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16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 Courthouse News Service,
21 Plaintiff,
22 vs.
23 Michael Planet, in his official capacity as
24 Court Executive Officer/Clerk of the
25 Ventura County Superior Court,
26 Defendant.

Case No. CV11-08083 R (MANx)

**REQUEST FOR JUDICIAL
NOTICE OF PLAINTIFF
COURTHOUSE NEWS SERVICE
IN SUPPORT OF OPPOSITION TO
MOTION TO DISMISS OF
DEFENDANT MICHAEL PLANET**

Date: August 18, 2014
Time: 10 a.m.
Judge: Hon. Manuel L. Real

1 In accordance with Federal Rule of Evidence 201, Plaintiff Courthouse News
2 Service hereby requests that the Court take judicial notice of the following facts,
3 documents and authorities in support of its Opposition to the Motion to Dismiss of
4 Defendant Michael Planet:

5 1. The following statutes, court rules and state constitutional provisions
6 requiring public access to court records, including complaints and other similar
7 case-initiating documents.¹

8 a. Alabama Code § 36-12-40, which provides, “Every citizen has a
9 right to inspect and take a copy of any public writing of this state, except as
10 otherwise expressly provided by statute.” *See Holland v. Eads*, 614 So. 2d 1012,
11 1015 (Ala. 1993) (interpreting “public writing” to include judicial records). A true
12 and correct copy of this statute is attached as Exhibit 1.

13 b. Alaska Administrative Rule 37.5, which provides for public
14 access to court records in a manner that, among other things, “maximizes
15 accessibility to court records” and defines “court record” to include “any document
16 ... collected, received, or maintained by the court system in connection with a
17 particular case.” Admin. R. 37.5(a)(1)(A) & (c)(1) & (2). A true and correct copy
18 of this administrative rule is attached as Exhibit 2.

19 c. Arizona Supreme Court Rule 123, which governs access to
20 judicial records and provides, in subsection (c)(1), “Historically, this state has
21 always favored open government and an informed citizenry. In the tradition, the
22 records in all courts and administrative offices of the Judicial Department of the
23 State of Arizona are presumed to be open to any member of the public for inspection
24 or to obtain copies at all times during regular office hours at the office having
25 custody of the records.” As further provided in subsection (b)(16)(B) of the rule,
26 “case records” are defined to include “any record that is collected, received, or

27 _____
28 ¹ For example, in some jurisdictions, such as Texas’ state courts, the case-initiating document is called a “petition.” *See Texas Rule of Civil Procedure 45.*

1 maintained by a clerk of court in connection with a judicial proceeding,” and
2 subsection (d) provides that “[a]ll case records are open to the public except as may
3 be closed by law, or as provided in this rule.” Nothing in the rule provides that
4 complaints are not open to the public as a general matter. A true and correct copy of
5 this rule is attached as Exhibit 3.

6 d. Arkansas Supreme Court Administrative Order 19, which
7 governs public access to court records and provides, in Section IX(A), that court
8 records “will be available for public access in the courthouse during regular business
9 hours established by the court.” For purposes of the Order, a “court record” is
10 defined in Section III(A)(1) to include “any document ... collected, received, or
11 maintained by a court, court agency or clerk of court in connection with a judicial
12 proceeding.” A true and correct copy of this administrative order is attached as
13 Exhibit 4.

14 e. California Rule of Court 2.550, which provides in subsection (c),
15 “Unless confidentiality is required by law, court records are presumed to be open.”
16 Under subsection (b)(1) of the rule, “record” is defined as “all or a portion of any
17 document, paper, exhibit, transcript, or other thing filed or lodged with the court,”
18 and “lodged” is defined as “a record that is temporarily placed or deposited with the
19 court, but not filed.” A true and correct copy of this court rule is attached as Exhibit
20 5.

21 f. Colorado Chief Justice Directive 05-01 and the resulting Public
22 Access to Court Records policy, which defines a “court record” to include, inter alia,
23 “any document ... collected, received, or maintained by a court or clerk of court in
24 connection with a judicial proceeding” and provides that with certain enumerated
25 exceptions, “[i]nformation in the court record is accessible to the public.” Public
26 Access to Court Records, §§ 3.10, 4.10(a)(1). True and correct copies of the
27 directive and policy are attached as Exhibit 6.

