

1 Robert A. Naeve (State Bar No. 106095)  
 2 Erica L. Reilley (State Bar No. 211615)  
 3 Nathaniel P. Garrett (State Bar No. 248211)  
 4 rnaeve@jonesday.com  
 5 JONES DAY  
 6 3161 Michelson Drive  
 7 Suite 800  
 8 Irvine, CA 92612.4408  
 9 Telephone: +1.949.851.3939  
 10 Facsimile: +1.949.553.7539

11 Attorneys for Defendant  
 12 MICHAEL PLANET

13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA  
 15 WESTERN DIVISION

16 COURTHOUSE NEWS SERVICE,  
 17 Plaintiff,

18 v.

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

23 Defendant.

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

**NOTICE OF FILING OF  
 UPDATED PROPOSED ORDER**

Date: August 18, 2014

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

24 Defendant Michael Planet in his official capacity as the Court Executive  
 25 Officer of the Superior Court of California, County of Ventura (“VSC”) hereby  
 26 submits, and lodges with Chambers a Word version of, the Updated Proposed Order  
 27 attached to this Notice as Exhibit “A.” The Updated Proposed Order reflects the

1 now-continued hearing date on VSC's motion to dismiss, and briefly addresses  
2 issues in the Opposition and Reply memoranda filed with respect to that motion.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: August 6, 2014.

JONES DAY

By: /s/  
Robert A. Naeve

Attorneys for Defendant  
MICHAEL PLANET

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  
26  
27  
28

EXHIBIT “A”

1 Robert A. Naeve (State Bar No. 106095)  
2 Erica L. Reilly (State Bar No. 211615)  
3 Nathaniel P. Garrett (State Bar No. 248211)  
4 rnaeve@jonesday.com  
5 JONES DAY  
6 3161 Michelson Drive  
7 Suite 800  
8 Irvine, CA 92612.4408  
9 Telephone: +1.949.851.3939  
10 Facsimile: +1.949.553.7539

11 Attorneys for Defendant  
12 MICHAEL PLANET

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

16 COURTHOUSE NEWS SERVICE,  
17 Plaintiff,

18 v.

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

23 Defendant.

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

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

Date: August 18, 2014

Time: 10:00 a.m.

Judge: Hon. Manuel L. Real

1 This is a civil action by Plaintiff Courthouse News Service (“CNS”) against  
2 Defendant Michael Planet in his official capacity as the Court Executive Officer of  
3 the Superior Court of California, County of Ventura (“VSC”). The Amended  
4 Complaint contains a single claim for relief for injunctive and declaratory relief  
5 arising from an alleged violation of the First Amendment to the United States  
6 Constitution. The Amended Complaint asks this Court to find that CNS has a  
7 constitutional right to review unlimited civil complaints on the same day they are  
8 received by VSC’s clerks, even before these complaints are processed, filed, and  
9 entered into the court’s official records – a so-called right of “same-day access.”

10 The question presented by this case is not whether a qualified First  
11 Amendment right of access could ever apply to civil complaints. Rather, the  
12 question presented is whether the First Amendment enshrines a right of access to  
13 civil complaints on the same day they are received by a court. In other words, “the  
14 issue is not whether the public will gain access, but when” the qualified First  
15 Amendment right of access might apply. See *U.S. v. Inzunza*, 303 F. Supp. 2d  
16 1041, 1048 (S.D. Cal. 2004). This is “an important question of first impression”  
17 about which the Ninth Circuit took “no position” when it remanded this case to this  
18 Court for further proceedings. *Courthouse News Service v. Planet*, 750 F.3d 776,  
19 793 (9th Cir. 2014).

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

23 (1) VSC’s Motion to Dismiss is not barred by the Ninth Circuit’s decision  
24 in *Courthouse News Service v. Planet*, 750 F.3d 776. The Ninth Circuit held that  
25 federal abstention doctrines do not preclude this Court from hearing this matter, and  
26 remanded CNS’s claims to this court so that they could be decided “on the merits”  
27 in the first instance. *Id.*, 750 F.3d at 779, 793. VSC’s motion to dismiss addresses  
28 “the merits” and is properly before this Court pursuant to a stipulated briefing

1 schedule. *Federated Dep't Stores v. Moitie*, 452 U.S. 394, 399 n.3 (1981); ECF 63  
2 (stipulation), 64 (order granting stipulation). The law of the case and rule of  
3 mandate doctrines do not apply in this circumstance. E.g., *Hall v. City of L.A.*, 697  
4 F.3d 1059, 1067 (9th Cir. 2012).

