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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

JUAN ANTHONY SANCHO, an individual,

Plaintiff,

v.

JACKSON COUNTY, OREGON, an Oregon
Governmental entity; and in their individual

Case No. 1:20-cv-01232-CL

MOTION OF NON-PARTY CIVIL RIGHTS
ORGANIZATIONS AMERICAN CIVIL LIBERTIES
UNION OF OREGON AND OREGON JUSTICE
RESOURCE CENTER TO INTERVENE FOR THE
LIMITED PURPOSE OF MOVING TO UNSEAL
JUDICIAL RECORDS

**PAGE 1 – MOTION OF NON-PARTY CIVIL RIGHTS ORGANIZATIONS AMERICAN
CIVIL LIBERTIES UNION OF OREGON AND OREGON JUSTICE RESOURCE CENTER
TO INTERVENE FOR THE LIMITED PURPOSE OF MOVING TO UNSEAL JUDICIAL
RECORDS**

and official capacities as deputies employed by the Jackson County Oregon Sheriff's Department: BRADY BJORKLUND, JEFFREY CARPENTER, STEPHEN DAFFRON, DAVID DALTON, MICHAEL HAMMOND, TAWNIA SELLERS, and DANIELLE THURNBAUER,

Defendants.

LR 7-1 CERTIFICATION

Counsel for Civil Rights Intervenors certifies they made a good faith effort through personal or telephone conferences to contact counsel for all parties to confer on the instant motion to intervene and unseal records. Neither Plaintiff nor County Defendants object to Civil Rights Intervenors' motion to intervene. Defendants reserved the right to oppose a motion to unseal judicial records when such a motion is presented to the court.

CERTIFICATION

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it is fewer than 35 pages and contains 4,231 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

MOTION

Pursuant to Fed. R. Civ. P. 24(a) and (b) and Local Rule 7, non-party civil rights organizations the American Civil Liberties Union of Oregon ("ACLU-OR") and the Oregon Justice Resource Center ("OJRC") (collectively, the "Civil Rights Intervenors") hereby move for leave to intervene in the above-captioned proceeding for the limited purpose of vindicating the right of the public to access judicial records in this matter. In particular, the Civil Rights

Intervenors seek to unseal judicial records filed entirely under seal by the parties pursuant to a protective order, including sealed records filed in support of the parties' motions for summary judgment and judgment on the pleadings. ECFs. 58-70, 74-75, 85, 87-88, 90, 94-95, and 102-103.

PRELIMINARY STATEMENT

This case concerns whether Jackson County ("the County") and their taxpayer-funded law enforcement officers wrongfully used excessive force and violated the constitutional rights of an adult in their custody when they chained a Latino Oregon Shakespeare Festival actor to a jail cell floor grate and forced him to lie in urine for hours. ECF 51. A central issue in this case is how government defendants respond to correctional officer misconduct. The Court entered a protective order that permitted restricted filing of, among other documents, "defendants' employment and discipline records" and "information contained in documents, interrogatory responses, responses to requests for admission, or deposition testimony." ECF 52 at 2. But the County Defendants have abused the limited scope of this protective order to keep secret a broad range of documents related to Defendants' alleged misconduct and how that misconduct was handled, including portions of summary judgment briefs and their supporting exhibits. ECFs 58-70, 74-75, 102-103. Similarly, Mr. Sancho's responsive briefing and exhibits, including expert reports, are filed restricted. ECFs. 85, 87-88, 90, 94-95. The records submitted in connection with County Defendants' summary judgment motion and Plaintiff's Motion for Judgment on the Pleadings could determine how the case will resolve at trial. Moreover, the records have the potential to inform and shape public discourse surrounding law enforcement misconduct given the issues before the Court. The public at large has a strong interest in knowing whether the County adequately investigates, reprimands, or removes dangerous employees or is training

officers on core issues that affect the treatment of and conditions of confinement for adults in custody in the Jackson County Jail. Access to information about how incidents of misconduct are investigated and handled provides the public with information they need to understand government processes and functioning, advocate for better accountability systems, press for the removal of problematic officers, and make decisions about County leadership. When officers are permitted to continue their harmful behavior without intervention or correction, every individual who interacts with law enforcement faces risk of abuse. Through this motion, the American Civil Liberties Union of Oregon (“ACLU-OR”) and the Oregon Justice Resource Center (“OJRC”) seek to vindicate their own and the public’s constitutional and common law rights of access to judicial records in the above-captioned matter.