28

1 g. Connecticut Civil Superior Court Rule § 11-20A, which provides
2 in subsection (a), “Except as otherwise provided by law, there shall be a
3 presumption that documents filed with the court shall be available to the public.” A
4 true and correct copy of this rule is attached as Exhibit 7.

5 h. Florida Constitution, art. I, § 24, which provides that “every
6 person” has a constitutional right of access to public records, “specifically
7 includ[ing] the legislative, executive, and judicial branches of government ...”. A
8 true and correct copy of this constitutional provision is attached as Exhibit 8.

9 i. Florida Rule of Judicial Administration 2.420, which governs
10 public access to judicial branch records and provides, in subsection (a), that the
11 “public shall have access to all records of the judicial branch of government,”
12 except as provided in certain enumerated exceptions. A true and correct copy of this
13 rule is attached as Exhibit 9.

14 j. Georgia Uniform Superior Court Rule 21, which provides that
15 “[a]ll court records are public and are to be available for public inspection unless
16 public access is limited by law or by the procedure set forth below,” and Rules 21.1
17 through 21.5, which set forth the narrow circumstances under which a party may
18 move to limit access to a particular court record. True and correct copies of these
19 rules are attached as Exhibit 10.

20 k. Idaho Court Administrative Rule 32, which provides in
21 subsection (d) that “pleadings” are among the court records “subject to examination,
22 inspection and copying.” A true and correct copy of this rule is attached as Exhibit
23 11.

24 l. Illinois Compiled Statute 705 ILCS 105/16, which provides, in
25 subsection (6), that “[a]ll records, dockets and books required by law to be kept by
26 [clerks of court] shall be deemed public records, and shall at all times be open to
27 inspection without fee or reward, and all persons shall have free access for
28 inspection and examination to such records, dockets and books, and also to all

1 papers on file in different clerks’ offices and shall have the right to take memoranda
2 and abstracts thereto.” A true and correct copy of this statute is attached as Exhibit
3 12.

4 m. Indiana Administrative Rule 9, which, per subsection (A)(1) &
5 (2), “governs public access to ... court records” and is intended to “[p]romote
6 accessibility to court records.” “Court records” are further defined in subsection
7 (C)(1) & (2) to include “any document ... collected, received, or maintained by a
8 court, court agency or clerk of court in connection with a particular case.” A true
9 and correct copy of this rule is attached as Exhibit 13.

10 n. Louisiana Constitution, art. 12, § 3, which provides that “[n]o
11 person shall be denied the right to observe the deliberations of public bodies and
12 examine public documents, except in cases established by law.” A true and correct
13 copy of this constitutional provision is attached as Exhibit 14.

14 o. Louisiana Code of Civil Procedure Article 251, which provides
15 in subsection (A) that the clerk of the court “shall permit any person to examine,
16 copy, photograph, or make a memorandum of any of these [court] records at any
17 time during which the clerk’s office is required by law to be open.” A true and
18 correct copy of this statute is attached as Exhibit 15.

19 p. Michigan Court Rule 8.119, which provides in subsection (H)(1)
20 that “[u]nless access to a case record or information contained in a record ... is
21 restricted by statute, court rule, or an order entered pursuant to subrule (I), any
22 person may inspect that record and may obtain copies ...”. Subsection (A) states the
23 rule “applies to all records in every trial court,” and “records” is defined in
24 subsection (D)(1)(d) to include “all pleadings ... filed in the action.” A true and
25 correct copy of this rule is attached as Exhibit 16.

26 q. Minnesota Rules of Public Access to Records of the Judicial
27 Branch, which define “case records” to include “all records of a particular case or
28 controversy” and further provide that “[a]ll case records are accessible to the public”

1 except for records falling into certain enumerated categories, none of which include
2 civil complaints. Minnesota Rules of Public Access to Records of the Judicial
3 Branch, Rules 3(5) & 4. A true and correct copy of these rules are attached as
4 Exhibit 17.

5 r. Missouri Supreme Court Operating Rule 2.02, which provides
6 that the “[r]ecords of all courts are presumed to be open to any member of the public
7 for purposes of inspection or copying during the regular business hours of the court
8 having custody of the records,” and Rule 2.03, which, in subdivision (c), defines
9 “case records” to include “all records relating to a specific case or controversy.”
10 True and correct copies of these rules are attached as Exhibit 18.

