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13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 ALEX ROSAS *and* JONATHAN
18 GOODWIN, *on behalf of themselves*
19 *and those similarly situated,*

20 Plaintiffs,

21 v.

22
23 ROBERT LUNA, *in his official*
24 *capacity as Sheriff of Los Angeles*
County,

25 Defendant.
26
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Case No. 12-cv-00428 DDP (MRW)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF NON-PARTY LOS
ANGELES TIMES
COMMUNICATIONS LLC TO
INTERVENE AND UNSEAL**

Date: September 11, 2023

Time: 10:00AM

Judge: Hon. Dean D. Pregerson

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INTRODUCTION

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2 Non-party Los Angeles Times Communications LLC (the “*Los Angeles*
3 *Times*”) seeks to intervene in the above-captioned action for the limited purpose of
4 obtaining an order unsealing the use-of-force packets and videos filed with the Court
5 as exhibits in support of Plaintiffs’ Motion to Modify Implementation Plan, as well as
6 the redacted portions of Plaintiffs’ Memorandum of Points and Authorities
7 (“Memorandum”) and supporting declarations that reference those exhibits (together,
8 the “Use-of-Force Materials”). Those judicial records, which document allegedly
9 unlawful conditions and official misconduct in Los Angeles County jails, go to the
10 heart of “the interest of citizens in ‘keep[ing] a watchful eye on the workings of
11 public agencies,’” as well as the role of members of the press like the *Los Angeles*
12 *Times* in “publish[ing] information concerning the operation of government.”
13 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting
14 *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (first alteration in
15 original)). The parties have not justified—and cannot justify—keeping those judicial
16 records under seal.

17
18 There is a “strong presumption of access” to judicial records under the
19 common law. *Id.* at 1178–79 (citation omitted). That presumption extends to any
20 motion—and any attachments to a motion—that is “more than tangentially related to
21 the merits of a case.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,
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1 1101 (9th Cir. 2016). The Use-of-Force Materials, which were filed with the Court to
2 obtain effective relief for alleged violations of Plaintiffs’ constitutional rights, fall
3 squarely within the scope of the common law right of access. *See Harper v. Nev.*
4 *Prop. 1, LLC*, 552 F. Supp. 3d 1033, 1040 & n.6 (D. Nev. 2021) (collecting cases
5 finding a strong presumption of access to motions to enforce a settlement agreement).
6

7 The only justification in the record for sealing the Use-of-Force Materials is the
8 existence of a stipulated protective order, *see* ECF No. 193, which Ninth Circuit law
9 makes clear is inadequate to rebut the common law presumption, *see Kamakana*, 447
10 F.3d at 1180. But even under the good-cause standard applicable to the entry of a
11 protective order, *see id.*, secrecy would be unjustified here. The extraordinary public
12 interest in the bleak conditions at Los Angeles County jails that are subject to federal
13 oversight—and recurring questions about the safety of those working and detained
14 there—overwhelmingly favors access, to enable the public to evaluate the
15 performance of the officials responsible. *See, e.g.,* Keri Blakinger, *Fights, Beatings*
16 *and a Birth: Videos Smuggled out of L.A. Jails Reveal Violence, Neglect*, L.A. Times
17 (June 24, 2023), <https://perma.cc/5ULL-73ZD>; Jaclyn Cosgrove, *After More than Six*
18 *Years of Federal Oversight, Dangerous Problems Persist in L.A. County Jails*, L.A.
19 Times (Jan. 15, 2022), <https://perma.cc/4GUU-NZ7P>.¹ For the reasons set forth
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26 ¹ Here and throughout this motion, this Court may “take judicial notice of news
27 articles” in evaluating the “significant interest to the public” of the policy issues at
28 stake here. *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 807 & n.5 (2002).

1 herein, the *Los Angeles Times* respectfully urges this Court to enter an order granting
2 its motion to intervene and ordering that the Use-of-Force Materials be unsealed.

