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7 Attorneys for Defendant  
 8 MICHAEL PLANET

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11  
 12 COURTHOUSE NEWS SERVICE,

13 Plaintiff,

14 v.

15 MICHAEL PLANET, in his official  
 16 capacity as court executive  
 officer/clerk of the Ventura County  
 Superior Court,

17 Defendant.  
 18  
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Case No. CV-11-08083-R(MANx)

Assigned for all purposes to  
 Hon. Manuel L. Real

**DEFENDANT'S RESPONSE TO  
 PLAINTIFF'S REQUEST FOR  
 JUDICIAL NOTICE**

Date: August 18, 2014

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

20 VSC agrees that this Court can (and should) take judicial notice of the  
 21 statutes and rules cited in CNS's Request to Take Judicial Notice, ECF No. 67  
 22 ("RJN"). See generally, *Lamar v. Micou*, 114 U.S. 218, 223 (1885) ("The law of  
 23 any State of the Union, whether depending upon statutes or upon judicial opinions,  
 24 is a matter of which the courts of the United States are bound to take judicial notice,  
 25 without plea or proof").

26 However, VSC respectfully submits that this Court should not take judicial  
 27 notice of the erroneous legal conclusions CNS makes regarding these authorities.

28 As established in the chart appended as Exhibit "A" to this Response, the

1 authorities upon which CNS relies establish the total absence of a history or  
2 experience of same-day access for a number of related reasons:

- 3 (1) None of the authorities upon which CNS relies establishes,  
4 recognizes or even mentions a purported right of access to new  
5 complaints before they are processed, secured, and filed for public  
6 viewing (“same day access”).
- 7 (2) Virtually all of the authorities upon which CNS relies recognize  
8 only a right of “reasonable access” to state court files. For  
9 example, Ohio provides that the court clerk need only “respond to  
10 [a public record] request within a reasonable amount of time.”  
11 Ohio Rules of Superintendence, Rule 45(b). Similarly, Rhode  
12 Island only requires access to be provided “at such reasonable time  
13 as may be determined by the custodian thereof.” R.I. Gen. Laws §  
14 38-2-3(a).
- 15 (3) Most of the authorities upon which CNS relies recognize that  
16 requests for court records may be delayed or denied if, as is the rule  
17 in Arizona, they “create an undue burden on court operations” or  
18 “substantially interfere with the “functions of the court.” Ariz. Sup.  
19 Ct. R. 12. Virginia law also provides that “[a] public agency may  
20 make reasonable rules to prevent disruption of operations, to  
21 preserve the security of public records or documents, and to protect  
22 them from damage.” 1 Va. Code § 316(j); see also id. § 17.1-208  
23 (prohibiting the inspection of public records in a manner that “will,  
24 in the determination of the clerk, interfere with the business of the  
25 office or by its reasonable use by the general public.”).
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(4) Most of the authorities upon which CNS relies establish some type of reasonable time and manner restrictions upon access. Texas, for example, permits a response to a request for court records to be made “[a]s soon as practicable -- and not more than 14 days” after the request. Tex. R. Judicial Admin., Rule 12.1. New York, too, mandates only that a records access officer respond “within five business days of the receipt of a request for access to a record.” N.Y. Ct. R. § 124.6.

In sum, it is no understatement to say that the First Amendment access right CNS seeks to establish in this case would invalidate the court document access laws in virtually all of the 50 states.

Moreover, CNS’ RJN omits a number of states from its survey. So that the Court may have a complete and accurate survey of the states’ public access laws, the chart appended as Exhibit B to this Response contains a brief summary of those states CNS chose not to discuss for an obvious reason: these states’ public access laws do not support CNS’ position.