11 s. Montana Constitution, art. 2, § 9, which provides that “[n]o
12 person shall be deprived of the right to examine documents or to observe the
13 deliberations of all public bodies or agencies of state government and its
14 subdivisions, except in cases in which the demand of individual privacy clearly
15 exceeds the merits of public disclosure.” A true and correct copy of this
16 constitutional provision is attached as Exhibit 19.

17 t. Montana Code Ann. § 2-6-102, which provides in subsection (1)
18 that “[e]very citizen has a right to inspect and take a copy of any public writings of
19 this state,” and § 2-6-101, which provides in subsection (2)(a) that “public writings”
20 covered by the code include “judicial” records. *See Cox v. Lee Enters.*, 723 P.2d
21 238, 240 (Mont. 1986) (finding a complaint is a public document covered by these
22 provisions). True and correct copies of this statutes are attached as Exhibit 20.

23 u. Nebraska Rule of Court § 1-804, which provides, “[i]nformation
24 in a court record is accessible to the public unless prohibited by this policy or
25 applicable laws.” A true and correct copy of this statute is attached as Exhibit 21.

26 v. Nevada State Supreme Court Rules, Part 7 (Rules Governing
27 Sealing and Redacting Court Records), Rule 1, which governs the sealing of courts
28 records and provides, in subsection (3), “All court records in civil actions are

1 available to the public, except as otherwise provided in these rules or by statute,”
2 and Rule 2, which defines “court record” in subsection (2)(a) to include “[a]ny
3 document, information, exhibit, or other thing that is maintained by a court in
4 connection with a judicial proceeding.” True and correct copies of these rules are
5 attached as Exhibit 22.

6 w. New Hampshire Constitution, pt. 1, art. 8, which provides that
7 “Government ... should be open, accessible, accountable and responsive. To that
8 end, the public’s right of access to governmental proceedings and records shall not
9 be unreasonably restricted.” *See Associated Press v. State*, 888 A.2d 1236, 1245
10 (N.H. 2005) (recognizing that this provision, together with a provision providing for
11 a free press, creates a public right of access to court records). A true and correct
12 copy of this constitutional provision is attached as Exhibit 23.

13 x. New Jersey Court Rule 1:38-1, which provides, “Court records
14 and administrative records as defined by R. 1:38-2 and R. 1:38-4 respectively and
15 within the custody and control of the judiciary are open for public inspection and
16 copying except as otherwise provided in this rule. Exceptions enumerated in this
17 rule shall be narrowly construed in order to implement the policy of open access to
18 records of the judiciary,” and New Jersey Court Rule 1:38-2, which defines “court
19 records” to include, among other documents, “pleadings.” True and correct copies
20 of these court rules are attached as Exhibit 24.

21 y. New Mexico State Court Rules 1-079, 2-112, 3-112, 5-123, 6-
22 114, 7-113, 8-112, 10-166 and 12-314, which, together, provide for public access to
23 court records of the various state courts in New Mexico, including the magistrate,
24 metropolitan, municipal, district, appellate and children’s courts. Each rule provides
25 that “[c]ourt records are subject to public access unless sealed by order of the court
26 or otherwise protected from disclosure under the provisions of this rule.” “Court
27 records” are defined in each rule to mean any “document, paper, ... or other material
28

1 filed or lodged with the court.” True and correct copies of these court rules are
2 attached as Exhibit 25.

3 z. New York Court Rule § 216.1, which creates a presumption of
4 openness to court records by providing, in subsection (a), that “a court shall not
5 enter an order in any action or proceeding sealing the court records, whether in
6 whole or in part, except upon a written finding of good cause, which shall specify
7 the grounds thereof,” and further providing, in subsection (b), that “‘court records’
8 shall include all documents and records of any nature filed with the clerk in
9 connection with the action.” A true and correct copy of this rule is attached as
10 Exhibit 26.

11 aa. North Carolina General Statute § 7A-109, which provides in
12 subsection (a) that records maintained by the clerk “shall be open to the inspection
13 of the public during regular office hours, and shall include civil actions, special
14 proceedings, estates, criminal actions, juvenile actions, minutes of the court,
15 judgments, liens, lis pendens, and all other records required by law to be
16 maintained.” A true and correct copy of this statute is attached as Exhibit 27.

