 *Pulsifer*, 137 Mass. 392 (1884).

20 (5) This Court also finds that there is no “logic” to a right of same-day
21 access under the second prong of the *Press-Enterprise* test. “Logic” supports a
22 First Amendment right of access when public access would shed light upon the
23 administration of justice; that salutary goal, however, has “no application whatever
24 to the contents of a preliminary written statement of a claim or charge ... whose
25 form and contents depend wholly on the will of a private individual.” *Cowley*, 137
26 Mass. at 394; *see also NBC Subsidiary (KNBC-TV) v. Superior Court*, 20 Cal.4th
27 1178, 1208 n.25 (1999).

28

1 (6) Assuming *arguendo* that the qualified First Amendment right of access
2 attached to new civil unlimited complaints on the moment they are received by
3 VSC for filing, the Amended Complaint must still be dismissed because it fails to
4 allege a violation of that qualified right for two related reasons. First, the alleged
5 delay in access to newly unlimited civil complaints “is not the kind of classic prior
6 restraint that requires exacting First Amendment scrutiny.” *Seattle Times Co. v.*
7 *Rhinehart*, 467 U.S. 20, 33 (1984). “[L]imitations on the right of access that
8 resemble ‘time, place, and manner’ restrictions on protected speech [are] not
9 subjected to such strict scrutiny.” *Globe Newspaper Co. v. Superior Court*, 457
10 U.S. 596, 607 n.17 (1982). Hence, the “compelling or overriding interest” standard
11 asserted in the Amended Complaint does not apply. *See Planet*, 2014 WL 1345504,
12 at *44 n.9.

13 (7) Second, and again assuming *arguendo* that the qualified First
14 Amendment right of access attached to new civil unlimited complaints on the
15 moment they are received by VSC for filing, the Amended Complaint does not
16 allege a violation of that qualified First Amendment right. VSC’s alleged policy, of
17 providing public access to unlimited civil complaints after they have been received,
18 processed and placed in official court files, reasonably balances the interests of
19 CNS with those of litigants and court staff, safeguards unprocessed documents from
20 theft and damage, and protects the privacy interests of third parties. *E.g., Bruce v.*
21 *Gregory*, 65 Cal.2d 666, 676 (1967).

22 IT IS SO ORDERED this ____ day of August, 2014.

23
24
25 _____
United States District Court Judge