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*Weekly, First Amendment Coalition,*  
6 *Patricia and Jennifer Ramirez, and*  
7 *Yvette, Xavier, and Janel Pajas*

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 JESSE HERNANDEZ et al., on behalf of  
12 themselves and all others similarly situated,

13 Plaintiffs,

14 v.

15 COUNTY OF MONTEREY; MONTEREY  
16 COUNTY SHERIFF’S OFFICE; CALIFORNIA  
FORENSIC MEDICAL GROUP,  
17 INCORPORATED., a California corporation;  
and DOES 1 to 20, inclusive,

18 Defendants.  
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Case No. CV 13 2354 BLF

**NOTICE OF MOTION AND MOTION  
TO INTERVENE FOR THE LIMITED  
PURPOSE OF UNSEALING COURT  
RECORDS AND PROTECTING  
ACCESS TO PUBLIC PROCEEDINGS**

Hearing Date: November 16, 2023

Hearing Time: 9:00 am

Judge: Beth Labson Freeman

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 Please take notice that on November 16, 2023, at 9:00 a.m., or as soon thereafter as the  
4 matter may be heard, Monterey County Weekly, the First Amendment Coalition, Patricia  
5 Ramirez, Jennifer Ramirez, Rafael Ramirez, Yvette Pajas, Xavier Pajas, and Janel Pajas  
6 (collectively, “Proposed Intervenors”) will and hereby do move pursuant to Federal Rule of Civil  
7 Procedure 24(b) for permissive intervention for the limited purpose of unsealing Plaintiffs’  
8 Motion to Enforce the Settlement Agreement and Wellpath Implementation Plan (“Motion to  
9 Enforce”) and related court records (Docs 787, 788, 793, 794, and all attachments).

10 This motion is based on (1) the accompanying Memorandum of Points and Authorities,  
11 (2) the Declarations of Proposed Intervenors and Exhibits filed in support of this Motion, (3) the  
12 Notice of Motion and Memorandum of Points and Authorities in Support of Proposed  
13 Intervenors’ Motion to Unseal Court Records and Protect Access to Public Proceedings (“Motion  
14 to Unseal,” filed concurrently), and (4) the entire record in this action. By separate motion,  
15 Proposed Intervenors will also request that the Court hear their Motions at or before the upcoming  
16 August 24, 2023, hearing on Plaintiffs’ Motion to Enforce. *See* Doc. 788.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **INTRODUCTION**

19 Four people have died while caged at the Monterey County Jail (the “Jail”) this calendar  
20 year alone. Ex. 1. They join a group of at least twenty-one other people who have died inside the  
21 Jail since this case was filed in 2013. *See* Doc. 776 at 9; Doc. 786. Every death at the Jail raises  
22 the same question: could this death have been prevented? The fact that the disturbingly long list  
23 of names keeps growing raises another: what is happening inside the Jail? The answers to these  
24 questions are largely—and unlawfully—hidden from the public. Monterey County Weekly, the  
25 First Amendment Coalition, and the families of two people who lost their lives because of the  
26 Jail’s inability or unwillingness to provide them with necessary care (collectively, “Proposed  
27 Intervenors”), seek to stop that secrecy. As further discussed in their Motion to Unseal, Proposed  
28

1 Intervenor have First Amendment and common law rights of access to court records. Those  
 2 rights attach to Plaintiffs’ Motion to Enforce and the evidence submitted in support thereof. Docs  
 3 787, 788, 793, 794, and all attachments (together “the requested records”).

4 In their Motion to Enforce, Plaintiffs allege that the Jail has, for the past eight years,  
 5 provided systemically inadequate care to incarcerated people, resulting in a death rate that is more  
 6 than twice the national average and a suicide rate more than three times the average for California  
 7 jails. Doc. 788 at 9. The public has a compelling interest in accessing the evidence supporting that  
 8 claim.