3
4 **FACTUAL BACKGROUND**

5 The *Los Angeles Times* is one of the largest daily newspapers in the United
6 States, informing audiences throughout California and across the nation. In that role,
7 *Times* reporters regularly cover noteworthy judicial proceedings in the Central
8 District of California, and the *Times* has extensively covered allegations of abuse and
9 mismanagement in the Los Angeles County jail system. *See Full Coverage: L.A.*
10 *County Jail System Under Scrutiny*, L.A. Times (July 21, 2012),
11 <https://perma.cc/DN37-A9VQ> (collecting more than 150 stories on the topic).
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14 In January 2012, Plaintiffs initiated the above-captioned class action, alleging a
15 “pattern of brutality” in L.A. County jails in violation of their Eighth and Fourteenth
16 Amendment rights. Complaint for Injunctive Relief at 74 (ECF No. 1). After several
17 years of litigation, the parties entered into a Court-approved settlement agreement
18 that provided for, among other relief, a binding implementation plan to be developed
19 by an expert panel “to ensure that members of the Plaintiff Class are not subjected to
20 excessive force.” Order Approving Class Settlement at 3 (ECF No. 135). Under the
21 terms of the settlement agreement, the expert panel is also required to “monitor and
22 advise the Court on Defendant’s compliance with the Implementation Plan.” *Id.*
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1 On May 31, 2023, Plaintiffs filed a motion to modify the implementation plan
2 that was approved by the Court. *See* Notice of Motion and Motion to Modify Court-
3 Approved Implementation Plan at 1 (ECF No. 252). Citing reports filed by the expert
4 panel, Plaintiffs argued that “for years LASD has failed, among other things, to
5 address (1) the overuse of dangerous and unnecessary head strikes; (2) the excessive
6 and unnecessary uses of force due to consistent non-compliance with force
7 prevention policies; (3) dishonest reporting by line personnel about uses of force; and
8 (4) the overuse of the dangerous WRAP restraint device.” Plaintiffs’ Memorandum
9 of Points and Authorities at 1 (ECF No. 253). To substantiate those allegations,
10 Plaintiffs and their declarants relied on “Use of Force Reports and Videos” that
11 document possibly excessive force. Redacted Declaration of Erin David Bigler at 2
12 (ECF No. 253-2).

13 Those exhibits were submitted to the Court entirely under seal, and any
14 descriptions of their contents are redacted wherever they appear in Plaintiffs’
15 Memorandum and supporting declarations. As a result, the public has lacked any
16 meaningful opportunity to evaluate Plaintiffs’ argument that “the need to protect
17 people incarcerated in the County jails from dangerous and unnecessary force[]
18 requires modifications [of the implementation plan] to finally bring the [Los Angeles
19 County Sheriff’s] Department into compliance.” Plaintiffs’ Memorandum of Points
20 and Authorities at 2. That avenue for public oversight has been barred even as
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1 similar evidence of force used in the jails has stoked an urgent public debate on the
2 need for reform. See Keri Blakinger, *Video Shows Deputy Slamming Handcuffed*
3 *Inmate Into Concrete Wall at Men’s Central Jail*, L.A. Times (June 3, 2023),
4 <https://perma.cc/RE6X-EUMN>; Blakinger, *Fights, Beatings and a Birth*, *supra*.

6 As a result, on August 7, 2023, the *Los Angeles Times* moved to intervene for
7 the limited purpose of seeking an order unsealing the Use-of-Force Materials.