17 bb. Ohio Rules of Superintendence Rule 45, which provides, in
18 subsection (a), “Court records are presumed open to public access.” A true and
19 correct copy of this rule is attached as Exhibit 28.

20 cc. Oklahoma Statute, Title 51 § 24A.5, which provides, “All
21 records of public bodies and public officials shall be open to any person for
22 inspection, copying, or mechanical reproduction during regular business hours,” and
23 § 24A.3, which, in subsection (2), specifies that “[p]ublic bod[ies]” includes
24 “court[s].” True and correct copies of these statutes are attached as Exhibit 29.

25 dd. Oregon Revised Statute § 192.420, which provides, “Every
26 person has a right to inspect any public record of a public body in this state,” and
27 § 192.410, which, in subsection (4)(a), specifies that “public record” includes “court
28 records.” True and correct copies of these statutes are attached as Exhibit 30.

1 ee. Rhode Island General Law § 38-2-3, which requires, in
2 subsection (a), that “all records maintained or kept on file by any public body,
3 whether or not those records are required by any law or by any rule or regulation,
4 shall be public records and every person or entity shall have the right to inspect
5 and/or copy those records at such reasonable time as may be determined by the
6 custodian thereof,” and Rhode Island General Law § 38-2-2(1), which defines
7 “agency” or “public body” to “mean[] any executive, legislative, judicial,
8 regulatory, or administrative body of the state, or any political subdivision thereof
9 ...”. True and correct copies of these statutes are attached as Exhibit 31.

10 ff. South Dakota Codified Laws §§ 15-15A-1 and 15-15A-2, which
11 together provide for public access to court records in order to “[m]aximize[]
12 accessibility to court records.” True and correct copies of these laws are attached as
13 Exhibit 32.

14 gg. Texas Rule of Civil Procedure 76a, which provides in subsection
15 (1) that “court records ... are presumed to be open to the general public and may be
16 sealed” only under certain circumstances, and further defines “court records” to
17 include “all documents of any nature filed in connection with any matter before any
18 civil court,” with certain enumerated exceptions that do not include complaints. A
19 true and correct copy of this rule is attached as Exhibit 33.

20 hh. Vermont Rules for Public Access to Court Records, which
21 provide, in § 4, “[e]xcept as provided in these rules, all case and administrative
22 records of the Judicial Branch shall be open to any member of the public for
23 inspection or to obtain cases,” and define “case record” in § 3(b) to include “any
24 judicial branch record pertaining to a particular case or controversy.” True and
25 correct copies of these rules are attached as Exhibit 34.

26 ii. Virginia Code § 17.1-208, which provides, “Except as otherwise
27 provided by law, any records that are maintained by the clerk of the circuit court
28 shall be open to inspection by any person and the clerk shall, when requested,

1 furnish copies thereof subject to any fee charged by the clerk pursuant to § 17.1-275,
2 except in cases in which it is otherwise specially provided by statute.” A true and
3 correct copy of this statute is attached as Exhibit 35.

4 jj. Washington Revised Code, General Rule 31, which provides in
5 subsection (d)(1) that the “public shall have access to all court records, except as
6 restricted by federal law, state law, court rule, court order, or case law,” and further
7 defines “court record” in subsection (c)(4) to include “[a]ny document ... or other
8 thing that is maintained by a court in connection with a judicial proceeding.” A true
9 and correct copy of this rule is attached as Exhibit 36.

10 kk. West Virginia Code § 51-4-2, which states, “The records and
11 papers of every court shall be open to the inspection of any person, and the clerk
12 shall, when required, furnish copies thereof, except in cases where it is otherwise
13 specially provided.” A true and correct copy of this statute is attached as Exhibit 37.

14 ll. Wisconsin Statute 19.35, which provides for access to public
15 records, which include, per Wisconsin Statute 19.32(1), the records of “any court of
16 law.” True and correct copies of these statutes are attached as Exhibit 38.

17 mm. Wyoming Rules Governing Access to Court Records, which
18 provide, in Rule 3, “Court records are presumed to be open to public access during
19 the regular business hours of the court, except as provided herein or otherwise
20 provided by law,” and define “court records” to include “case records,” which are
21 defined, in Rule 2(c), to include “any document or information collected, received,
22 or maintained by a custodian in connection with a specific case or judicial
23 proceeding.” True and correct copies of these rules are attached as Exhibit 39.

