

1 Jaqueline Aranda Osorno [S.B. # 308084]
2 PUBLIC JUSTICE
3 1620 L St. NW, Suite 630
4 Washington, DC 20036
5 (202) 797-8600
6 jaosorno@publicjustice.net

7 *Counsel for Monterey County*
8 *Weekly, First Amendment Coalition,*
9 *Patricia and Jennifer Ramirez, and*
10 *Yvette, Xavier, and Janel Pajas*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 JESSE HERNANDEZ et al., on behalf of
14 themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 COUNTY OF MONTEREY; MONTEREY
18 COUNTY SHERIFF'S OFFICE; CALIFORNIA
19 FORENSIC MEDICAL GROUP,
20 INCORPORATED., a California corporation;
21 and DOES 1 to 20, inclusive,

22 Defendants.

Case No. CV 13 2354 BLF

**PROPOSED INTERVENORS'
RESPONSE TO COURT'S REQUEST
FOR CLARIFICATION OF THEIR
INTERVENOR STATUS**

Judge: Beth Labson Freeman

**PROPOSED INTERVENORS' RESPONSE TO COURT'S REQUEST FOR
CLARIFICATION OF THEIR INTERVENOR STATUS**

On July 20, 2023, Monterey County Weekly, the First Amendment Coalition, Patricia Ramirez, Jennifer Ramirez, Yvette Pajas, Xavier Pajas, and Janel Pajas (collectively, "Proposed Intervenor") moved to intervene in this matter for the limited purpose of unsealing court records and protecting access to upcoming settlement enforcement proceedings. Docs. 799,¹ 800. On July 21, 2023, the Court issued an order ("Order") denying in large part the parties' motions to seal documents submitted in support of Plaintiffs' Motion to Enforce the Settlement Agreement and Wellpath Implementation Plan ("Motion to Enforce"). Doc. 802. Recognizing that its Order may have mooted Proposed Intervenor's motions, the Court separately ordered Proposed Intervenor to, after reviewing the unsealed documents, advise the Court whether they still intended to pursue their claims. Doc.803. Proposed Intervenor hereby submit this response to advise the Court that, in light of Defendant Wellpath's appeal of and motion to stay the Court's order, Proposed Intervenor will continue to pursue their motions for the purposes of (1) opposing Defendants' request for an emergency stay; and (2) protecting public access to the August 24, 2023, hearing on Plaintiffs' Motion to Enforce, and any subsequent enforcement proceedings. *See* Docs. 805, 806.

I. Defendants Have Not Met the Burden of Showing the Circumstances in This Case Justify a Stay

In deciding whether to grant a stay pending an appeal, a court must consider "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Defendants ignore this traditional and well-established standard for a stay and instead propose that the Court apply a legal standard that fails to consider the likelihood of Defendants' success on the merits of the appeal, or accords sufficient weight to injuries to other parties, including

¹ Proposed Intervenor filed an amended motion to intervene on July 24, 2023. Doc.808.

1 the public. Doc. 806 at 2 (proposing, without justification, that the Court apply the *Landis* standard).
2 Defendants fall woefully short of meeting the correct *Nken* standard.

3 To the first *Nken* factor, Defendants have not made a showing, let alone “a strong showing,”
4 that they are likely to succeed on the merits, which is one of the “most critical” factors in determining
5 whether a stay is proper. *See Niken*, 556 U.S. at 434. In their motion requesting a stay, Defendants
6 only state that “the issues on appeal are significant,” and implicate “privilege, privacy, and
7 confidentiality.” Doc. 806 at 4. This says nothing of the strength of their appeal. To the second *Nken*
8 factor, Defendants have not articulated how they will be harmed if the documents are publicly
9 docketed. They merely repeat that the documents are “private, privileged, and confidential.” Doc.
10 806 at 4. Any such concerns were addressed by the Court’s Order directing the redaction of certain
11 sensitive information.² Even if Defendants were able to establish an irreparable injury, that alone
12 would not justify granting a stay. *Nken*, 556 U.S. at 433 (“A stay is not a matter of right, even if
13 irreparable injury might otherwise result.”)

