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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEX ROSAS and JONATHAN)
GOODWIN, on behalf of)
themselves and of those)
similarly situated,)

Plaintiff,)

v.)

LEROY BACA, Sheriff of Los)
Angeles County Jails; PAUL)
TANAKA, Undersheriff, Los)
Angeles Sheriff's)
Department; CECIL RHAMBO,)
Assistant Sheriff, Los)
Angeles Sheriff's Department)
and DENNIS BURNS, Chief of)
Custody Operations Division,)
Los Angeles Sheriff's)
Department,)

Defendants.

Case No. CV 12-00428 DDP (SHx)

**ORDER RE: MOTIONS TO INTERVENE
AND UNSEAL**

[Dkt. 268,269]

Presently before the court are two separate Motions to Intervene and Unseal, filed by Los Angeles Times Communications LLC ("LA Times") (Dkt. 268) and WitnessLA (Dkt. 269) (collectively, "Movants"). The motions seek intervention to unseal six video exhibits, and references thereto, concerning use of force incidents in Los Angeles County Jail facilities. All six videos depict

1 incidents that occurred before Sherriff Luna, the current
2 Sheriff's, administration. Having considered the submissions of
3 the parties and heard oral argument, the court grants the motions
4 to intervene and adopts the following Order. An order regarding
5 the motions to unseal shall issue separately.

6 **I. Background**

7 In 2012, Plaintiffs filed a putative class action complaint
8 alleging a pervasive pattern of excessive force being utilized
9 against inmates in Los Angeles County jail facilities in downtown
10 Los Angeles. (Dkt. 32.) The court certified a plaintiff class
11 shortly thereafter, and facilitated several settlement discussions
12 for approximately two years. Those discussions culminated in a
13 Settlement Agreement, under which an independent panel of experts
14 ("the Monitors) would formulate an implementation plan to address
15 use of force issues within the jails and issue periodic reports
16 regarding Defendants' progress toward implementation. (Dkt. 110).
17 This Court approved the settlement in April 2015, and retained
18 jurisdiction to enforce the Settlement Agreement. (Dkt. 135.)

19 Progress toward implementation of the Settlement Agreement
20 proceeded more slowly than hoped, and in September 2017, Plaintiffs
21 filed a Motion to Enforce Settlement Agreement, primarily seeking
22 access to documents that Defendants were already producing to the
23 Monitors. (Dkt. 152). After extensive discussions, the parties
24 reached a mutually agreeable resolution, and Plaintiffs withdrew
25 their Motion to Enforce (Dkt. 194). Key to that resolution was a
26 Stipulated Protective Order, which this Court entered in May 2018
27 upon a finding of good cause. (Dkt. 193.) In essence, the
28 Protective Order provided that Defendants would provide Plaintiffs

1 with certain information, including videos, with the proviso that
2 such information would remain confidential and filed before the
3 court, if at all, under seal. Plaintiffs retained, however, the
4 right to seek a court determination whether confidential
5 information could be publicly filed.

6 Several years passed. Although the Los Angeles County
7 Sheriff's Department made some headway in implementing the
8 Settlement Agreement, progress toward certain key provisions
9 stalled under former County and Sheriff's Department leadership.
10 Accordingly, in May 2023, Plaintiffs filed a Motion to Modify
11 Implementation Plan (Dkt. 252.) In support of that motion,
12 Plaintiffs filed a total of six video exhibits ("the Videos"). In
13 accordance with the Protective Order, Plaintiffs filed the Videos,
14 as well as various references thereto (collectively, "the Sealed
15 Materials") in Plaintiffs' supporting materials, under seal.

16 Movants now seek to intervene in this case for the sole
17 purpose of unsealing the Sealed Materials.

18 **II. Legal Standard**

19 Under Federal Rule of Civil Procedure 24, a court must allow
20 intervention by any movant who "claims an interest relating to the
21 property or transaction that is the subject of the action, and is
22 so situated that disposing of the action may as a practical matter
23 impair or impede the movant's ability to protect its interest,
24 unless existing parties adequately represent that interest." Fed.
25 R. Civ. P. 24(a)(2). An applicant meets these criteria, and may
26 intervene as of right, if (1) the motion is timely; (2) the
27 applicant has a "significant protectable" interest relating to the
28 action; (3) disposition of the action may, as a practical matter,

1 impair or impede the applicant's ability to protect that interest;
2 and (4) the applicant's interest is inadequately represented by the
3 parties to the action. California ex rel. Lockyer v. United
4 States, 450 F.3d 436, 440 (9th Cir. 2006). When evaluating these
5 requirements, courts are guided by "practical and equitable
6 considerations," and generally construe the Rule to apply "broadly
7 in favor of proposed intervenors." Wilderness Soc. v. U.S. Forest
8 Serv., 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting United States
9 v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002))
10 (internal quotation omitted).