Dated: August 4, 2014 JONES DAY

By: /s/ \_\_\_\_\_  
Robert A. Naeve

Attorneys for Defendant  
MICHAEL PLANET

**EXHIBIT "A"**

<b>CNS's RJN Argument as to Each State</b>	<b>VSC's Response to Plaintiff's RJN Argument</b>
<p><u><b>Alabama</b></u> Code § 36-12-40: "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." (ECF No. 67 Ex. 1.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. In Alabama, custodians of public writings are not required to permit examination of writings where to do so would "unduly interfere or hinder the discharge of the duties of such officer." <i>Holcombe v. State ex rel. Chandler</i>, 240 Ala. 590, 597 (1941).</p>
<p><u><b>Alaska</b></u> Administrative Rule 37.5: Provides for public access to court records in a manner that, among other things, "maximizes accessibility to court records" and defines "court record" to include "any document ... collected, received, or maintained by the court system in connection with a particular case." Admin. R. 37.5(a)(1)(A) &amp; (c)(1) &amp; (2). (ECF No. 67 Ex. 2.)</p>	<p>1. The cited rule does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Instead, Alaska court administrators need only "ensure that all members of the public upon request will be given <b>reasonable access</b> and opportunity to inspect such public records . . . ." Alaska R. Admin. 37.5(f). The Alaska Guidelines for Inspecting and Obtaining Copies of Public Records define what is reasonable: "[A] case file must be made available for inspection to a member of the general public <b>within one working day</b> after the request is made." Alaska Court System Office Of The Administrative Director, Guideline for Inspecting and Obtaining Copies of Public Records V(B)(1). However, "[i]f a case file is checked out of the clerk's office, is being processed by the clerk's office, or cannot be located," the clerk's office must respond "<b>no later than five working days</b> after the request is made," and must indicate "whether the records are accessible to the</p>

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	CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
		public, and if so, when and where inspection may take place or copies may be obtained." Id. Guidelines V(B)(1), V(C) & V(D). See Def.'s Req. for Judicial Notice ("Def.'s RJN"), Ex. 1 (Alaska Court System Office Of The Administrative Director, Guidelines for Inspecting and Obtaining Copies of Public Records).
	<u>Arizona</u> Supreme Court Rule 123(c)(1): "Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records." As further provided in subsection (b)(16)(B), "case records" are defined to include "any record that is collected, received, or maintained by a clerk of court in connection with a judicial proceeding," and subsection (d) provides that "[a]ll case records are open to the public except as may be closed by law, or as provided in this rule." (ECF No. 67 Ex. 3.)	<p>1. The cited rule does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Arizona Supreme Court Rule 123(f)(4) provides that requests for records may be delayed or denied if they "<b>create an undue burden</b> on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request," or "<b>substantially interfere with the functions of the court,</b>" among other <b>limitations on public access</b>. Crucially, the rule also requires that upon request for inspection of records, the court custodian must "provide the records <b>in a reasonable time</b>" based on certain enumerated factors. Id. Arizona's rule therefore expressly does not provide any same day right of access to court records.</p>
	<u>Arkansas</u> Supreme Court Administrative Order 19: Court records "will be available for public access in the courthouse during regular business hours established	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Arkansas Supreme Court</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p>by the court.” For purposes of the Order, a “court record” is defined in Section III(A)(1) to include “any document... collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding.” (ECF No. 67 Ex. 4.)</p>	<p>Administrative Order 19, § IX(A) requires a response to requests for access to records only “<b>within a reasonable period of time.</b>” Moreover, the commentary to the rule states it “is not the intent of the order” to impose the “additional access” or to require electronic access to public records after the court’s regular hours. The rule does not guarantee same day access to court records.</p>
<p><b>California</b> Rule of Court 2.550(c): “Unless confidentiality is required by law, court records are presumed to be open.” Under subsection (b)(1) of the rule, “record” is defined as “all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court,” and “lodged” is defined as “a record that is temporarily placed or deposited with the court, but not filed.” (ECF No. 67 Ex. 5.)</p>	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. CNS fails to cite California Government Code § 68150(l) and California Rule of Court 2.500(a), which require that court records be made “<b>reasonably accessible.</b>” See Def.’s RJN, Exs. 2, 3. California recognizes that the right to inspect public records may be denied “when necessary to prevent interference” with the operations of the relevant public office. <i>Bruce v. Gregory</i>, 65 Cal. 2d 666, 677 (1967).</li> <li>3. CNS also fails to cite California Rule of Court 2.250(B)(7), which confirms that documents are not “officially filed” until they have been processed and reviewed, and entered into a court’s records. See Def.’s RJN, Ex. 4.</li> </ol>
<p><b>Colorado</b> Chief Justice Directive 05-01 &amp; Public Access to Court Records Policy §§3.10, 4.10(a)(1): Defines a “court record” to include “any document... collected, received, or maintained by a court</p>	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. The stated “purpose” of the Colorado Chief Justice Directive 05-01 is “to provide</li> </ol>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p>or clerk of court in connection with a judicial proceeding” and provides that, with certain enumerated exceptions, “[i]nformation in the court record is accessible to the public.” (ECF No. 67 Ex. 6.)</p>	<p><b>reasonable access</b> to court records while simultaneously ensuring confidentiality in accordance within existing laws, policies and procedures.” (ECF No. 67 Ex. 6.) In fact, the Colorado Supreme Court has noted “access to court-maintained files involves a fragile balance between the interests of the public and the protection of individuals who are parties to cases in court.” <i>Gleason v. Judicial Watch, Inc.</i>, 292 P.3d 1044, 1049 (2012).</p> <p>3. CNS fails to cite section 24-72-303 of the Colorado Criminal Justice Records Act, which permits the custodian of records “<b>three working days</b>” to make a record “available for inspection” if it is “is in active use or in storage[.]” Colo. Rev. Stat. § 24-72-303. See Def.’s RJN, Ex. 5.</p>
<p><b>Connecticut</b> Civil Superior Court Rule § 11-20A(a): “Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.” (ECF No. 67 Ex. 7.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Connecticut has embraced the common law principle that the right to public access to any court document “<b>never has been absolute, nor has it extended to all documents filed with the court.</b> The public does not have a presumption of access to documents that do not bear directly on the courts’ adjudicatory functions.” <i>Rosado v. Bridgeport Roman Catholic Diocesan Corp.</i>, 292 Conn. 1, 45 (2009).</p>
<p><b>Florida</b> Constitution, art. I, § 24: “[E]very person” has a constitutional right of access to</p>	<p>1. The cited laws do not recognize or create a right of same-day access to civil</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p>public records, "specifically includ[ing] the legislative, executive, and judicial branches of government..." (ECF No. 67 Ex. 8.)</p> <p>Florida Rule of Judicial Administration 2.420(a): The "public shall have access to all records of the judicial branch of government," except as provided in certain enumerated exceptions. (ECF No. 67 Ex. 9.)</p>	<p>complaints.</p> <p>2. CNS fails to cite Florida Rule of Judicial Administration 2.420(m), which provides that responses to requests for court records "shall be made in a <b>reasonable manner</b>." See Def.'s RJN, Ex. 7.</p> <p>3. The Florida Supreme Court has held that "the press has no constitutional, first amendment, right of access to the taking of pretrial depositions in a criminal case and the <b>right of access to depositions did not accrue until they were filed</b> with the clerk of the court." <i>Palm Beach Newspapers, Inc. v. Burk</i>, 504 So. 2d 378, 379 (Fla. 1987).</p>
<p><b>Georgia</b> Uniform Superior Court Rule 21: "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below." (ECF No. 67 Ex. 10.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. No Georgia court rule speaks to the timing of public access to court documents in any fashion, let alone require same day access. In fact, Georgia's Open Records Act provides: "Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed <b>three business days</b> of receipt of a request." Ga. Code § 50-18-71. See Def.'s RJN, Ex. 8.</p>
<p><b>Idaho</b> Court Administrative Rule 32(d): "[P]leadings" are among the court records "subject to examination, inspection and copying." (ECF No. 67 Ex.11.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Idaho Court Administrative Rule 32(a)(11) states that public access to court records will only be provided in a manner that "[a]voids <b>unduly burdening the</b></p>