### 9 INTERESTS OF MOVANTS

10 **Monterey County Weekly** is a community newspaper established in 1988 whose mission  
 11 is to inspire independent thinking and conscious action. Ex. 2 at ¶ 2. The Weekly, like all  
 12 professional news agencies in democratically governed nations, relies on access to public records  
 13 in its daily reporting. *Id.* at ¶ 6. Staff request and review court records which are incorporated into  
 14 their journalism on a regular basis. *Id.* The Weekly has been covering local government, including  
 15 operations at the Jail, for more than 34 years. *Id.* at ¶ 7. Because much of the evidence generated  
 16 by the *Hernandez* settlement has been shielded from the public, the Weekly’s coverage of the  
 17 *Hernandez* litigation and of current conditions at the Jail has been limited. *Id.* at ¶ 11. The Weekly  
 18 seeks to intervene in this case to ensure it can produce timely and accurate reporting that enables  
 19 community leaders, government officials and the interested public to make the best decisions  
 20 about how to care for people incarcerated at the Jail. *Id.* at ¶ 12-13.

21 **The First Amendment Coalition** (“FAC”) is a nonpartisan public interest nonprofit  
 22 dedicated to protecting and promoting a free press, freedom of expression, and the people’s right  
 23 to know. Ex. 3 at ¶ 4. FAC believes that the broadest range of engaged and informed communities  
 24 is essential to the health of our democracy, and that the values expressed by the First Amendment  
 25 provide a blueprint for an inclusive, equitable society and a responsive, accountable government.  
 26 *Id.* at ¶ 5. Because information relating to incarceration, policing, and civil rights is of significant  
 27 public concern, FAC has a demonstrated commitment to ensuring law enforcement’s exercise of  
 28 power is exposed to public scrutiny. *Id.* at ¶ 7. FAC seeks to intervene in this case to protect the

1 public’s right to see what information is before the court so the public can assess for itself the true  
 2 state of conditions in the Jail and hold elected officials accountable as the public sees fit. *Id.* at ¶¶  
 3 8, 10-11.

4 **Patricia and Jennifer Ramirez**<sup>1</sup> (together “the Lara family”) are adult children of Rafael  
 5 Ramirez Lara, who died while caged at the Jail on December 22, 2019, over four years after the  
 6 *Hernandez* settlement agreement was approved. *See* Ex. 4 at ¶ 2; Ex. 5 at ¶ 2. Mr. Lara, who had  
 7 a documented history of mental illness that the Jail was well aware of, was incarcerated in  
 8 September 2019. Casey Bastian, *\$775,000 Paid for Mentally Ill California Jail Detainee Who*  
 9 *Compulsively Drank Water Until He Died*, Prison Legal News (June 15, 2023),  
 10 <https://tinyurl.com/muebsrkz>. Despite documentation by Jail staff that he was mentally  
 11 decompensating over the months during which he was incarcerated, the Jail repeatedly failed to  
 12 provide him mental health treatment. *Id.* The County coroner determined that Mr. Lara died from  
 13 psychogenic polydipsia, resulting from untreated schizophrenia—meaning he drowned to death  
 14 from overconsumption of water. *Id.* On the morning of Mr. Lara’s death, a Jail custody officer  
 15 conducting “welfare checks” ignored liquid flooding from Mr. Lara’s cell onto the tier floor—  
 16 making note of the water, then moving on—leaving Mr. Lara to die alone in a pool of water and  
 17 bodily fluids. *Id.* The Lara family brought a lawsuit against the County of Monterey and the  
 18 County’s correctional health provider, Wellpath, alleging that the Jail was deliberately indifferent  
 19 to Mr. Lara’s medical and mental health needs and failed to protect him from harm, which settled  
 20 in 2022 for \$2.5 million. Royal Caulkins, *Another Monterey County Jail Death Claim Settled*,  
 21 *Voices of Monterey Bay* (Oct. 19, 2022), <https://tinyurl.com/3u4z28zc>. The Lara family firmly  
 22 believes that shedding light on failures of the jail system is crucial to initiating positive change  
 23 and seeks to intervene to ensure their father did not die in vain. *See* Ex. 4 at ¶ 8; Ex. 5 at ¶ 7, 8.