11 Alternatively, when an intervenor cannot satisfy the four-part
12 test for intervention as of right, courts may allow any applicant
13 who "has a claim or defense that shares with the main action a
14 common question of law or fact" to intervene. Fed. R. Civ. P.
15 24(b)(1)(B). Courts may only grant such permissive intervention,
16 however, where an applicant shows, in addition to a common question
17 of law or fact, "(1) independent grounds for jurisdiction; [and
18 that] (2) the motion is timely." San Jose Mercury News, Inc. v.
19 U.S. Dist. Ct.--N. Dist. (San Jose), 187 F.3d 1096, 1100 (9th Cir.
20 1999). Where, as here, a party does not seek to litigate a claim
21 on the merits, but rather seeks only to challenge a protective
22 order, that party need only satisfy the timeliness requirement.
23 See Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470, 473-74
24 (9th Cir. 1992); Cosgrove v. Nat'l Fire & Marine Ins. Co., 770 F.
25 App'x 793, 795 (9th Cir. 2019) (unpublished disposition). In
26 evaluating motions to intervene, courts must "take all
27 well-pleaded, nonconclusory allegations in the motion to intervene,
28 the proposed complaint or answer in intervention, and declarations

1 supporting the motion as true.” Sw. Ctr. for Biological Diversity
2 v. Berg, 268 F.3d 810, 820 (9th Cir. 2001).

3 **III. Discussion**

4 A. Permissive Intervention

5 The parties agree that the only disputed issue as to whether
6 Movants should be permitted to intervene is the timeliness of their
7 attempts to do so. See Beckman, 966 F.2d at 473-74. “In
8 determining whether a motion for intervention is timely, a court
9 must consider three factors: (1) the stage of the proceeding at
10 which an applicant seeks to intervene; (2) the prejudice to other
11 parties; and (3) the reason for and length of the delay.” San Jose
12 Mercury News, 187 F.3d at 1100-01 (internal quotation marks
13 omitted). The inquiry into any delay “looks to when the intervenor
14 first became aware that its interests would no longer be adequately
15 protected by the parties.” Id.

16 (1) Prejudice

17 With respect to prejudice, Defendants contend that publication
18 of the Sealed Materials would impair their ability to conduct
19 investigations related to the use of force inside the jails, and
20 would compromise inmate and deputy safety. (County Opposition at
21 12; Declaration of Larry Alva ¶¶ 6,8.) Moreover, Defendants argue,
22 their agreement to provide the Sealed Materials to Plaintiffs was
23 conditioned on the expectation that those materials would, absent
24 some affirmative action by Plaintiffs, remain confidential. (Opp.
25 at 11.) The unsealing of the confidential materials will,
26 Defendants assert, impair their ability to cooperate and share
27 information with Plaintiffs in the future, and by extension impair

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1 Defendants' ability to comply with the Settlement Agreement, thus
2 affecting the interests of both Plaintiffs and Defendants.¹

3 The Ninth Circuit has, at times, concluded that where a
4 party's agreement to settle a matter is premised upon
5 confidentiality, intervention to challenge that confidentiality can
6 so substantially prejudice a party that denial of leave to
7 intervene may be appropriate. See Brunson v. Lambert Firm PLC, 757
8 F. App'x 563, 567 (9th Cir. 2018). Brunson is somewhat analogous
9 to the circumstances here. Although the LA Times argues that the
10 sealing of the materials at issue here "was not a bargained-for
11 aspect of the parties' settlement agreement," that is only true in
12 a narrow sense. To be sure, the Protective Order postdated the
13 Settlement Agreement by several years. The stipulated Protective
14 Order, however, was the product of extensive, protracted, and
15 ultimately successful negotiations between the parties, and was key
16 to the resolution of Plaintiffs' Motion to Enforce Settlement
17 Agreement.

18 As Movants also highlight, Brunson differed from the instant
19 case in that the former involved a dispute between two private
20 parties, whereas this case has been litigated by a public entity
21 and a class of plaintiffs. The Ninth Circuit has, however, also
22 occasionally found prejudice involving similar parties. Orange
23 County v. Air California, 799 F.2d 535, 538 (9th Cir. 1986), for
24 example, involved a municipality's attempt to intervene in
25 litigation between a county government and a collection of
26 citizens' groups and private businesses. 799 F.2d at 536-37. In

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28 ¹ The court notes that Plaintiffs have not taken any position
on the instant motions.