14 To the third *Nken* factor, Defendants fail to acknowledge that issuing a stay will substantially
15 injure Proposed Intervenor and the public. *See* Doc. 806 at 3 (arguing that issuing a stay “is of no
16 prejudice to . . . the public at large”). As explained in Proposed Intervenor’s Motions to Unseal, the
17 public has unquestionable First Amendment and common law rights of access to the records
18 Defendants insist must remain entirely secret. Doc. 800 at 5-7. These records likely shed light on
19 whether Defendants have and continue to provide systemically inadequate care to people
20 incarcerated at the Jail and may help explain why the death and suicide rates at the Jail are alarmingly
21 high. This Court has already determined that the public has a right to access these records, and that
22 access must be “immediate and contemporaneous.” *See Grove Fresh Distributors, Inc. v. Everfresh*
23 *Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994), *superseded by rule on other grounds in Bond v. Utreras*,
24 585 F.3d 1061 (7th Cir. 2009). As such, each passing day without access to these records constitutes

25
26 ² Proposed Intervenor do not waive their right to challenge the redaction of information currently
27 designated by the Court as “sensitive.”
28

1 separate, cognizable, and irreparable harm to Proposed Intervenor and the public. *See Lugosch v.*
 2 *Pyramid Co. of Onondaga*, 435 F.3d 110, 126 (2d Cir. 2006) (holding that a court’s delay in ruling
 3 on a motion to intervene and unseal records was “effectively a denial of any right to
 4 contemporaneous access—where each passing day may constitute a separate and cognizable
 5 infringement of the First Amendment” (internal alternations and citations omitted)).

6 Finally, to the fourth *Nken* factor, courts have “consistently recognized the significant public
 7 interest in upholding First Amendment principles.” *Index Newspapers LLC v. U.S. Marshals Serv.*,
 8 977 F.3d 817, 838 (9th Cir. 2020) (citations omitted). Here, Proposed Intervenor and the public
 9 have a First Amendment right to inspect court records in a case that alleges serious and ongoing
 10 constitutional violations. Both the information contained in those records and the fact that the
 11 government continues to try to shield that information from public scrutiny are of significant public
 12 interest. *See* Rey Mashayekhi, *Behind the Bars*, Monterey County Weekly (July 26, 2023),
 13 <https://tinyurl.com/yc484kms>. Granting a stay and allowing secrecy to continue is contrary to
 14 “where the public interest lies.” *See Nken*, 556 U.S. at 434.

15 Because Defendants cannot meet the burden of showing why the circumstances in this case
 16 justify issuing a stay, Proposed Intervenor ask that the Court deny the motion to stay and order the
 17 unsealing of the neutral monitor reports consistent with the Court’s July 21, 2023, Order. *See* Doc.
 18 802.

19 **II. Even if the Stay is Granted, Enforcement Proceedings Must Remain Public**

20 Proposed Intervenor seek not only to unseal records, but also to protect public access to
 21 proceedings. Doc. 808. If the Court is inclined to grant Defendants’ motion and issues a stay of its
 22 July 21, 2023, Order, Proposed Intervenor renew their argument that the Court must preserve public
 23 access to the upcoming settlement enforcement proceedings on August 24, 2023. Doc. 800 at 9-10.
 24 Without access to these proceedings, the public will be left to speculate not only what the specific
 25 evidence being considered is, but also what arguments Plaintiffs are making or what relief they seek.
 26 *See* Doc. 788 (redacting most of the factual and procedural background and argument of the
 27 Plaintiffs’ Motion to Enforce). Ultimately, “[p]ublic confidence in the courts is the issue: How can
 28 the public know that courts are deciding cases fairly and impartially if it doesn't know what is being

1 decided? . . . Sealing a record undermines that interest, but shutting the courthouse door poses an
2 even greater threat to public confidence in the justice system.” *BP Expl. & Prod., Inc. v. Claimant*
3 *ID 100246928*, 920 F.3d 209, 210 (5th Cir. 2019) (internal citations omitted). The Court should
4 ensure the courthouse doors remain open on August 24, 2023, and any subsequent enforcement
5 proceedings.

6 **CONCLUSION**

7 As explained above, Proposed Intervenors continue to pursue their motions to intervene and
8 unseal in light of Wellpath’s appeal and motion for stay. Proposed Intervenors request that the Court
9 deny Defendants’ request to stay the July 21, 2023, Order and ensure the upcoming proceedings
10 remain public. Proposed Intervenors also request that the Court resolve their Motion to Intervene to
11 ensure Proposed Intervenors can defend any appeal related to the sealing issues.

12
13 Dated: July 26, 2023

Submitted,

14 /s/ Jaqueline Aranda Osorno
15 *Counsel for Proposed Intervenors*

16 Jaqueline Aranda Osorno (308084)
17 PUBLIC JUSTICE
18 1620 L St. NW, Suite 630
19 Washington, DC 20036
(202) 797-8600
jaosorno@publicjustice.net