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COURTHOUSE NEWS SERVICE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Courthouse News Service,

Plaintiff,

vs.

Michael Planet, in his official capacity as Court Executive Officer/Clerk of the Ventura County Superior Court,

Defendant.

Case No. CV11-08083 R (MANx)

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

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

The June 24, 2014 Motion to Dismiss Amended Complaint of Defendant Michael Planet, in his official capacity as Court Executive Officer/Clerk of the

Ventura County Superior Court ("Defendant), came on for hearing on August 18, 2014. Having considered the papers submitted by the parties, the arguments of counsel, and good cause appearing, the Court hereby ORDERS as follows:

(1) Defendant's Motion to Dismiss Amended Complaint is DENIED. The Court finds that Plaintiff Courthouse News Service has stated a plausible First Amendment claim for relief.

(2) As a preliminary matter, the Ninth Circuit has recognized that Plaintiff has stated a plausible claim for relief: "[T]here is no question that CNS itself has alleged a cognizable injury caused by Ventura County Superior Court's denial of timely access to newly filed complaints." *Courthouse News v. Planet*, 750 F.3d 776, 788 (9th Cir. 2014). As such, the doctrines of "law of the case" and the "rule of mandate" bar Defendant's argument that unlimited civil complaints filed in the Ventura County Superior Court are not "judicial records" to which a right of access attaches under the First Amendment "until they are considered by the court and made the subject of some judicial decision." Def.'s MPA 10-11.

(3) Even if the law of the case and the rule of mandate did not bar Defendant's motion, the Court finds that Defendant has failed to show, as a matter of law, that Plaintiff has not stated a plausible claim for relief.

(4) Moreover, the Court further finds that as a matter of law, there is a presumptive First Amendment right of access to newly filed civil complaints, irrespective of whether the court has taken action in the case or the defendant has been served. The First Amendment right of access to newly-filed complaints is confirmed by application of the "experience" and "logic" analysis. The two prongs of this analysis are not "separate inquiries," *In re Copley Press*, 518 F.3d 1022, 1026 n.2 (9th Cir. 2008), but rather are "complementary considerations." *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986). The tradition need only be long enough so that the "tradition of accessibility implies the favorable judgment of experience." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605 (1982) (Brennan, J., concurring). In this case, the allegations in Plaintiff's Amended

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Complaint and the authorities provided by Plaintiff in its opposition to the motion to dismiss and accompanying request for judicial notice establish a strong national tradition of open access to civil court complaints from the time of filing. There is also a well-established logic in access to newly-filed complaints, as demonstrated by the authorities cited in Plaintiff's opposition. The judicial system works best if complaints are open to public scrutiny from the time of filing.

(5) Where the First Amendment right of access attaches, the burden is on the party seeking to restrict access – in this case, Defendant – to overcome that presumptive right by demonstrating an "'overriding [governmental] interest based on findings that closure is essential to preserve higher values.'" *Courthouse News*, 750 F.3d at 793 n.9 (quoting *Leigh v. Salazar*, 677 F.3d 892, 898 (9th Cir. 2012)); *accord, e.g.*, *Oregonian Pub. Co. v. United States District Court*, 920 F.2d 1462, 1466-67 (9th Cir. 1990) ("It is the burden of the party seeking closure ... to present facts supporting closure and to demonstrate that available alternatives will not protect" his interests); *Associated Press v. United States District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983) ("we require that a party seeking closure of proceedings or sealing of documents establish that the procedure "'is strictly and inescapably necessary in order to protect [the interest at issue]' ... To meet this burden and justify abrogating the first amendment right to access, it is necessary to satisfy three separate substantive tests.") (quoting *United States v. Brooklier*, 685 F.2d 1162, 1167 (9th Cir. 1982)). Defendant has not met this burden. Moreover, neither the factual assertions in his memorandum of points and authorities nor his reference to his prior factual contentions in the declarations he previously filed in this case may be credited in support of his own 12(b)(6) motion to dismiss.

(6) Defendant argues that delays in access to civil complaints need not satisfy strict scrutiny, and that Plaintiff bears the burden of pleading – and cannot allege facts demonstrating – that Defendant's policies relating to access to new civil complaints and the resulting delays in access are not reasonable time, place and manner restrictions. Again, the Court disagrees. The burden of pleading and proof

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lies with Defendant, not Plaintiff, *Comite de Jornaleros de Redondo Beach v. Redondo Beach*, 657 F.3d 936, 947 (9th Cir. 2011) (en banc), and it is Defendant who has the burden of pleading and proving that his policy and the resulting delays in access are justified as a reasonable time, place and manner regulations. *Id.* Defendant's argument that his policies and the delays in access to newly filed complaints can be justified as a reasonable time, place and manner regulation is contrary to the Ninth Circuit and other authorities cited in Plaintiff's opposition. *E.g., Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1145 (9th Cir. 1983). Moreover, even if the time, place and manner analysis were appropriate here, Defendant has not shown that his policies satisfy the Ninth Circuit's three-part test for time place and manner restrictions, namely, that his policies are content-neutral, narrowly tailored and allow for channels of alternate communication of the information at issue, i.e., newly-filed complaints. *Comite*, 657 F.3d at 945.

(7) Defendant's answer or responsive pleading shall be due 14 days from the date of this Order.

IT IS SO ORDERED.

Dated: _____, 2014

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The Honorable Manuel Real
Judge of the U.S. District Court
Central District of California

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