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		<p><b>ongoing business of the judiciary.”</b> (ECF No. 67 Ex.11.) Moreover, Rule 32(f) permits a <b>ten day period</b> for responses to requests for access to certain compiled public records. <i>Id.</i> That certain records may be subject to at least a ten day delay indicates Idaho embraces no policy of providing same day access to public records.</p>
	<p><b>Illinois</b> Compiled Statute 705 ILCS 105/16(6): “All records, dockets and books required by law to be kept by [clerks of court] shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, dockets and books, and also to all papers on file in different clerks’ offices and shall have the right to take memoranda and abstracts thereto.” (ECF No. 67 Ex. 12.)</p>	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. This statute does not mandate access to judicial documents until they are part of the court record. See <i>People v. Pelo</i>, 384 Ill. App. 3d 776, 781 (2008) (right of access does not attach to “unedited [criminal] evidence deposition” because it “has not been submitted into evidence and has not been played in open court.”).</li> </ol>
	<p><b>Indiana</b> Administrative Rule 9(A): “[G]overns public access to ... court records” and is intended to “[p]romote accessibility to court records.” “Court records” are defined in subsection (C)(1) &amp; (2) to include “any document... collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case.” (ECF No. 67 Ex. 13.)</p>	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. Indiana Administrative Rule 9(A)(2)(k) provides that the rule seeks to “[a]void unduly burdening the ongoing business of the judiciary.” Commentary to the rule also provides that public access rights should “[t]ak[e] into account public policy interests that are not always fully compatible with unrestricted access.”</li> </ol>