PROPOSED CIVIL RIGHTS INTERVENORS

The ACLU-OR is a non-profit, nonpartisan organization dedicated to the principles embodied in the Bill of Rights. It advocates for transparency in government functions, law enforcement accountability, and the protections against excessive force, deliberate indifference, and unlawful searches and seizures enshrined in the Constitution. In particular, the ACLU-OR advocates to end abuse by police and in jails through policy reforms and litigation. Access to information concerning past incidents of misconduct and how that misconduct was addressed is essential to the ACLU-OR’s efforts to identify root causes of abuse and formulate solutions to end it. Moreover, ACLU-OR believes that transparency can lead to more accountability for officers and better jail practices.

The OJRC is a non-profit organization founded in 2011 to promote criminal legal system reform through advocacy, direct legal services, and public education. OJRC works to dismantle systemic discrimination in the administration of justice by promoting civil rights and enhancing

the quality of legal representation for traditionally underserved communities. Public accountability is an essential tenet of OJRC's work and the organization is focused on redressing correctional officer violence across the state.

BACKGROUND

Plaintiff Juan Anthony Sancho is an actor who lives in California. In April 2019, Mr. Sancho was in Ashland, Oregon acting in productions of *Mother Road*, a sequel to John Steinbeck's *The Grapes of Wrath*, for the Oregon Shakespeare Festival. On April 18, 2019, Mr. Sancho was taken into custody by the Ashland Police and transported to the Jackson County Jail for safe detox from alcohol after the police encountered Mr. Sancho walking on a sidewalk at night without a ride home. Mr. Sancho was never charged with any crime, and was taken to the Jackson County jail as a public safety detox measure.¹

Once lodged in the jail, Jackson County Sheriff Deputies placed Mr. Sancho in an administrative segregation "dry cell." This cell had a door with a glass window, but no furniture, bedding, sink for water, or toilet in the cell. The only restroom facility in the cell was a metal urine grate embedded in the concrete floor. Mr. Sancho was placed in handcuffs before entering the cell and kept in handcuffs while he was in the cell, despite there being no items or other people in the cell aside from Mr. Sancho. ECF 51.

Mr. Sancho knocked on the window of the cell door attempting to get the deputies' attention. The deputies responded by entering the cell, forcefully taking Mr. Sancho down to the concrete floor, delivering multiple knee strikes into Mr. Sancho's back, and kneeling on top of

¹ See Noelle Crombie, *ACLU files civil rights lawsuit against Ashland police over arrest of Oregon Shakespeare Festival actor*, THE OREGONIAN (April 19, 2021), <https://www.oregonlive.com/crime/2021/04/aclu-files-civil-rights-lawsuit-against-ashland-police-over-arrest-of-oregon-shakespeare-festival-actor.html>.

Mr. Sancho's neck and back while he was handcuffed in a face down, prone position on the concrete floor. Mr. Sancho briefly lost consciousness during the encounter. *Id.*

Later, Mr. Sancho again knocked on the jail cell door seeking assistance. Jail deputies again entered the cell and took Mr. Sancho to the floor, this time handcuffing him directly to the urine grate on the ground. The grate had recently been used for urination and Mr. Sancho was forced to lie in urine on the floor handcuffed to the grate for more than two hours. *Id.* It is unknown whether these incidents resulted in any discipline for any of the deputies involved.

Mr. Sancho brought this action against the Jackson County Jail and a number of its employees alleging violations of his constitutional rights. *Id.* Over the course of the litigation, Defendants have unsurprisingly been adamant about denying the public access to County records regarding the incident and keeping briefing and exhibits regarding the case under seal. Although Mr. Sancho disputed its entry, this Court ultimately ordered the parties to enter a protective order. ECF 17. But in doing so, the Court expressly acknowledged it may remove certain documents from beneath the protective order in the future. *Id.* (“Later, if there are particular documents that one party or the other believes should not be subject to the protective order, and the dispute cannot be resolved, the parties may seek the Court’s assistance.”).