1 light of the district court's observation that intervention "would
2 be the undoing of five years of protracted litigation," the Orange
3 County Air court concluded that intervention "clearly [] would
4 prejudice the parties involved," and therefore affirmed the
5 district court's denial of permissive intervention, notwithstanding
6 that such denial preceded the district court's final court approval
7 of a negotiated settlement involving a public entity. Air
8 California, 799 F.2d at 538, 539.

9 Air California, however, involved an attempt to intervene on
10 the merits, not a narrower effort to unseal confidential materials.
11 Air California, 799 F.2d at 537. In more recent years, the Ninth
12 Circuit has taken a more limited view of prejudice, at least in the
13 context of relatively limited motions to intervene for the purpose
14 of gaining access to sealed court records. In San Jose Mercury
15 News, government entity defendants argued, as do Defendants here,
16 that they might have litigated the case differently if they had
17 known that materials subject to a protective order might later
18 become public. San Jose Mercury News, 187 F.3d at 1101. The court
19 rejected that argument, holding that any reliance on the protective
20 order was unreasonable, as the government defendants could not
21 bargain away the public's right to access court documents. Id.
22 The court further observed that, by the defendants' logic, any
23 post-hoc attempt to intervene would necessarily be untimely, and
24 concluded instead that any burdens or inequities resulting from a
25 party's efforts to obtain records "should affect not the right to
26 intervene but, rather, the court's evaluation of the merits of the

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1 applicant's motion to lift the protective order."² Id.
2 Accordingly, this Court cannot conclude that any prejudice to the
3 parties warrants the denial of intervention.

4 (2) Stage of Proceedings

5 "The stage of the proceeding at which an applicant seeks to
6 intervene" is also relevant to the timeliness inquiry. San Jose
7 Mercury News, 187 F.3d at 1100. Here, Movants seek to intervene at
8 a very late stage of this settled, but ongoing, proceeding. This
9 case was filed, and a plaintiff class subsequently certified, over
10 eleven years ago. (Dkts. 1, 54.) After numerous settlement
11 conferences with the court, the parties entered into the Settlement
12 Agreement over eight years ago. (Dkt 110.) The court held a
13 public hearing and approved the settlement shortly thereafter.
14 (Dkts. 134, 135.) Pursuant to the Settlement Agreement, the
15 Monitors have issued publicly-available status reports for over
16 seven years. (E.g. Dkt. 141.) The parties have engaged in
17 contentious, collaborative, and productive discussions regarding
18 implementation of the settlement agreement for nearly as long.
19 (Dkts. 152, 194.) As part of those discussions, the parties
20 stipulated to, and the court entered, the Protective Order, which
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23 ² WitnessLA appears to suggest that a motion to intervene for
24 the purpose of unsealing can never be untimely, citing the San Jose
25 Mercury News court's statement that "if a motion to intervene is
26 denied as untimely, it is likely that subsequent motions to
27 intervene will also be held untimely, stymying the public's right
28 of access altogether." San Jose Mercury News, 187 F.3d at 1101.
The court made this pronouncement, however, in the course of
rejecting the defendants' specific, prejudice-based "upset
expectations" argument. Id. As the court observed, the defendants
did not, unlike Defendants here, contend that a delay rendered the
attempt to intervene untimely. Id.

1 the instant motions seek to circumvent or modify, over five years
2 ago. (Dkt. 193.)

3 The advanced stage of the litigation, alone, however, does not
4 render untimely a motion to intervene to challenge confidentiality
5 orders, even if made "long after a case has been terminated." Blum
6 v. Merrill Lynch Pierce Fenner & Smith Inc., 712 F.3d 1349, 1353
7 (9th Cir. 2013) (internal quotation marks omitted). Courts in this
8 circuit have, therefore, regularly concluded that a motion to
9 intervene is not necessarily untimely simply for being filed late
10 in the game, even after settlement, trial, or an appeal. See,
11 e.g., Hernandez v. Cnty. of Monterey, No. 13-CV-02354-BLF, 2023 WL
12 5418753, at *1 (N.D. Cal. Aug. 21, 2023) Morizur v. SeaWorld Parks
13 & Ent., Inc., No. 15-CV-02172-JSW, 2023 WL 1111501, at *1 (N.D.
14 Cal. Jan. 30, 2023); Mendez v. City of Gardena, 222 F. Supp. 3d
15 782, 788 (C.D. Cal. 2015). The late stage of proceedings in this
16 case is not, therefore, dispositive of Movants' motions.

17 (3) Reasons for and Extent of Delay

18 This is not to say that any delay in seeking intervention is
19 inconsequential. The court still must determine when a proposed
20 intervenor first knew, or should have known, that intervention
21 might have been necessary to protect the intervenor's interest.
22 San Jose Mercury News, 187 F.3d at 1101; see also Alaniz v. Tillie
23 Lewis Foods, 572 F.2d 657, 659 (9th Cir. 1978).