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CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p data-bbox="277 300 837 590"><b>Louisiana</b> Constitution, art. 12, § 3: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” (ECF No. 67 Ex. 14.)</p> <p data-bbox="277 625 837 1010">Louisiana Code of Civil Procedure Article 251(A): The clerk of the court “shall permit any person to examine, copy, photograph, or make a memorandum of any of these [court] records at any time during which the clerk’s office is required by law to be open.” (ECF No. 67 Ex. 15.)</p>	<p data-bbox="846 300 1544 422">1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p data-bbox="846 457 1544 1094">2. CNS fails to cite Louisiana’s Public Records Act, La. Rev. Stat. §§ 44:33, which expressly states that if the public record requested is not immediately available then the custodian has <b>three business days</b> within which to provide it. See Def.’s RJN, Ex. 14. “The purpose of the Public Records Act is to keep the public reasonably informed, while at the same time balancing the public’s right of access against the public interest of protecting and preserving the public records against unreasonable dangers of loss or damage, <b>or acts detrimental to the integrity of the public records.</b>” <i>Revere v. Canulette</i>, 715 So. 2d 47, 53 (La. Ct. App. 1998).</p>
<p data-bbox="277 1167 837 1713"><b>Michigan</b> Court Rule 8.119(H)(1): “Unless access to a case record or information contained in a record is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain copies ...” Subsection (A) states the rule “applies to all records in every trial court,” and “records” is defined in subsection (D)(1)(d) to include “all pleadings ... filed in the action.” (ECF No. 67 Ex. 16.)</p>	<p data-bbox="846 1167 1544 1289">1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p data-bbox="846 1325 1544 1577">2. Rule 8.119(H)(2) specifically authorizes individual courts to “make <b>reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference</b> with the discharge of [the court’s] functions[.]”</p> <p data-bbox="846 1612 1544 1902">3. CNS fails to cite Michigan Trial Court Case File Management Standards § 1.1.6, which sets forth detailed procedures for providing public access to court records; no mention is made of same-day access or any other time restriction. See Def.’s RJN, Ex. 18.</p>

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<b>CNS’s RJN Argument as to Each State</b>	<b>VSC’s Response to Plaintiff’s RJN Argument</b>
<p><b>Minnesota</b> Rules of Public Access to Records of the Judicial Branch 3(5) &amp; 4: Define “case records” to include “all records of a particular case or controversy” and further provide that “[a]ll case records are accessible to the public” except for records falling into certain enumerated categories. (ECF No. 67 Ex. 17.)</p>	<ol style="list-style-type: none"><li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li><li>2. CNS fails to cite Minnesota Rule of Public Access to Records of the Judicial Branch 7, which provides that the custodian of records shall respond to requests for records “<b>as promptly as practical.</b>” (ECF No. 67 Ex. 17.)</li></ol>
<p><b>Missouri</b> Supreme Court Operating Rule 2.02 &amp; 2.03(c): “Records of all courts are presumed to be open to any member of the public for purposes of inspection or copying during the regular business hours of the court having custody of the records”; “case records” include “all records relating to a specific case or controversy.” (ECF No. 67 Ex. 18.)</p>	<ol style="list-style-type: none"><li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li><li>2. CNS fails to cite Missouri Supreme Court Operating Rule 2.08, which provides that the custodian of records must respond to requests for records only “<b>as promptly as practical.</b>” See Def.’s RJN, Ex. 20.</li></ol>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p data-bbox="277 300 846 720"><b>Montana</b> Constitution, art. 2, § 9: “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.” (ECF No. 67 Ex. 19.)</p> <p data-bbox="277 751 846 1087">Montana Code Ann. §§ 2-6-101(2)(a), 2-6-102(1): “Every citizen has a right to inspect and take a copy of any public writings of this state”; “public writings” covered by the code include “judicial” records. (ECF No. 67 Ex. 20.)</p>	<p data-bbox="846 300 1542 426">1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p data-bbox="846 457 1542 793">2. CNS cites Cox v. Lee Enters., 723 P.2d 238, 240 (Mont. 1986), for the proposition that a complaint is a public document covered by the cited provisions. But nothing in either Montana’s Code or Constitution sets forth the timing of public access rights, let alone mandates any same-day access right policy.</p>
<p data-bbox="277 1161 846 1413"><b>Nebraska</b> Rule of Court § 1-804: “Information in a court record is accessible to the public unless prohibited by this policy or applicable laws.” (ECF No. 67 Ex. 21.)</p>	<p data-bbox="846 1161 1542 1287">1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p data-bbox="846 1318 1542 1528">2. CNS fails to cite Nebraska’s Public Records Act, which provides the custodian of records <b>four business days</b> to respond to records requests. Neb. Rev. Stat. § 84-712. See Def.’s RJN, Ex. 23.</p> <p data-bbox="846 1560 1542 1812">3. CNS also fails to cite Nebraska Rule of Court 1-809(C), which expressly permits the Court to respond to a “request for access to information” not on the same day as the request but instead merely “<b>within a reasonable time.</b>” See Def.’s RJN, Ex. 24.</p>
<p data-bbox="277 1854 846 1921"><b>Nevada</b> State Supreme Court Rules, Part 7, Rules 1(3) &amp; 2(2)(a): “All</p>	<p data-bbox="846 1854 1542 1921">1. The cited law does not recognize or create a right of same-day access to civil</p>