Civil Rights Intervenors now ask the Court to allow intervention for the purpose of evaluating and unsealing records in the public interest. The dispositive motion briefs and exhibits remain under seal and are not available for public view. ECFs. 58-70, 74-75, 85, 87-88, 90, 94-95, and 102-103. The portions of the records that are not sealed hint that the sealed evidence contains details that would be in the public interest and relevant to the work of both Civil Rights Intervenors.

The misconduct in this case is not an isolated incident, and similar mistreatment continues to occur in the Jackson County jail. There are documented allegations against officers in the Jackson County jail for excessive force² and unsafe and unsanitary conditions of confinement³ as well as claims that Jackson County has failed to take appropriate steps to prevent misconduct. In the time since Mr. Sancho experienced the physical abuse and unsanitary conditions of confinement by the County described in his lawsuit, at least three people have died in the jail while in Jackson County custody.⁴

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² Maxine Bernstein, *Video shows southern Oregon sheriff's deputy slapping disabled homeless activist in wheelchair*, THE OREGONIAN (Sept. 14, 2022), <https://www.oregonlive.com/crime/2022/09/video-shows-southern-oregon-sheriffs-deputy-slapping-disabled-homeless-activist-in-wheelchair.html#:~:text=Jackson%20County%20sheriff%27s%20deputies%2C%20as,jail%20on%20July%2011%2C%202019.&text=A%20southern%20Oregon%20sheriff%27s%20deputy,jail%20cell%20in%20a%20wheelchair>; *Watts v. Novak*, 1:22-cv-0512-MO (D. Or. Jan. 3, 2023); *Evans v. Jackson Cnty.*, No. 1:14-CV-145-CL, 2015 WL 2170114, at *6 (D. Or. May 7, 2015) (“The Court takes judicial notice of the existence of three other federal lawsuits filed against the County and various officers within its employ for the use of excessive force against inmates from 2010 to 2012: *Alvarez v. Jackson County et al.*, Case No. 1:13-cv00641-PA; *Rodrigues v. Jackson County et al.*, Case No. 1:13-cv-1589-CL; and *Williams v. Jackson County et al.*, Case No. 1:13-cv-1190-CL.”); *Comfort v. Jackson County*, 09-cv-3060-CL (D. Or. Jul. 16, 2010).

³ See Brian Bull, *Journalist April Ehrlich sues Medford and Jackson County officials over 2020 arrest*, KLCC (Sept. 28, 2022), <https://www.klcc.org/crime-law-justice/2022-09-28/journalist-april-ehrllich-sues-medford-and-jackson-county-officials-over-2020-arrest#> (describing jail conditions as “disgusting”); Ethan McReynolds, *Federal civil rights lawsuit filed against JaCo Jail over treatment*, KOBI (Sept. 15, 2022), <https://www.kobi5.com/news/jackson-county-faces-lawsuit-over-jail-treatment-195620/> (forcing paraplegic inmate to lay in urine for hours).

⁴ *Jackson County inmate dies following possible head injury, says police*, KOBI (Feb. 16, 2020), available at <https://www.kobi5.com/news/jackson-county-inmate-dies-following-possible-head-injury-says-police-121999/>; Jerry Howard, *Central Point woman died as Jackson County jail inmate*, KDRV (Nov. 14, 2022), available at https://www.kdrv.com/news/central-point-woman-died-as-jackson-county-jail-inmate/article_1cd7794a-6495-11ed-985a-8fb6c475995d.html; *Jackson County Jail inmate dies while in custody*, KOBI (June 28, 2023), available at <https://kobi5.com/news/jackson-county-jail-inmate-dies-while-in-custody-210868/>.

ARGUMENT

1. Civil Rights Intervenors Have a Presumptive Right to Intervene to Unseal Records.

The public has a presumptive right of access to court records filed under seal pursuant to the First Amendment and the common law. *See Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978); *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise I)*, 464 U.S. 501, 508 (1984); *Courthouse News Serv. v. Planet (Planet II)*, 947 F.3d 581, 591 (9th Cir. 2020). Public access to judicial proceedings “enhances both the basic fairness of the [proceeding] and the appearance of fairness so essential to public confidence in the system.” *Press-Enterprise I*, 464 U.S. at 508. The Ninth Circuit has held that public access forms “an essential part of the First Amendment’s purpose to ‘ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.’” *Courthouse News Serv. v. Planet (Planet I)*, 750 F.3d 776, 785 (9th Cir. 2014) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982)).