9 **ARGUMENT**

10 **I. The motion to intervene should be granted.**

11 The Ninth Circuit has made clear that “[n]onparties seeking access to a judicial
12 record in a civil case may do so by seeking permissive intervention under Rule
13 24(b)[.]” *San Jose Mercury News, Inc. v. U.S. District Court*, 187 F.3d 1096, 1100
14 (9th Cir. 1999); see also *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 473 (9th
15 Cir. 1992) (intervention granted to seek modification of protective order). The
16 question of public access provides the “common question of law or fact” that Rule
17 24(b)(1) requires, see *San Jose Mercury News*, 187 F.3d at 1100, and this motion—
18 filed just two months after the documents were filed with the Court—is plainly
19 timely, see *id.* at 1101 (“[D]elays measured in years have been tolerated where an
20 intervenor is pressing the public’s right of access to judicial records.”). Accordingly,
21 the *Los Angeles Times*’ motion to intervene should be granted under Rule 24(b)(1).
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1 The *Los Angeles Times* is also entitled to intervene as of right. “[A] news
2 agency has a legal interest in challenging a confidentiality order” that satisfies Rule
3 24(a)’s need for “an interest relating to the property or transaction that is the subject
4 of the underlying action.” *Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir.
5 2001). That interest in transparency is not “adequately protected by the parties.” *San*
6 *Jose Mercury News*, 187 F.3d at 1101; *see also BP Expl. & Prod., Inc. v. Claimant*
7 *ID 100246928*, 920 F.3d 209, 211 (5th Cir. 2019) (“Most litigants have no incentive
8 to protect the public’s right of access.”). And, as explained above, intervention is
9 timely.
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13 Through either lens, because “representatives of the press and general public
14 must be given an opportunity to be heard on the question of their exclusion” when
15 access to records is at stake, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596,
16 609 n.25 (1982) (citation and internal quotation marks omitted), the motion of the *Los*
17 *Angeles Times* to intervene should be granted.
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19 **II. The Use-of-Force Materials should be unsealed.**
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21 The parties have not justified (and cannot justify) keeping the Use-of-Force
22 Materials secret. When those judicial records were attached to and referenced in
23 Plaintiffs’ motion, the strong presumption of public access attached to them—a
24 presumption that the parties cannot rebut merely by pointing to the stipulated
25 protective order. *See Harper*, 552 F. Supp. 3d at 1040 & n.6. Indeed, even if the
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1 Court were to apply a good-cause standard instead of the one required under the
2 common law, the public’s powerful interest in understanding the allegations of
3 official misconduct presented by Plaintiffs would swamp any interest in secrecy here.
4

5 **A. The common law presumption of access attaches to the Use-of-Force**
6 **Materials, which were filed with the Court in connection with a**
7 **motion “more than tangentially related to the merits” of the case.**

8 In the Ninth Circuit, the common law guarantees “a strong presumption in
9 favor of access to court records,” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d
10 1122, 1135 (9th Cir. 2003), a presumption that attaches to—among other judicial
11 records—any motion that is “dispositive” in the sense that it seeks relief “more than
12 tangentially related to the merits of a case,” *Ctr. for Auto Safety*, 809 F.3d at 1101.
13 That strong presumption in favor of public access also applies to attachments to such
14 motions, even if the material “w[as] previously filed under seal or [is subject to a]
15 protective order.” *Kamakana*, 447 F.3d at 1179. Here, Plaintiffs’ motion to modify
16 the implementation plan to ensure effective relief is plainly “more than tangentially
17 related to the merits” of the underlying action. *Ctr. for Auto Safety*, 809 F.3d at 1101.
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21 District courts in this Circuit have routinely concluded as much where a party
22 seeks relief under the terms of a settlement agreement. *See Harper*, 552 F. Supp. 3d
23 at 1040 & n.6 (collecting cases); *see also Allstar Mktg. Grp., LLC v. Your Store*
24 *Online, LLC*, No. CV-09-02094, 2010 WL 11523739, at *1 (C.D. Cal. July 14, 2010).

25 And for good reason. Such a motion “invoke[s] important Article III powers” by
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1 asking the Court to bind the opposing party to a particular course of action. *Ctr. for*
2 *Auto Safety*, 809 F.3d at 1100 (citation and internal quotation marks omitted). And as
3 Plaintiffs’ motion makes clear, their entitlement (or not) to that relief turns on its
4 relevance to redressing the same alleged violations of “constitutional rights” at issue
5 in their underlying action. Plaintiffs’ Memorandum of Points and Authorities at 20
6 (ECF No. 253) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). A
7 strong presumption of public access therefore attaches to the Use-of-Force Materials,
8 which were filed with the Court so that it may adjudicate a controversy that squarely
9 implicates the public’s interest in monitoring public officials and institutions.
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13 **B. The common law presumption of access to the Use-of-Force**
14 **Materials cannot be overcome by mere reliance on the parties’**
15 **stipulated protective order.**