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

9 (3) Most circuit courts, including the Ninth Circuit, rely upon the  
10 “experience and logic” test enunciated in *Press-Enterprise Co. v. Superior Court*,  
11 464 U.S. 501 (1984) to determine the extent of the right of access to judicial  
12 documents in criminal proceedings. See, e.g., *U.S. v. Higuera-Guerrero*, 518 F.3d  
13 1022, 1026 (9th Cir. 2008); *Oregonian Publ'g Co. v. U.S. Dist. Court*, 920 F.2d  
14 1462, 1465 (9th Cir. 1990). Federal courts recognize that “the First Amendment  
15 guarantee of access has been extended only to particular judicial records and  
16 documents.” *Stone v. Univ. of Md. Medical System Corp.*, 855 F.2d 178, 180 (4th  
17 Cir. 1988).

18 (4) This Court finds that the First Amendment right of access does not  
19 apply to documents the moment they are “received” by a state court, before these  
20 documents are processed, filed, secured and entered into court records for public  
21 review. Filing “is very much a prerequisite” to First Amendment access rights.  
22 *SEC v. Am. Int'l Group*, 712 F.3d 1, 4 (D.C. Cir. 2013). New civil unlimited  
23 complaints are not “filed” until after they have been processed, reviewed and  
24 entered into the court’s official records. E.g., Cal. Rs. Ct. 2.250(b)(7), 2.253(b)(7),  
25 2.254(c), 2.259(c). CNS’s Amended Complaint must therefore be dismissed  
26 because it seeks to impose a First Amendment right of access upon new civil  
27 unlimited complaints before they are “filed.” *Pansy v. Borough of Stroudsburg*, 23  
28

1 F.3d 772, 782 (3d Cir. 1994) (whether a document is a judicial record turns “on the  
2 technical question of whether a document is physically on file with the court”).

3 (5) Even if new civil unlimited complaints were “filed” upon “receipt,”  
4 this Court finds that the qualified First Amendment right of access extends only to  
5 particular “judicial records,” Stone, 855 F.2d at 180; that “the mere filing of a paper  
6 or document with the court is insufficient to render that paper a judicial document  
7 subject to the right of public access,” U.S. v. Amodeo, 44 F.3d 141, 145 (2d Cir.  
8 1995); and that complaints become “judicial records” only when they “come before  
9 the court in the course of an adjudicatory proceeding” and are “relevant to that  
10 adjudication,” In re Providence Journal Co., 293 F.3d 1, 9 (1st Cir. 2002). Hence,  
11 this Court finds as a matter of law that unlimited civil complaints do not qualify as  
12 “judicial documents” on the day VSC receives them for filing.

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

19 (7) This Court takes judicial notice of, and has reviewed, the statutes,  
20 court rules and memoranda attached to the Requests for Judicial Notice submitted  
21 by CNS (ECF 67) and VSC (ECF 72). Fed. R. Evid. 201. None of these authorities  
22 recognize a right of access to court documents before they have been processed,  
23 reviewed and entered into the court’s official records. To the contrary, these  
24 authorities recognize only a right of “reasonable access” to state court files. E.g.,  
25 Ariz. S. Ct. R. 123(2) & (4); Ohio R. Super. 45(b); R.I. Gen. Laws § 38-2-3(a). In  
26 addition, most of these laws mandate varying time periods – including a  
27 “reasonable period of time” in Arizona, one to three days in Alaska, three days in  
28 Colorado, five days in New York, ten days in Hawaii, fourteen days in Texas, up to

1 sixty working days in Maine, and no specific time at all in Wisconsin – in which to  
2 respond to access requests. See Alaska Guidelines for Inspecting and Obtaining  
3 Copies of Public Records V(B)(1), V(C) & V(D); Colo. Rev. Stat. § 24-72-303;  
4 Hawaii Court Records Rule 10.4; Maine Administrative Order JB-05-20; New  
5 York Administrative Rule of the Unified Court System 124.6; Texas Rule of  
6 Judicial Administration 12.1; Wisconsin Department of Justice, Compliance  
7 Outline: Wis. Stat. §§ 19.31-19.39 § VII(B)(1) (Sept. 2012).