In particular, there is an established public right of access to judicial documents and proceedings where (1) the types of judicial processes or records sought have “historically been open to the press and general public” and (2) “public access plays a significant positive role in the functioning of the particular [governmental] process in question.” *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 8 (1986). Both factors are met here.

On the first factor, the Civil Rights Intervenors are seeking to unseal law enforcement misconduct documents filed in support of summary judgment and other briefing—documents which have traditionally been open to the press and public. *See, e.g., Macias v. Cleaver*, 2016 U.S. Dist. LEXIS 85529 (E.D. Cal. Jun. 30, 2016) (“This ‘federal common law right of access’

to court documents generally extends to ‘all information filed with the court,’”) (citing *Phillips ex Rel Estates of Byrd v. Gen Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002)); *Perkins v. City of Oakland*, 2018 U.S. Dist. LEXIS 234852 (N.D. Cal. May 1, 2018); *Welsh v. City & County of San Francisco*, 887 F. Supp. 1293, 1302 (N.D. Cal. 1995); *Skibo v. City of New York*, 109 F.R.D. 58, 61 (E.D.N.Y. 1985). Indeed, courts have found the public is entitled to court records involving law enforcement conduct ranging from documents filed in pre-trial criminal proceedings to search warrant applications. *CBS, Inc. v. United States District Court*, 765 F.2d 823 (9th Cir. 1985); *U.S. v. Business of Custer Battlefield Museum*, 658 F.3d 1188 (9th Cir. 2011).

On the second factor, public access to records regarding misconduct is instrumental in the proper functioning of jail operations in Jackson County. Public access to evidence in law enforcement accountability litigation plays a significant role in ensuring fairness, decreasing the perception of bias, and boosting public confidence in the justice system. *See Nixon*, 435 U.S. at 598 (explaining that the law’s recognition of the importance of judicial transparency serves “the citizen’s desire to keep a watchful eye on the workings of public agencies... [and] the operation of government”); *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1234 (10th Cir. 2007) (recognizing in public records case that “Undoubtedly, there is a strong public interest in monitoring the conduct and actual performance of public officials,” including law enforcement officers, and noting “[e]ach of these individuals was a low-level employee who committed serious acts of misconduct. The public interest in learning how law enforcement agencies dealt with these individuals is very high, and that information must be released.”). Here, transparency is an essential prerequisite to ensuring law enforcement officer accountability and it is critical to

ongoing discussions about how best to address claims of misconduct and the community's lack of trust in the Jackson County Sheriff's Department.

Third parties are frequently deemed the proper advocates for vindicating the public's right of access to sealed court records. *Beckman Indus., Inc. v Int'l Ins Co.*, 966 F.2d 470, 473 (9th Cir. 1992). Non-profit organizations in particular have standing to challenge the unsealing of records both on their own behalf and on behalf of the general public. *See, e.g., Uniloc USA, Inc. v. Apple, Inc.*, 508 F. Supp. 3d. 550, 554 (N.D. Cal. 2020) (granting the privacy non-profit Electronic Freedom Foundation's motion to intervene for the purpose of unsealing records); *Muhaymin v. Phoenix*, 17-cv-04565, ECF #375 (D. Ariz. Nov. 2, 2021) (granting civil rights non-profit Muslim Advocate's motion to intervene for the limited purpose of unsealing judicial records); *Hispanic Nat'l Law Enf't Ass'n NCR v. Prince George's Cty.*, 2021 U.S. Dist. LEXIS 9591 at *4 (D. Md. Jan. 19, 2021) (granting motion to intervene to unseal records brought by civil rights organizations NAACP and National Action Network); *Johnson v. CCA*, 2014 U.S. Dist. LEXIS 11171 (W.D. Ky. 2016) (granting motion to intervene of non-profit Prison Legal News). Here, Civil Rights Intervenors and the public at large have a strong interest in knowing what happened to Mr. Sancho when he was detained in the Jackson County jail, how County leadership responded to the deputies' actions, and how the events and deputies in question were investigated following Mr. Sancho's complaints of misconduct and abuse.