16 It appears from the public docket that no motion to seal was filed in connection
17 with the filing of the Use-of-Force Materials; instead, the parties’ stipulated
18 protective order contemplates that such material will be filed under seal wherever it
19 appears without leave of court. *See* Stipulated Protective Order Regarding Class
20 Counsel’s Access to Documents at 15–16 (ECF No. 193). But Ninth Circuit
21 precedent makes clear that such a protective order cannot, without more, justify
22 sealing records that are subject to the strong common law presumption of access.²
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26 ² *See, e.g., San Jose Mercury News*, 187 F.3d at 1102–03 (stipulated protective
27 orders are “subject to challenge and modification”); *Citizens First Nat’l Bank of*
28 *Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944 (7th Cir. 1999) (rejecting

1 And even if the parties were to attempt to meet their burden under the common law,
2 they would fall well short given the vital public interests favoring transparency here.

3 “Those who seek to maintain the secrecy of documents attached”—as here—
4
5 “to dispositive motions must meet the high threshold of showing that ‘compelling
6 reasons’ support secrecy.” *Kamakana*, 447 F.3d at 1180 (quoting *Foltz*, 331 F.3d at
7 1136). Crucially, a “‘good cause’ showing alone will not suffice to fulfill the
8 ‘compelling reasons’ standard,” even if it justified entry of a protective order
9 governing unfiled material at some earlier point in the litigation. *Id.* Here, good
10 cause is all that the parties have even purported to show. *See* Stipulated Protective
11 Order, *supra*, at 4–5. And that showing is doubly insufficient because the protective
12 order was obtained “without making a particularized showing of good cause with
13 respect to any individual document,” such that the parties “could not reasonably rely
14 on the order to hold these records under seal forever.” *Foltz*, 331 F.3d at 1138.

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18 Nor does any other adequate basis for sealing the Use-of-Force Materials
19 appear in the record before this Court. The common law standard is “stringent”: The
20 party seeking secrecy “bears the burden” of showing “compelling reasons” for
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24 stipulated protective order as a basis for restricting access, noting that “[t]he parties to
25 a lawsuit are not the only people who have a legitimate interest in the record
26 compiled in a legal proceeding”); *H.B. Fuller Co. v. Doe*, 151 Cal. App. 4th 879,
27 891–92 (2007) (unsealing records that had been sealed pursuant to a stipulated
28 protective order); *In re Providian Credit Card Cases*, 96 Cal. App. 4th 292, 309–10
(2002) (same).

1 nondisclosure, and the court “must then conscientiously balance the competing
2 interests of the public and the party who seeks to keep certain judicial records secret.”
3 *Ctr. for Auto Safety*, 809 F.3d at 1096–97 (citations omitted) (internal quotation
4 marks and alterations omitted). After conducting that “document-by-document, line-
5 by-line balancing,” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir.
6 2021) (citations and internal quotation marks omitted), any order that ultimately seals
7 any portion of a record must “articulate the factual basis” for doing so “without
8 relying on hypothesis or conjecture,” *Valley Broad. Co. v. U.S. District Court*, 798
9 F.2d 1289, 1295 (9th Cir. 1986).

