

BRYAN CAVE LLP
560 MISSION STREET, 25TH FLOOR
SAN FRANCISCO, CA 94105-2994

Rachel E. Matteo-Boehm (SBN 195492)
rachel.matteo-boehm@bryancave.com
Roger Myers (SBN 146164)
roger.myers@bryancave.com
Leila C. Knox (SBN 245999)
leila.knox@bryancave.com
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 675-3400
Facsimile: (415) 675-3434

Jonathan G. Fetterly (SBN 228612)
jon.fetterly@bryancave.com
BRYAN CAVE LLP
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

Attorneys for Plaintiff
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)

**PLAINTIFF COURTHOUSE
NEWS SERVICE'S OBJECTIONS
TO DEFENDANT MICHAEL
PLANET'S [PROPOSED]
MEMORANDUM AND ORDER
GRANTING DEFENDANT'S
MOTION TO DISMISS**

1 Plaintiff Courthouse News Service (“Courthouse News”) respectfully objects
2 as follows to the [Proposed] Memorandum and Order Granting Defendant’s Motion
3 to Dismiss Amended Complaint lodged on August 26, 2014 by Defendant Michael
4 Planet in his official capacity as Court Executive Officer/Clerk of the Ventura
5 County Superior Court (“Defendant’s Proposed Order”) (ECF #80-1).

6 In its August 18, 2014 ruling from the bench, the Court directed counsel to
7 submit an order “consistent with” that ruling. Similarly, in its subsequent minute
8 order, the Court stated that it had granted Defendant’s motion to dismiss “for the
9 reasons as stated on the record” and that counsel should lodge a proposed order
10 “consistent with the Court’s ruling.”

11 As evidenced by the transcript of the August 18, 2014 proceedings, a copy of
12 which is attached hereto as Exhibit 1 (hereinafter “Transcript”), Defendant’s
13 Proposed Order goes well beyond the Court’s ruling and repeats many arguments
14 and assertions made in his moving and reply papers that were not among “the
15 reasons ... stated on the record” for the Court’s ruling, including Defendant’s
16 characterizations, and mischaracterizations, of authority the Court did not discuss on
17 the record.

18 In addition, page 2, lines 23-27 of Defendant’s proposed order
19 mischaracterizes the relief sought in Courthouse News’ Amended Complaint, in an
20 attempt to make it appear that Courthouse News seeks access to complaints before
21 they are filed. This tactic – which Defendant also used in his moving and reply
22 papers – rests on Defendant’s attempt to redefine “filed” and his argument that a
23 complaint is unfiled until it is processed, even if that is days or weeks after the
24 complaint is received by the court.

25 Consistent with these objections, Courthouse News respectfully requests that
26 Defendant’s Proposed Order be amended as follows:

27 Page 2, lines 23-27: Strike the entire sentence beginning with the phrase
28 “The Amended Complaint ...” and replace it with the following sentence: “In the

1 Court's view, the issue in this case is whether the public and CNS has a First
2 Amendment right to review civil complaints on the same day they are received by
3 VSC clerks before these complaints are processed, filed, and entered into the
4 Court's official records." (see Transcript, page 7, lines 24-25 and page 8, lines 1-3).

5 Page 3, lines 10-28: Strike paragraphs 2, 3 and 4 of the "Facts" section of
6 Defendant's Proposed Order as inconsistent with the Court's August 18 ruling.

7 Page 4, lines 12-28; page 5, lines 1-4: Strike paragraphs 1 and 2 of the
8 "Analysis" section of Defendant's Proposed order as inconsistent with the Court's
9 August 18 ruling. Replace these paragraphs with the following: "VSC has always
10 provided access to civil complaints. In the Court's view, there is no issue as to if
11 access will be granted, but the issue is when access must be given." (see Transcript,
12 page 7, lines 14-16).

13 Page 5, lines 11-28: Strike paragraphs 4, 5 and 6 of the "Analysis" section of
14 Defendant's Proposed order as inconsistent with the Court's August 18 ruling.
15 Replace paragraph 5 with the following sentence: "Although CNS argues the Ninth
16 Circuit already decided that CNS has stated a viable claim for violation of this First
17 Amendment right, this Court disagrees. The Ninth Circuit only determined that this
18 Court should not abstain from hearing the case. The Ninth Circuit explicitly stated
19 that it was making no decision on the merits, exactly what a 12(b)(6) motion is, a
20 motion on the merits." (see Transcript, page 7, lines 17-23).