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	court records in civil actions are available to the public, except as otherwise provided in these rules or by statute”; “court record” includes “[a]ny document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding.” (ECF No. 67 Ex. 22.)	complaints.
	<b><u>New Hampshire</u></b> Constitution, pt. 1, art. 8: “Government ... should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.” (ECF No. 67 Ex. 23.)	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS cites <i>Associated Press v. State</i>, 888 A.2d 1236, 1245 (N.H. 2005), as recognizing that the cited Constitutional provision, together with a provision providing for a free press, creates a public right of access to court records. But CNS does not cite any New Hampshire rule addressing the timing of any public access right to court records. In fact, the Report of the New Hampshire Supreme Court Task Force on Public Access to Court Records has recommended the institution of a <b>ten day opportunity</b> for “affected persons” to request a limit on public access rights, including with respect to “pleading[s].” See Def.’s RJN, Ex. 25.</p>
	<b><u>New Jersey</u></b> Court Rules 1:38-1 & 1:38-2: “Court records and administrative records as defined by R. 1:38-2 and R. 1:38-4 respectively and within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule.	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. New Jersey Court Rule 1:38-1 provides that “[c]ourt records and administrative records are available only in the form in which they are maintained or</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p>Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary"; "court records" include "pleadings." (ECF No. 67 Ex. 24.)</p>	<p>indexed by the Judiciary," which implies the records may be processed before any public right of access adheres.</p> <p>3. New Jersey's Open Public Records Act provides only that a "custodian shall <b>promptly</b> comply with a request to inspect, examine, copy, or provide a copy of a government record." N.J. Stat. § 47:1A-5. See Def.'s RJN, Ex. 22.</p>
<p><b>New Mexico</b> State Court Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166 and 12-314: Together provide for public access to court records of the various state courts in New Mexico. Each rule provides that "[c]ourt records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule." "Court records" are defined in each rule to mean any "document, paper,... or other material filed or lodged with the court." (ECF No. 67 Ex. 25.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Commentary to Rule 1-079 specifies that it does not "address the manner in which a court must provide public access to court records." (ECF No. 67 Ex. 25.)</p>
<p><b>New York</b> Court Rule § 216.1(a)-(b): "[A] court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof"; "court records" shall include all documents and records of any nature filed with the clerk in connection with the action." (ECF</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite New York Administrative Rules of the Unified Court System, Rule 124.6, which provides that a records access officer shall respond "<b>within five business days</b> of the receipt of a request for access to a record." See Def.'s RJN, Ex.</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
No. 67 Ex. 26.)	26.
<p><b>North Carolina</b> General Statute § 7A-109(a): Records maintained by the clerk “shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained.” (ECF No. 67 Ex. 27.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite North Carolina’s Public Records Act, N.C. Gen. Stat. § 132-6(a), which only requires custodians of public records to permit documents to be inspected “<b>at reasonable times</b>” and to provide the documents “<b>as promptly as possible.</b>” North Carolina has thus expressly rejected any same day public access right. See Def.’s RJN, Ex. 21.</p>
<p><b>Ohio</b> Rule of Superintendence 45(a): “Court records are presumed open to public access.” (ECF No. 67 Ex. 28.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Far from guaranteeing any same day access right, Ohio Rule of Superintendence 45(b) provides that the court clerk need only “respond to [a public record] request within <b>a reasonable amount of time.</b>”</p>
<p><b>Oklahoma</b> Statute, Title 51 §§ 24A.3(2) &amp; 24A.5: “All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours”; “[p]ublic bod[ies]” includes “court[s].” (ECF No. 67 Ex. 29.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite the Oklahoma statute which provides, “A public body must provide <b>prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.</b>” Okla. Code, Title 51 § 24A.5(5) (emphasis added). See Def.’s RJN, Ex. 28.</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p><b>Oregon</b> Revised Statute §§ 192.410(4)(a) &amp; 192.420: “Every person has a right to inspect any public record of a public body in this state;” “public record” includes “court records.” (ECF No. 67 Ex. 30.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite Or. Rev. Stat. § 192.430, which requires only “<b>proper and reasonable opportunities</b> for inspection and examination” of public records. See Def.’s RJN, Ex. 29.</p> <p>3. CNS also failed to cite Or. Rev. Stat. § 192.440, which requires that a response to a request for public records shall be made “<b>as soon as practicable</b> and without unreasonable delay.” See Def.’s RJN, Ex. 30.</p>
<p><b>Rhode Island</b> General Law §§ 38-2-2(1) &amp; 38-2-3(a): “[A]ll records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof”; “agency” or “public body” “means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof.” (ECF No. 67 Ex. 31.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Rhode Island only requires access to be provided “at such <b>reasonable time as may be determined by the custodian thereof.</b>” Moreover, subdivision (e) expressly disclaims any same day public access right because it provides the custodian <b>ten business days</b> within which inspection of records must be permitted. R.I. Gen. Laws § 38-2-3. See Def.’s RJN, Ex. 32.</p>
<p><b>South Dakota</b> Codified Laws §§ 15-15A-1 &amp; 15-15A-2: Provide for public access to court records in order to “[m]aximize[] accessibility</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p>



CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
<p>to court records.” (ECF No. 67 Ex. 32.)</p>	<p>2. CNS fails to cite S.D. Codified Laws §15-15A-14, which provides: “Upon receiving a request for access to information the court will respond within a <b>reasonable time</b> regarding the availability of the information and provide the information within a <b>reasonable time</b>.” See Def.’s RJN, Ex. 33.</p>
<p><b>Texas</b> Rule of Civil Procedure 76a(1): “[C]ourt records are presumed to be open to the general public and may be sealed” only under certain circumstances; “court records” include “all documents of any nature filed in connection with any matter before any civil court,” with certain enumerated exceptions. (ECF No. 67 Ex. 33.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite Texas Rule of Judicial Administration 12.1, which provides that responses to a request for court records must be made “[a]s soon as practicable -- and <b>not more than 14 days</b>” after the request.” See Def.’s RJN, Ex. 36.</p>
<p><b>Vermont</b> Rules for Public Access to Court Records §§ 3(b) &amp; 4: “Except as provided in these rules, all case and administrative records of the Judicial Branch shall be open to any member of the public for inspection or to obtain cases”; “case record” includes “any judicial branch record pertaining to a particular case or controversy.” (ECF No. 67 Ex. 34.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to cite Vermont Rule for Public Access to Court Records 6(f), which provides that “[t]he record custodian shall act on a [court records] request promptly within the time limits set” by statute. (ECF No. 67 Ex. 34.) That statute, 23. Vt. Stat. tit. 1, § 318, requires the custodian to “promptly produce” the requested record, but also permits the custodian to <b>delay providing a record if it “is in active use or in storage and therefore not available for use at the time the person asks to examine it.”</b> See Def.’s RJN, Ex. 39.</p> <p>3. Another Vermont statute, Vt. Stat. tit.</p>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
	1, § 316(j) states that “[a] public agency may make <b>reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.</b> ” See Def.’s RJN, Ex. 38.
<b>Virginia</b> Code § 17.1-208: “Except as otherwise provided by law, any records that are maintained by the clerk of the circuit court shall be open to inspection by any person and the clerk shall, when requested, furnish copies thereof subject to any fee charged by the clerk pursuant to § 17.1-275, except in cases in which it is otherwise specially provided by statute.” (ECF No. 67 Ex. 35.)	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. CNS fails to quote to that portion of Va. Code § 17.1-208 which prohibits the inspection of public records in a manner that “will, in the determination of the clerk, <b>interfere with the business of the office or by its reasonable use by the general public.</b>” (ECF No. 67 Ex. 35.)</li> </ol>
<b>Washington</b> Revised Code, General Rule 31(c)(4), (d)(1): The “public shall have access to all court records, except as restricted by federal law, state law, court rule, court order, or case law”; “court record” includes “[a]ny document... or other thing that is maintained by a court in connection with a judicial proceeding.” (ECF No. 67 Ex. 36.)	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. CNS fails to cite Wash. Rev. Code, General Rule 31(a), which states that “[a]ccess to court records is not absolute and shall . . . <b>not unduly burden the business of the courts.</b>” See Def.’s RJN, Ex. 41.</li> </ol>
<b>West Virginia</b> Code § 51-4-2: “The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.” (ECF No. 67 Ex. 37.)	<ol style="list-style-type: none"> <li>1. The cited law does not recognize or create a right of same-day access to civil complaints.</li> <li>2. CNS fails to cite W. Va. Code § 29B-1-3(3), which permits the custodian of records to “make <b>reasonable rules and regulations necessary for the protection of the records and to prevent interference</b></li> </ol>