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13 Here, the balance of interests plainly favors transparency. It is nearly a truism
14 that the common law right of access is “especially strong” in cases that involve—as
15 this one does—allegations of potential wrongdoing by public officials. *In re NBC*,
16 *Inc.*, 635 F.2d 945, 952 (2d Cir. 1980); *accord, e.g., United States v. Criden*, 648 F.2d
17 814, 822 (3d Cir. 1981); *United States v. Beckham*, 789 F.2d 401, 413 (6th Cir.
18 1986); *Bradley ex rel. AJW v. Ackal*, 954 F.3d 216, 232 (5th Cir. 2020); *In re L.A.*
19 *Times Commc’ns LLC*, 28 F.4th 292, 298 (D.C. Cir. 2022). And as another district
20 court in this Circuit recently found, “[i]nformation about the County’s possible
21 mistreatment of its inmates is inherently a matter of significant public interest:
22 County residents not only support these operations with their taxpayer dollars but
23 may be subject to such treatment if detained.” Order Granting Media Intervenors’
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1 Motion to Intervene and Unseal, *Greer v. Cnty. of San Diego*, No. 19-cv-378 (S.D.
2 Cal. July 10, 2023), slip op. at 10, <https://perma.cc/5DQQ-JFH2>. The interest in
3 access is only sharpened by the context in which the Use-of-Force Materials come
4 before this Court—as evidence in support of a motion that asks the Court to exercise
5 “important Article III powers” to conform the conduct of a public agency to the law.
6 *Ctr. for Auto Safety*, 809 F.3d at 1100 (citation and internal quotation marks omitted).
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9 Whatever countervailing interests the parties might attempt to assert, “[t]he
10 mere fact that the production of records may lead to a litigant’s embarrassment,
11 incrimination, or exposure to further litigation will not, without more, compel the
12 court to seal its records.” *Kamakana*, 447 F.3d at 1179. And the fact that the Use-of-
13 Force Materials may document official misconduct undercuts any claim to secrecy,
14 because Defendant “cannot assert a valid compelling interest in sealing the videos to
15 cover up any wrongdoing on their part or to shield themselves from embarrassment.”
16 *Mendez v. City of Gardena*, 222 F. Supp. 3d 782, 792 (C.D. Cal. 2015) (ordering
17 disclosure of videos documenting fatal—and allegedly unlawful—use of force).
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21 The balance of interests skews dramatically in favor of access, and the public’s
22 common law right “to keep a watchful eye on the workings of public agencies”
23 requires that the Use-of-Force Materials be unsealed. *Nixon*, 435 U.S. at 598.
24

25 **C. Even under a good-cause standard, the parties cannot show that**
26 **sealing is justified in light of the powerful public interest in access.**
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1 Even if a good-cause standard—rather than the compelling-reasons standard—
2 applied to the Use-of-Force Materials, secrecy would be unjustified here in light of
3 the urgent public interests favoring disclosure. “For good cause to exist, the party
4 seeking protection bears the burden of showing specific prejudice or harm will result
5 if no protective order is granted,” *Phillips ex rel. Estates of Byrd v. Gen. Motors*
6 *Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002), a showing that must be
7 “particularized . . . with respect to any individual document” at issue, *San Jose*
8 *Mercury News*, 187 F.3d at 1103. Even where that threshold showing is made, the
9 court must then go on to “balance[] the public and private interests” at stake.
10 *Phillips*, 307 F.3d at 1211.

14 Here, the parties’ stipulated protective order gestures at potential harms, but
15 none are particularized with reference to any specific document or exhibit that has
16 since been filed with the Court. Moreover, the public interest in understanding
17 allegations of official misconduct against officials responsible for conditions in
18 County jails would dwarf any private interest the parties might attempt to show.

21 The Ninth Circuit has “directed courts doing this balancing” to weigh:

- 22 1) whether disclosure will violate any privacy interests; (2) whether the
23 information is being sought for a legitimate purpose or for an improper
24 purpose; (3) whether disclosure of the information will cause a party
25 embarrassment; (4) whether confidentiality is being sought over
26 information important to public health and safety; (5) whether the sharing
27 of information among litigants will promote fairness and efficiency; (6)
whether a party benefitting from the order of confidentiality is a public

entity or official; and (7) whether the case involves issues important to the public.