21 Page 6, lines 1-15: Strike paragraph 7 of the "Analysis" section of
22 Defendant's Proposed order as inconsistent with the Court's August 18 ruling.
23 Replace with the following: "The Ninth Circuit relies on the experience and logic
24 test enunciated in *Press Enterprise Company v. Superior Court*, 464 U.S. 501
25 (1984) to determine the extent of the right of access to judicial documents. Under
26 the experience and logic test, the court examines (1) whether the proceeding has
27 historically been open to the public and (2) whether the right of access plays an
28 essential role in the proper functioning of the judicial process and the government as

1 a whole.” (*see* Transcript, page 8, lines 8-17).

2 Page 6, lines 16-28; page 7, lines 1-28: Strike paragraphs 8, 9, 10 and 11 of
3 the “Analysis” section of Defendant’s Proposed order as inconsistent with the
4 Court’s August 18 ruling. Replace with the following: “CNS alleges that there is a
5 tradition of allowing same-day access to complaints before they are processed and
6 has submitted voluminous amounts of documents that it requests this Court to take
7 judicial notice thereof. There has not been a long tradition of same-day access to
8 complaints. Justice Oliver Wendell Holmes, as part of the Massachusetts Supreme
9 Court, held that civil complaints are not even proceedings in open court and that the
10 reporting privilege does not attach to them. *Cowley v. Pulsifer*, 137 Mass. 392
11 (1884). Regardless of whether this is currently good law, it shows there is not a
12 long tradition of same-day access to complaints for the press. Moreover, many of
13 the state statutes that provide access to complaints that CNS seeks to have this Court
14 take judicial notice of only contemplate making the case file available to the public.
15 None of these require same-day access before a case file has even been created.”
16 (*see* Transcript, page 8, lines 18-25; page 9 lines 1-13).

17 Page 8, lines 1-28; page 9, lines 1-12: Strike paragraphs 12 and 13 of the
18 “Analysis” section of Defendant’s Proposed order as inconsistent with the Court’s
19 August 18 ruling. Replace with the following: “This experience comports with
20 logic. States have a compelling interest to safeguard unprocessed documents from
21 theft and damage and protect the privacy interests of third parties. *Bruce v.*
22 *Gregory*, 65 Cal. 2d 666 (1967). Without some minimal processing by the clerk it is
23 impossible to ensure the integrity of the filed complaints. Moreover, as CNS notes
24 in its exhibit to its complaint, that many of the courts that provide same-day access
25 to complaints only do so after the clerk has either scanned the complaint or
26 photocopied it. This is logical to make sure that integrity of the documents is not
27 compromised. Finally, many courts have a cutoff time, usually two hours to half an
28 hour before the end of day, wherein complaints are received. That time will not be

1 available for same-day review. Although many courthouses allow access to
2 complaints before they are fully processed, most either scan or photocopy the
3 complaint and assign a case number before allowing access.” (see Transcript, page
4 9, lines 14-25; page 10, lines 1-10).

5 Page 9, lines 15-16: Strike the phrase “and a hard or electronic copy has been
6 made accessible to the public” in paragraph 14 of the Analysis section as
7 inconsistent with the Court’s August 18 ruling. Replace with the following: “and
8 making either a hard or electronic copy.” (see Transcript, page 10, lines 13-14).

9 Page 9, lines 17-28: Strike paragraph 15 of the “Analysis” section of
10 Defendant’s Proposed order as inconsistent with the Court’s August 18 ruling.
11 Replace with the following: “As a matter of law, CNS does not have a First
12 Amendment right to access civil complaints before this minimal processing has been
13 completed.” (see Transcript, page 10, lines 18-20).

14 Page 10, lines 1-11: Strike paragraph 16 of the “Analysis” section of
15 Defendant’s Proposed order as inconsistent with the Court’s August 18 ruling.

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17 Dated: August 27, 2014

BRYAN CAVE LLP

18 By: /s/ Rachel E. Matteo-Boehm
19 Rachel E. Matteo-Boehm
20 Attorneys for Plaintiff
21 COURTHOUSE NEWS SERVICE
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