CNS's RJN Argument as to Each State	VSC's Response to Plaintiff's RJN Argument
	<p><b>with the regular discharge of his or her duties.</b>" See Def.'s RJN, Ex. 40.</p> <p>3. CNS also fails to cite W. Va. Code § 29B-1-3(4), which gives records custodians <b>five business days</b> to furnish copies of public records. See <i>id.</i></p>
<p><b>Wisconsin</b> Statutes 19.32(1) &amp; 19.35: Provide for access to public records, including the records of "any court of law." (ECF No. 67 Ex. 38.)</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil complaints.</p> <p>2. CNS fails to Wis. Stat. § 19.35(4)(a), which only requires responses to requests for records to be made "<b>as soon as practicable and without delay</b>[" See Def.'s RJN, Ex. 42.</p> <p>3. Wisconsin's Attorney General has opined that the state's "public records law <b>does not require response within any specific time</b>, such as 'two weeks' or '48 hours. . . . What constitutes a reasonable time for a response to any specific request depends on the nature of the request, the staff and other resources available to the authority to process the request, the extent of the request, and related considerations. Whether an authority is acting with reasonable diligence in responding to a particular request will depend on the totality of circumstances surrounding that request. [Citation]." See Def.'s RJN, Ex. 43 (Wisconsin Department of Justice, Compliance Outline: Wis. Stat. §§ 19.31-19.39, Sept. 2012).</p>
<p><b>Wyoming</b> Rules Governing Access to Court Records 2(c) &amp; 3: "Court</p>	<p>1. The cited law does not recognize or create a right of same-day access to civil</p>

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<b>CNS's RJN Argument as to Each State</b>	<b>VSC's Response to Plaintiff's RJN Argument</b>
records are presumed to be open to public access during the regular business hours of the court, except as provided herein or otherwise provided by law"; "court records" include "any document or information collected, received, or maintained by a custodian in connection with a specific case or judicial proceeding." (ECF No. 67 Ex. 39.)	complaints.  2. CNS fails to cite Rule 4 of the Wyoming Rules Governing Access to Court Records, which provides that, "[u]pon receiving a request for access to court records, the custodian shall respond within a <b>reasonable time</b> regarding the availability of the records, and shall provide or deny access thereto within a <b>reasonable time</b> . Court records shall be provided <b>at a time and in a manner that does not unreasonably interfere with other business of the courts.</b> " See Def.'s RJN, Ex. 44.

EXHIBIT “B”

CNS also fails to cite the court rules of a number of other states that similarly fail to establish, recognize or even mention a purported right of same-day access. So that the Court may have a complete and accurate survey of the states’ public access laws, the following chart contains brief summary of those states CNS chose not to discuss for an obvious reason: these states’ public access laws do not support CNS’ position.

<u>State</u>	<u>Relevant Statute or Rule Regarding the Timing of Public Access to Court Records</u>
<b>Delaware</b>	<ol style="list-style-type: none"><li>1. Delaware does not recognize or create a right of same-day access to civil complaints.</li><li>2. Delaware Chancery Court Rule 5.1 provides that court records “shall be available for public access” without placing any timing requirements upon the custodians of those records. See Def.’s RJN, Ex. 5.</li></ol>
<b>Hawaii</b>	<ol style="list-style-type: none"><li>1. Hawaii does not recognize or create a right of same-day access to civil complaints.</li><li>2. Hawaii Court Records Rules, Rule 10.4 requires that the Clerk shall make public records available “within <b>a reasonable time</b>, subject to the court’s . . . priority use of the record,” and only requires notice to the Requester if the record not been provided within <b>ten business days</b>. See Def.’s RJN, Ex. 9.</li></ol>
<b>Iowa</b>	<ol style="list-style-type: none"><li>1. Iowa does not recognize or create a right of same-day access to civil complaints.</li><li>2. Chapter 22 of the Iowa Code addresses public access to court records, and does not set forth any timing requirements, let alone same day access to civil complaints. See Def.’s RJN, Exs. 10, 11 (Iowa</li></ol>