In re Roman Cath. Archbishop of Portland, 661 F.3d 417, 424 & n.5 (9th Cir. 2011) (citation omitted). The parties have so far made no particularized showing as to the interests they believe counsel in favor of secrecy, and the remaining factors favor access. For one, the *Los Angeles Times* seeks the Use-of-Force Materials for a legitimate—and for that matter vital—purpose: to “publish information concerning the operation of government,” *Kamakana*, 447 F.3d at 1178 (citation omitted), thereby “keeping officials elected by the people responsible to all the people whom they were selected to serve,” *Mills v. Alabama*, 384 U.S. 214, 219 (1966).

There can likewise be no question that this case involves issues important to the public. Law enforcement officers play a unique role—and exercise unique powers—in our society: “It is indisputable that law enforcement is a primary function of local government and that the public has a . . . great[] interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an ‘on the street’ level[.]” *Gomes v. Fried*, 136 Cal. App. 3d 924, 933 (1982) (emphasis omitted) (citation omitted). As a result, “[t]he public has a strong interest in assessing the truthfulness of allegations of official misconduct [by law enforcement personnel], and whether agencies that are responsible for investigating and adjudicating complaints of misconduct have acted properly and wisely.” *Welsh v. City & Cnty. of San Francisco*, 887 F. Supp. 1293, 1302 (N.D. Cal. 1995); *see also*

1 *City of Los Angeles v. Superior Court*, 41 Cal. App. 4th 1083, 1091 (1996) (same
2 with respect to “claims of excessive force” by the Los Angeles Police Department);
3 *Doe v. Marsalis*, 202 F.R.D. 233, 235 (N.D. Ill. 2001) (same with respect to
4 “allegations of official sexual misconduct” by Chicago police).
5

6 Given that bedrock need that officials with the power to use lethal force against
7 members of the public be accountable to the public, the parties face an exceptional
8 burden in justifying withholding from public view information about violence that
9 occurred while the Los Angeles Sheriff’s Department and its deputies were in charge
10 of the jails. *See, e.g., King v. Conde*, 121 F.R.D. 180, 191 (E.D.N.Y. 1988) (“[E]ven
11 disclosures having some effect on individual liberty or privacy because of their
12 personal nature are permissible when disclosure serves important public concerns.”
13 (citation and internal quotation marks omitted)); *Marsalis*, 202 F.R.D. at 235–36.
14

15 Although “[p]eople in an open society do not demand infallibility from their
16 institutions, . . . it is difficult for them to accept what they are prohibited from
17 observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).
18

19 Those principles require openness here, where the sealed use-of-force reports and
20 videos will shed light on decades-long controversies involving excessive force
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1 allegations and extreme violence in the Los Angeles County jails.³ Even under a
2 good-cause analysis, this Court should order the Use-of-Force Materials unsealed.

3
4 **CONCLUSION**

5 For the reasons set forth above, the *Los Angeles Times* respectfully requests
6 that the Court grant its motion to intervene and enter an order unsealing the Use-of-
7 Force Materials.

8
9 Dated: August 7, 2023.

10 s/ Katie Townsend

11 Katie Townsend
12 REPORTERS COMMITTEE FOR
13 FREEDOM OF THE PRESS

14 *Counsel for Non-Party Intervenor*
15 LOS ANGELES TIMES
16 COMMUNICATIONS LLC

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23 ³ See, e.g., Keri Blakinger, *Senators Fault Department of Justice for ‘Appalling’*
24 *Conditions in Los Angeles Jails*, L.A. Times (Feb. 13, 2023), <https://perma.cc/2A2K-84ER>; Eric Lichtblau, *U.S. Justice Dept. Investigates Alleged Mistreatment of*
25 *Mentally Ill in County Jails*, L.A. Times (June 14, 1996), <https://perma.cc/AYY6-CL2F>; Cindy Chang & Joel Rubin, *After Years of Scandal, L.A. Jails Get Federal*
26 *Oversight, Sweeping Reforms*, L.A. Times (Aug. 5, 2015), <https://perma.cc/9XWP-MDRR>; Robert Faturechi & Jack Leonard, *U.S. Widens Inquiry into Abuse at L.A.*
27 *County Jails*, L.A. Times (Oct. 15, 2011), <https://perma.cc/XT7C-Z4B4>.