Moreover, the documents sought will help Civil Rights Intervenors in their efforts to advocate for police accountability and reform. This matter is of significant public concern and debate, as the State of Oregon is in the process of soliciting public comment and input regarding

the formation of statewide standards for law enforcement misconduct in Oregon,⁵ and the Oregon Legislature has been actively addressing law enforcement misconduct policy in recent years.⁶ Excessive use of force against pre-trial detainees inside the Jackson County jail was specifically highlighted during the Commission on Statewide Law Enforcement Standards of Conduct and Discipline’s public hearings as exemplifying the need for further accountability and standards.⁷ ACLU-OR and OJRC both provided feedback on the proposed standards, and access to information such as the documents Civil Rights Intervenors seek to unveil is relevant to their participation in this ongoing public process.

2. Civil Rights Intervenors’ Motion is Timely and Intervention is Permissible Under Rule 24.

Moving for permissive intervention is the appropriate procedural mechanism for third parties to assert their own and the public’s right to access sealed records, and courts generally “construe[] [the Rule] broadly in favor of proposed intervenors.” *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992). Pursuant to F.R.C.P 24(b), a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or

⁵ Commission on Statewide Law Enforcement Standards of Conduct and Discipline, <https://justice.oregon.gov/lesc/>.

⁶ Dirk VanderHart and Jeff Mapes, *Oregon Legislature Advances Police Accountability Measures*, OPB (June 26, 2020), available at <https://www.opb.org/news/article/oregon-senate-sends-police-discipline-bill-to-house/>.

⁷ See Frederick M. Boss, *Presiding Officer’s Report on Rulemaking Hearings*, OREGON DEPARTMENT OF JUSTICE, at 3-4 and Ex. 3 (Sept. 21, 2022), https://justice.oregon.gov/lesc/documents/NPRM_2022-07-28_Hearing_Report.pdf; see also Commission on Statewide Law Enforcement Standards of Conduct and Discipline, OREGON DEPARTMENT OF JUSTICE at 10:10-41:28 (Sept. 14, 2022), <https://www.youtube.com/watch?v=4ZXgm2RuzUo> (Video of public testimony regarding Jackson County Sheriff Deputy excessive use of force in the jail).

defense, and the main action, have a question of law or a question of fact in common. *Northwest Forest Res. Council v. Glickman*, 82 F.3d at 825, 839 (9th Cir. 1996); *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 403 (9th Cir. 2002). However, where a third party seeking to intervene does not intend to become a party to the action and is only seeking limited intervention for the purpose of unsealing judicial records—as the Civil Rights Intervenors seek to do here—courts generally limit their analysis to whether the proposed intervenor’s motion is timely. *Beckman Indus. v. Int’l Ins. Co.*, 966 F.2d 740, 473-74 (9th Cir. 1992) (holding Rule 24(b)’s prongs regarding independent jurisdictional basis or common question of fact or law inapplicable to limited intervention); *San Jose Mercury News v. U.S. Dist. Court—N. Dist. (San Jose)*, 187 F.3d 1096, 1100 (9th Cir. 1999); *Confederated Tribes of Siletz Indians of Oregon v Weyerhaeuser Co.*, 340 F. Supp. 2d 1118, 1121 (D. Or. 2003) (noting that a party’s filing of an exhibit under seal pursuant to a protective order is of little weight in the court’s unsealing analysis because blanket protective orders are “inherently subject to challenge and modification”).

Courts consider three factors in determining whether a motion is timely: “(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, Inc.*, 187 F.3d at 1100-01. Ninth Circuit courts have held that intervention to unseal is appropriate at the pre-judgment and pre-settlement stages of litigation. *Id.* at 1101-03 (holding that the public has a pre-judgment right of access to judicial records in civil cases); *Cahill v. Nike Inc.*, No. 3:18-cv-01477-JR, 2022 U.S. Dist. LEXIS 182366 at *42-43 (D. Ore. Sept. 30, 2022) (granting intervention where motion was filed nearly three years after protective order was entered and two days after the defendant filed its Reply to Motion to Seal) (findings and recommendations adopted by *Cahill v.*

Nike, Inc., No. 3:18-cv-01477-JR, 2022 U.S. Dist. LEXIS 205971 (D. Or. Nov. 13, 2022).