<u>State</u>	<u>Relevant Statute or Rule Regarding the Timing of Public Access to Court Records</u>
	Code §§ 22.2, 22.4).
<b>Kansas</b>	<p>1. Kansas does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Kansas Stat. § 45-218(d) expressly disclaims any same day access rights, and provides instead that “[e]ach request for access to a public record shall be acted upon <b>as soon as possible, but not later than the end of the third business day following the date that the request is received.</b>” See Def.’s RJN, Ex. 12.</p>
<b>Kentucky</b>	<p>1. Kentucky does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Kentucky’s Open Records Act permits a <b>three day window</b> within which a custodian may provide a public record if the document is “in active use.” Ky. Stat. § 61.872. See Def.’s RJN, Ex. 13.</p>
<b>Maine</b>	<p>1. Maine does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Maine Administrative Order JB-05-20(III)(A)(1), effective July 1, 2014, sets forth a specific timetable for those seeking “records related to cases”:</p> <p style="text-align: center;"><b>1-5 names within 5 working days</b>  <b>6-10 names within 30 working days</b>  <b>11-15 names within 45 working days</b>  <b>16-20 names within 60 working days</b>  <b>21+ names to be determined by the Clerk and/or Senior Service Center Associate</b></p> <p>See Def.’s RJN, Ex. 15. No same day access right is provided, as even for one record the rule permits a <b>five business day</b> response time.</p>
<b>Maryland</b>	<p>1. Maryland does not recognize or create a right of same-day access to civil complaints.</p>

<u>State</u>	<u>Relevant Statute or Rule Regarding the Timing of Public Access to Court Records</u>
	<p>2. Maryland Rule of Procedure 16-1002(b)(i) provides that the records open to inspection include only those that have “been <b>docketed or recorded and indexed.</b>”</p> <p>See Def.’s RJN, Ex. 16.</p>
<b>Massachusetts</b>	<p>1. Massachusetts does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Massachusetts has announced that “[t]he public’s presumptive right of access is <b>subject to reasonable limitations as to time and place</b> that clerk-magistrates may impose to avoid disrupting the orderly functioning of their offices or courtroom proceedings, to protect the physical security of court records, and to guarantee equal access to all inquirers.” Massachusetts District Court Department of the Trial Court, A Guide to Public Access, Sealing &amp; Expungement, § I(1)(6) (emphasis added). See Def.’s RJN, Ex. 17.</p>
<b>Mississippi</b>	<p>1. Mississippi does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Mississippi’s Public Access Law, Miss. Code § 25-61-5, which applies to court records, provides that access to documents must only be provided “in accordance with <b>reasonable written procedures adopted by the public body concerning the cost, time, place and method of access[.]</b>” See Def.’s RJN, Ex. 19.</p>
<b>North Dakota</b>	<p>1. North Dakota does not recognize or create a right of same-day access to civil complaints.</p> <p>2. North Dakota Supreme Court’s Administrative Rule 41(3)(b)(2) provides that “[u]pon receiving a request for access to information, the clerk of court must respond as <b>promptly as practical.</b>” See Def.’s RJN, Ex. 27.</p>

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<u>State</u>	<u>Relevant Statute or Rule Regarding the Timing of Public Access to Court Records</u>
<b>Pennsylvania</b>	<p>1. Pennsylvania does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Pennsylvania’s “Right-to-Know” law provides that the “time for response [for public records] shall not exceed <b>five business days</b>.” 65 Pa. Code § 67.901. See Def.’s RJN, Ex. 31.</p>
<b>South Carolina</b>	<p>1. South Carolina does not recognize or create a right of same-day access to civil complaints.</p> <p>2. South Carolina Clerk of Court Manual Rule 1.13 does not provide any same day right of access, but merely instructs that “information filed in the Clerk of Court offices . . . are public records which may be viewed on request.” See Def.’s RJN, Ex. 34.</p>
<b>Tennessee</b>	<p>1. Tennessee does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Tennessee’s Open Records Act provides: “In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within <b>seven (7) business days</b>” respond to the request or provide the document. Tenn. Code § 10-7-503(A)(1)(B). See Def.’s RJN, Ex. 35.</p>
<b>Utah</b>	<p>1. Utah does not recognize or create a right of same-day access to civil complaints.</p> <p>2. Utah’s Government Records Access and Management Act requires a response to a request for court records “no later than <b>10 business days</b> after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person.” Utah Code § 63G-2-204(1) (emphasis added). See Def.’s RJN, Ex. 37.</p>

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