8 (8) The First Amendment access right CNS seeks to establish in this case  
9 is inconsistent with the access laws in virtually every state in the union.

10 (9) This Court also finds that there is no “logic” to a right of same-day access  
11 under the second prong of the Press-Enterprise test. Logic supports a right of  
12 constitutional access where it “is significantly important to the public’s ability to  
13 oversee the [judicial] process and to ensure the judicial system functions fairly and  
14 effectively.” *U.S. v. Wecht*, 537 F.3d 222, 257 (3d Cir. 2008). Thus, the Ninth Circuit  
15 has recognized a constitutional right of access to documents filed in regard to criminal  
16 pretrial proceedings because such documents are “important to a full understanding of  
17 the way in which ‘the judicial process and the government as a whole’ are  
18 functioning.” *Associated Press v. U.S. Dist. Court*, 705 F.2d 1143, 1145 (9th Cir.  
19 1983). The First Amendment’s salutary goal of shedding light upon the administration  
20 of justice, however, has “no application whatever to the contents of a preliminary  
21 written statement of a claim or charge ... whose form and contents depend wholly on  
22 the will of a private individual.” *Cowley*, 137 Mass. at 394; see also *NBC Subsidiary*  
23 *(KNBC-TV) v. Superior Court*, 20 Cal.4th 1178, 1208 n.25 (1999). The “logic” that  
24 compels public access to certain proceedings and documents, therefore, is inapplicable  
25 to civil complaints. See *IDT Corp. v. eBay, Inc.*, 709 F.3d 1220, 1224 (8th Cir. 2013);  
26 *Mercury Interactive Corp. v. Klein*, 158 Cal.App.4th 60, 96-97 (2007).

27 (10) The alternative First Amendment access test CNS advocates in its  
28 Opposition (ECF 66 at 21) does not apply. The alternative test extends the First

1 Amendment right of access “to materials submitted in conjunction with judicial  
2 proceedings that themselves would trigger the right to access.” *Co. Doe v. Pub.*  
3 *Citizen*, 749 F.3d 246, 267 (4th Cir. 2014); see also *Hartford Courant Co. v.*  
4 *Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004) (granting First Amendment access rights  
5 upon documents that are “derived from or a necessary corollary of the capacity to  
6 attend the relevant proceedings”). Put simply, there is no such proceeding at the  
7 moment new complaints are received by a state court. See *Times Mirror Co. v.*  
8 *U.S.*, 873 F.2d 1210, 1217-18 (9th Cir. 1989) (although a judicial document “may,  
9 in due course, be disclosed to a defendant so she can challenge the constitutionality  
10 of the search at a suppression hearing to which the public has a First Amendment  
11 right of access, it does not follow that the public should necessarily have access to  
12 the information before that time”).

13 (11) Assuming *arguendo* that the qualified First Amendment right of access  
14 attached to new civil unlimited complaints on the moment they are received by  
15 VSC for filing, the Amended Complaint must still be dismissed because it fails to  
16 allege a violation of that qualified right for two related reasons. First, the alleged  
17 delay in access to new unlimited civil complaints “is not the kind of classic prior  
18 restraint that requires exacting First Amendment scrutiny.” *Seattle Times Co. v.*  
19 *Rhinehart*, 467 U.S. 20, 33 (1984). “[L]imitations on the right of access that  
20 resemble ‘time, place, and manner’ restrictions on protected speech [are] not  
21 subjected to such strict scrutiny.” *Globe Newspaper Co. v. Superior Court*, 457  
22 U.S. 596, 607 n.17 (1982). Hence, the “compelling or overriding interest” standard  
23 asserted in the Amended Complaint does not apply. See *Planet*, 750 F.3d at 793  
24 n.9.

25 (12) Second, and again assuming *arguendo* that the qualified First  
26 Amendment right of access attached to new civil unlimited complaints on the  
27 moment they are received by VSC for filing, the Amended Complaint does not  
28 allege a violation of that qualified First Amendment right. VSC’s alleged policy of

1 providing public access to unlimited civil complaints after they have been received,  
2 processed and placed in official court files, reasonably balances the interests of  
3 CNS with those of litigants and court staff, safeguards unprocessed documents from  
4 theft and damage, and protects the privacy interests of third parties. E.g., Bruce v.  
5 Gregory, 65 Cal.2d 666, 676 (1967).

6 IT IS SO ORDERED this \_\_\_\_ day of August, 2014.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

United States District Court Judge