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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

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

I. Background

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

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

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

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

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

II. Legal Standard

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

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

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

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

III. Discussion

A. Permissive Intervention

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

(1) Prejudice

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

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

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

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

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

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

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

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

(2) Stage of Proceedings

"The stage of the proceeding at which an applicant seeks to intervene" is also relevant to the timeliness inquiry. San Jose Mercury News, 187 F.3d at 1100. Here, Movants seek to intervene at a very late stage of this settled, but ongoing, proceeding. This case was filed, and a plaintiff class subsequently certified, over eleven years ago. (Dkts. 1, 54.) After numerous settlement conferences with the court, the parties entered into the Settlement Agreement over eight years ago. (Dkt 110.) The court held a public hearing and approved the settlement shortly thereafter. (Dkts. 134, 135.) Pursuant to the Settlement Agreement, the Monitors have issued publicly-available status reports for over seven years. (E.g. Dkt. 141.) The parties have engaged in contentious, collaborative, and productive discussions regarding implementation of the settlement agreement for nearly as long. (Dkts. 152, 194.) As part of those discussions, the parties stipulated to, and the court entered, the Protective Order, which

[2] WitnessLA appears to suggest that a motion to intervene for the purpose of unsealing can never be untimely, citing the San Jose Mercury News court's statement that "if a motion to intervene is denied as untimely, it is likely that subsequent motions to intervene will also be held untimely, stymying the public's right 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.

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

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

(3) Reasons for and Extent of Delay

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

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

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

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

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

IV. Conclusion

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

A separate Order shall issue with respect to Movants' motions to unseal the Sealed Materials. At argument, Movants indicated that they would not object to redactions of certain information in the Videos. Defendants, for their part, indicated that they would not object to the unsealing of at least one of the Videos. With

[3] The LA Times, but not Witness LA, also seeks intervention as of right under Rule 24(a). WitnessLA, but not the LA Times, also asserts a First Amendment right to intervene. Having granted permissive intervention to Movants, however, the court need not address these additional arguments.

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

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

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

IT IS SO ORDERED.

Dated: September 12, 2023

DEAN D. PREGERSON
United States District Judge

[4] To the extent Defendants believe that any of the written 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.