24 2. A copy of “Notice of Public Access to Scanned Civil Unlimited
25 Complaints” (“Notice”), available on the Ventura County Superior Court’s website
26 at <http://www.ventura.courts.ca.gov/public-notice.html>. A true and correct copy of
27 this notice is attached as Exhibit 40.

28

1 3. The Declaration of Cheryl Kanatzar in Support of Defendant’s
2 Opposition to Plaintiff’s Motion for Preliminary Injunction, filed on October 31,
3 2011 in this action (the “Kanatzar Declaration”) (Dkt. #25-2). A true and correct
4 copy of this declaration is attached as Exhibit 41.

5 Federal Rule of Evidence 201(b) allows this Court to take judicial notice of
6 any fact “not subject to reasonable dispute because it” is either (1) “generally known
7 within the trial court’s territorial jurisdiction” or (2) “can be accurately and readily
8 determined from sources whose accuracy cannot reasonably be questioned.”

9 The Court may take judicial notice of the statutes, court rules and directives,
10 and constitutional provisions listed in Paragraph 1 and attached as Exhibits 1
11 through 39 since “[c]ourts routinely take judicial notice of state or federal statutes
12 and regulations.” *Martinez v. Welk Group, Inc.*, 2011 U.S. Dist. LEXIS 2564, *7-8
13 (S.D. Cal. Jan. 11, 2011); *Wilson v. Tilton*, 2011 U.S. Dist. LEXIS 139729, *5 n.3
14 (C.D. Cal. Oct. 24, 2011) (citing *Martinez* and taking judicial notice of a provision
15 contained in the California Code of Regulations).

16 “Judicial notice may be taken of documents available on government
17 websites,” *Jarvis v. JP Morgan Chase Bank, N.A.*, 2010 U.S. Dist. LEXIS 84958,
18 *3 (C.D. Cal. July 23, 2010), and therefore the Court can take notice of the Ventura
19 County Superior Court’s Notice attached as Exhibit 40, which is posted to its
20 publicly available website. This is because such documents, and the information
21 contained therein, are “capable of accurate and ready determination by resort to
22 sources whose accuracy cannot reasonably be questioned.” *Marley v. JP Morgan*
23 *Chase Bank*, 2013 U.S. Dist. LEXIS 122171, *5 (C.D. Cal. Aug. 27, 2013) (quoting
24 Fed. R. Evid. 201(b)) (internal quotations omitted). “Courts regularly take judicial
25 notice of government agency websites and the information contained on them,
26 treating official policies and records posted on the websites as public records.”
27 *Daghlian v. Devry Univ., Inc.*, 2007 U.S. Dist. LEXIS 97797, *9-11 n.9 (C.D. Cal.
28 Dec. 10, 2007); *see also Global Acquisitions Network v. Bank of Am. Corp.*, 2013

1 U.S. Dist. LEXIS 22351, *10 (C.D. Cal. Feb. 19, 2013) (“This information, from
2 two different government websites, ‘can be accurately and readily determined from
3 sources whose accuracy cannot reasonably be questioned’ and therefore ‘is not
4 subject to reasonable dispute.’”); *Sturm v. Davlyn Investments, Inc.*, 2013 U.S. Dist.
5 LEXIS 188027, *5 n.5 (C.D. Cal. Sept. 30, 2013) (taking judicial notice of fact
6 taken from public record on government website).

7 It is also well-established that courts may take judicial notice of documents on
8 file in federal or state courts. *Harris v. County of Orange*, 682 F.3d 1126, 1131-32
9 (9th Cir. 2012). In ruling on a motion to dismiss or for judgment on the pleadings,
10 the Court may take judicial notice of and consider the Kanatzar Declaration attached
11 as Exhibit 41 because it was previously submitted by the opposing party and is in
12 the Court’s own files of the case. *Id.*; *see also Wilson*, 2011 U.S. Dist. LEXIS
13 139729, *5 n.3 (taking judicial notice of the fact of the filing of the complaint and
14 first amended complaint and the statements contained therein).

15 Dated: July 21, 2014
16 BRYAN CAVE LLP
17 By: /s/ Rachel E. Matteo-Boehm
18 Rachel E. Matteo-Boehm
19 Attorneys for Plaintiff
20 COURTHOUSE NEWS SERVICE
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