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 25 \_\_\_\_\_  
 26 <sup>1</sup> The Lara family previously intervened in this case for the limited purpose of modifying the  
 27 protective order in order to gain access to their father’s records. *See* Doc. 700.  
 28



1 “Nonparties seeking access to a judicial record in a civil case may do so by seeking  
2 permissive intervention under Rule 24(b)(2).” *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187  
3 F.3d 1096, 1100 (9th Cir. 1999); *see* Fed. R. Civ. P. 24. Ordinarily, a court may grant permissive  
4 intervention if the movant presents “(1) an independent ground for jurisdiction; (2) a timely  
5 motion; and (3) a common question of law and fact between the movant's claim or defense and  
6 the main action.” *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992).  
7 Consistent with the requirements of Rule 24(b), the court must also “consider whether the  
8 intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed.  
9 R. Civ. P. 24(b)(3).

10 Because Proposed Intervenors seek to intervene only for the limited purpose of unsealing  
11 court records, they need not “demonstrate independent jurisdiction or a common question of law  
12 or fact,” only that their motion is timely. *Cosgrove v. Nat’l Fire & Marine Ins. Co.*, 770 F. App’x  
13 793, 795 (9th Cir. 2019) (citing *Beckman*, 966 F.2d at 473); *see Greer v. Cty. of San Diego*, No.  
14 19CV378-JO-DEB, 2023 WL 4479234, at \*3 (S.D. Cal. July 10, 2023) (“a party who seeks to  
15 intervene solely to unseal filed documents only needs to show timeliness”). In determining  
16 whether the motion is timely, a court must consider “(1) the stage of the proceeding at which an  
17 applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length  
18 of the delay.” *San Jose Mercury News*, 187 F.3d at 1101.

19 None of these factors indicate that Proposed Intervenors’ Motion to Intervene is untimely.  
20 Proposed Intervenors took reasonably prompt action and filed their Motions less than three  
21 months after Plaintiffs filed their initial Motion. *See id.* (citing cases to demonstrate that “delays  
22 measured in years have been tolerated where an intervenor is pressing the public’s right of access  
23 to judicial records”). Furthermore, because the degree of secrecy involved in these proceedings  
24 may infringe on the press and public’s presumptive right of access to the upcoming August 24,  
25 2023, hearing, Proposed Intervenors’ Motions to Intervene and Unseal are well-timed. *See* Ex. 2  
26 at ¶ 12; *Newman v. Graddick*, 696 F.2d 796, 801 (11th Cir. 1983) (holding that “civil trials [and  
27 enforcement proceedings] which pertain to the release or incarceration of prisoners and the  
28 conditions of their confinement are presumptively open to the press and public”). Granting this

1 Motion to Intervene would not prejudice the parties. Even if it did, once an intervenor asserts “a  
 2 legitimate, presumptive right to open the court record . . . , the potential burden or inequity to the  
 3 parties should affect not the right to intervene but, rather, the court’s evaluation of the merits of  
 4 the applicant’s motion.” *San Jose Mercury News*, 187 F.3d at 1101 (quoting *Public Citizen v.*  
 5 *Liggett Grp., Inc.*, 858 F.2d 775, 787 (1st Cir. 1988)).

6 Finally, allowing Proposed Intervenors to intervene will not unduly delay or prejudice the  
 7 adjudication of the original parties’ rights. *See* Fed. R. Civ. P. 24(b)(3). As explained in Proposed  
 8 Intervenors’ Motion to Unseal, Defendants have an existing burden to establish that there are  
 9 compelling reasons for keeping these court records sealed. “The mere fact that Defendants will  
 10 need to explain why the relevant records should remain sealed is not, itself, unduly prejudicial.”  
 11 *Muhaymin v. City of Phoenix*, No. CV-17-04565-PHX-DLR, 2021 WL 5173767, at \*1 (D. Ariz.  
 12 Nov. 3, 2021). Further, because the parties in this case have already completed briefing on  
 13 whether certain court records (the neutral monitor reports) should be maintained under seal, any  
 14 burden on the parties in presenting relevant argument and evidence on the issues raised by  
 15 Proposed Intervenors’ Motions will be minimal. *See* Docs. 776, 782, 786.

### 16 CONCLUSION

17 Because Proposed Intervenors satisfy the requirements for permissive intervention under  
 18 Rule 24(b), the Court should grant their Motion and allow them to assert their First Amendment  
 19 and common law rights of access to court records.

20  
 21 Dated: July 20, 2023

Submitted,

22 /s/ Jaqueline Aranda Osorno  
 23 *Counsel for Proposed Intervenors*

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