24 There can be no dispute that that media outlets such as
25 Movants have an interest in "publish[ing] information concerning
26 the operation of government." Kamakana v. City & Cnty. of
27 Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). Nevertheless,
28 Defendants argue that Movants had notice that their interests

1 diverged from Plaintiffs' no later than May 2018, when Plaintiffs
2 stipulated to the entry of the Protective Order and withdrew their
3 Motion to Enforce. Movants suggest that they relied upon
4 Plaintiffs to safeguard Movants' interests, and that Movants only
5 realized that such reliance was misplaced in May 2023, when
6 Plaintiffs failed to exercise the right, retained under the
7 Protective Order, to seek to file the Sealed Materials publicly.

8 As private citizens, Plaintiffs certainly possess some
9 interest in keeping a "watchful eye" on public agencies. Kamakana,
10 447 F.3d at 1178 (quoting Nixon v. Warner Communications, Inc., 435
11 U.S. 589, 598 (1978)). Strictly speaking, however, the interest
12 Plaintiffs seek to protect through this litigation – the right
13 under the Eighth and Fourteenth Amendments "to reasonable
14 protection from violence and excessive force" – is distinct from
15 Movants' interest in publishing information concerning the workings
16 of government agencies. (First Amended Complaint ¶ 3.) In some
17 cases, however, a plaintiff's interest may overlap with distinct
18 press interests. In San Jose Mercury News, for example, two
19 plaintiffs brought employment discrimination claims against a
20 public entity. San Jose Mercury News, 187 F.3d at 1101.
21 Notwithstanding the private nature of the plaintiffs' interests,
22 the court held, upon a motion by a newspaper to obtain a sealed
23 report produced, over the defendants' objection, in discovery, that
24 "the interests of the Mercury News were being effectively
25 represented by the Plaintiffs, who had persistently sought
26 production of the Report." Id. Granted, the court also concluded
27 that that confluence of interests persisted only "until the filing
28 of the stipulated protective order," at which point "the injury to

1 the public's right of access became clear." Id. Here, however,
2 the filing of the Protective Order did not give Movants similar
3 notice. The Protective Order applied (and continues to apply) to
4 broad categories of documents, not specifically to the Sealed
5 Materials themselves. Movants have made clear that they do not
6 seek access to the entire universe of materials subject to the
7 Protective Order, but rather only to the limited set of Sealed
8 Materials, which did not exist at the time the Protective Order was
9 entered. Movants had no indication of the existence of those
10 materials until Plaintiffs recently filed them, at which point it
11 also became clear that Plaintiffs would not seek a court
12 determination that the Sealed Materials could be filed publicly.
13 Movants sought to intervene approximately two months later. This
14 modest delay does not warrant a finding of untimeliness.

15 **IV. Conclusion**

16 For the reasons stated above, the court determines that
17 Movants' motions to intervene are timely. The motions to intervene
18 are, therefore, GRANTED, pursuant to Rule 24(b).³

19 A separate Order shall issue with respect to Movants' motions
20 to unseal the Sealed Materials. At argument, Movants indicated
21 that they would not object to redactions of certain information in
22 the Videos. Defendants, for their part, indicated that they would
23 not object to the unsealing of at least one of the Videos. With
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26 ³ The LA Times, but not Witness LA, also seeks intervention as
27 of right under Rule 24(a). WitnessLA, but not the LA Times, also
28 asserts a First Amendment right to intervene. Having granted
permissive intervention to Movants, however, the court need not
address these additional arguments.

1 that understanding, the court is inclined to grant Movants' motions
2 to unseal, subject to the following:

3 Defendants shall, within 21 days of the date of this Order,
4 lodge with the court a set of edited Videos pixelated, cropped, or
5 otherwise redacted to the minimum extent necessary to address any
6 privacy or security concerns (the "Edited Videos").⁴ Such
7 alterations shall not obscure or diminish any depictions of uses of
8 force. Plaintiffs and Defendants may lodge, along with the set of
9 Edited Videos, a Joint Statement providing additional contextual
10 information about any or all of the Videos. Although the court
11 prefers that Plaintiffs and Defendants agree on any such
12 commentary, the parties may, if necessary, submit separate
13 additional statements.

14 The court then anticipates issuing an Order releasing the
15 Edited Videos shortly thereafter.

16 IT IS SO ORDERED.

17 Dated: September 12, 2023



18 DEAN D. PREGERSON
19 United States District Judge
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26 _____
27 ⁴ To the extent Defendants believe that any of the written
28 references to the Videos in the Sealed Materials implicate these
concerns, Defendants shall also lodge proposed versions of those
references redacted to the minimum extent necessary.