Further, there is no bright-line rule on what constitutes an impermissible delay but courts have permitted intervention years after protective orders have been issued in a case. *San Jose Mercury News*, 187 F.3d at 1101 (finding an intervention 12 weeks after the submission of sealed records was timely and that “delays measured in years have been tolerated where an intervenor is pressing the public’s right of access to judicial records”); *Beckman Indus.*, 966 F.2d at 471 (affirming intervention two years after underlying case settled); *Olympic Refining Co. v. Carter*, 332 F.2d 260, 265-66 (9th Cir. 1964) (permitting intervention to challenge a protective order three years after the underlying litigation had terminated).

Here, the Civil Rights Intervenors’ motion is timely because it is being filed within two months of the Court’s ruling on the motion for summary judgment wherein the need for intervention to unseal documents was made apparent through the briefing being filed under seal, and the motion to intervene is made prior to trial. Moreover, the Civil Rights Intervenors are not aware of any plausible argument that their motion comes at an inappropriate stage of the litigation or that the timing of the filing will prejudice Defendants.

3. The Extensive Sealing in this Case Violates Proposed Intervenors’ and the Public’s Common Law and First Amendment Right of Access to Judicial Records and Defendants Lack a Compelling Reason to Keep the Records Sealed.

In motions to unseal, the onus is on government defendants to show good cause for keeping the records confidential. *Wood v. Ryan*, 759 F.2d 1076, 1081-82 (9th Cir. 2014); *Press-Enter Co. v. Superior Ct.*, 478 U.S. 1, 8 (1986). To show good cause, a defendant must show that “specific prejudice or harm will result” from unsealing the records. *Phillips ex. rel. Est. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1076, 1081-2 (9th Cir. 2014). Where records are used to

support a dispositive motion, the proponent of secrecy has a heightened burden and must establish “compelling reasons” to keep the records sealed. *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1179-1180 (9th Cir. 2006) (“[W]e treat judicial records attached to dispositive motions differently from records attached to non-dispositive motions. Those who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that ‘compelling reasons’ support secrecy.”) (citing *Foltz v. State Farm*, 331 F.3d 1122, 1136 (9th Cir. 2003)). A compelling reason is defined as an interest “essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enter. Co.*, 478 U.S. at 2. Generally, compelling reasons require a finding that “the disclosure of the material could result in improper use of material for scandalous or libelous purpose or infringement upon trade secrets.” *Foltz*, 331 F.3d at 1136. Ultimately the court’s decision to unseal turns on a balancing test where the opponent of unsealing must put forward an exceptionally weighty reason to prevail. *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995); *Ctr. for Auto Safety v. Chrysler Group LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (describing the conscientious balance between the public’s weighty interest in access and the government’s “compelling reasons” for confidentiality) (quoting *Foltz*, 331 F.3d at 1135)).

No such interest is present in this case. Here, there is no question that the sealed documents are judicial records in which there is a public interest. Further, the bulk of the records Civil Rights Intervenors would be moving to unseal are exhibits to briefing on the parties’ motions for summary judgment. Additionally, Defendants do not have a compelling reason for the records to remain sealed, as generic privacy interest in personnel matters would be insufficient to prove that disclosure would result in improper use of material for a scandalous purpose. Courts have routinely found that the public’s interest in allegations of police

misconduct and how they are handled outweighs any concern that the information will be misused. *See, e.g., Macias v. Cleaver*, 2016 U.S. Dist. LEXIS 85529 (E.D. Cal. Jun. 30, 2016); *Perkins v. City of Oakland*, 2018 U.S. Dist. LEXIS 234852 (N.D. Cal. May 1, 2018); *Welsh v. City & County of San Francisco*, 887 F. Supp. 1293, 1302 (N.D. Cal. 1995); *Skibo v. City of New York*, 109 F.R.D. 58, 61 (E.D.N.Y. 1985).

CONCLUSION

For the foregoing reasons, the Civil Rights Intervenors respectfully request that the Court grant their motion to intervene for the limited purpose of moving to unseal and make public the judicial records in this case, including the records filed at ECFs. 58-70, 74-75, 85, 87-88, 90, 94-95, and 102-103.

DATED this 2nd day of November 2023.

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