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11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13	In re:)	Case No. 16-BK-30625-MH
14	JOHN M. MATA	)	Chapter 7
15	Debtor.	)	Adv. Pro. No. 6:18-ap-01089-MH
16	<hr/>	)	MEMORANDUM OF POINTS AND
17	JOHN MATA	)	AUTHORITIES IN SUPPORT OF MOTION
18	Plaintiff	)	TO INTERVENE FOR THE LIMITED
19	v.	)	PURPOSE OF UNSEALING COURT
20	NATIONAL COLLEGIATE STUDENT	)	RECORDS
21	LOAN TRUST 2006-1, NATIONAL	)	Date: December 18, 2019
22	COLLEGIATE STUDENT LOAN TRUST	)	Time: 2:00 p.m.
23	2006-4, NATIONAL COLLEGIATE	)	Place: 3420 Twelfth Street
24	STUDENT LOAN TRUST 2007-4	)	Courtroom 303
25	Defendants	)	Riverside, CA 92501
26		)	Judge: Hon. Mark Houle
27)	
28)	

1 The National Consumer Bankruptcy Rights Center (“NCBRC”) seeks to intervene for the
2 limited purpose of prosecuting its motion to unseal (1) two student loan guaranty agreements (the
3 “Guaranty Agreements”) between National Collegiate Student Loan Trust 2006-1, National
4 Collegiate Student Loan Trust 2006-4, and National Collegiate Student Loan Trust 2007-4
5 (“Defendants”), on the one hand, and the now-defunct The Education Resources Institute, Inc.
6 (“TERI”), filed as Dkt No. 41 in this adversary proceeding, and (2) two unredacted pleadings that
7 rely on the Guaranty Agreements, filed as Dkt Nos. 48 and 64 in this adversary proceeding (together
8 with the Guaranty Agreements, the “Sealed Documents”).

9 NCBRC is a 501(c)(3) organization dedicated to protecting the integrity of the bankruptcy
10 system and preserving the rights of consumer bankruptcy debtors. Created in 2010, NCBRC was
11 founded by the Board of the National Association of Consumer Bankruptcy Attorneys to provide
12 assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law.
13 NCBRC has standing to bring its motion based upon the public’s right to access court records and
14 the interests of NCBRC in ensuring that the bankruptcy process is fair, transparent, and in
15 accordance with law. *See Bond v. Utreras*, 585 F.3d 1061, 1074 (7th Cir. 2009) (“the general right
16 of public access to judicial records is enough to give members of the public standing to attack a
17 protective order that seals this information from public inspection”); *Brown v. Advantage*
18 *Engineering, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992) (“because it is the rights of the public, an
19 absent third party, that are at stake, any member of the public has standing to view documents in the
20 court file that have not been sealed in strict accordance with [applicable law], and to move the court
21 to unseal the court file in the event the record has been improperly sealed”).

22 In the interests of brevity, NCBRC respectfully refers the Court to its motion to unseal the
23 Sealed Documents and its memorandum in support thereof, which have been filed
24 contemporaneously with this Motion. Those pleadings set forth the nature of the Sealed Documents
25 and the reasons for NCBRC’s request that they be made available to the public.

1 **ARGUMENT**

2 **A. The Standard For Permissive Intervention Is Relaxed When Intervention Is**
3 **Sought For The Sole Purpose Of Unsealing Court Records.**

4 “Nonparties seeking access to a judicial record in a civil case may do so by seeking
5 permissive intervention under Rule 24(b)(2).” *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187
6 F.3d 1096, 1100 (9th Cir. 1999); *see also Flynt v. Lombardi*, 782 F.3d 963, 966 (8th Cir. 2015)
7 (permissive intervention “an appropriate procedural vehicle for parties seeking to intervene for the
8 purpose of obtaining judicial records”).

9 Ordinarily, parties seeking permissive intervention pursuant to Rule 24(b) must show: (1) an
10 “independent ground for jurisdiction”; (2) the motion is “timely”; and (3) that “the applicant’s claim
11 or defense, and the main action, have a question of law or fact in common.” *San Jose Mercury*
12 *News*, 187 F.3d at 1100. These requirements, however, are relaxed where, as here, intervention is
13 sought for the sole purpose of challenging the sealing of court records. *See id.* (following the holding
14 of *Beckman Indus. Inc. v. International Ins. Co.*, 966 F.2d 470, 473-74 (9th Cir. 1992), “that
15 independent jurisdictional basis and strong nexus of fact or law are not required where intervenor
16 merely seeks to challenge a protective order”); *Flynt*, 782 F.3d at 967 (describing ways in which
17 requirements to intervene for the purpose of unsealing documents are relaxed); *Pansy v. Borough of*
18 *Stroudsburg*, 23 F.3d 772, 780 n.7 (3d Cir. 1994) (explaining that the “standards articulated in”
19 cases governing traditional motions to intervene “do not control in cases” where the proposed
20 intervenors “seek to litigate an ancillary issue, such as a protective or confidentiality order”).¹

21 First, “when a party is seeking to intervene only to modify a protective order or unseal
22 documents, and not to litigate a claim on the merits, an independent basis of jurisdiction is not
23 required” at all. *Flynt*, 782 F.3d at 967; *Beckman*, 966 F.2d at 473 (“an independent jurisdictional
24 basis is not required because intervenors do not seek to litigate a claim on the merits”).

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¹ Unless otherwise specified, all internal quotation marks, citations, and alterations are omitted
28 throughout.

1 Second, “the importance of access to documents prepared for similar litigation involving the
2 same parties satisfie[s] the commonality requirement of 24(b).” *Beckman*, 966 F.2d at 474. As set
3 forth in the accompanying motion to unseal and supporting memorandum, the Sealed Documents
4 are relevant to countless discharge proceedings in which Defendants and their affiliates have relied,
5 or undoubtedly will rely, upon them to contend that debtors’ student loans are nondischargeable
6 under Bankruptcy Code section 523(a)(8). Moreover, a prospective intervenor challenging a sealing
7 order *necessarily* raises a question of law in common with the main action—the propriety of sealing
8 the court records and the public’s interest in access to them. *See Flynt*, 782 F.3d at 966.

9 And finally, where a motion to intervene is brought solely to challenge the sealing of court
10 records, timeliness is extremely broadly construed. As explained by the Ninth Circuit, “delays
11 measured in years have been tolerated where an intervenor is pressing the public’s right of access
12 to judicial records.” *San Jose Mercury News*, 187 F.3d at 1101 (citing *Beckman*, 966 F.2d at 471
13 (affirming intervention 2 years after settlement); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775,
14 785 (1st Cir. 1988) (collecting cases)); *see also Flynt*, 782 F.3d at 966 n.2 (holding that a “district
15 court may properly consider” such a motion “even after the underlying dispute between the parties
16 has long been settled”). This is because “Rule 24(b)’s timeliness requirement is to prevent prejudice
17 in the adjudication of the rights of the existing parties”—“a concern not present” when intervention
18 is solely for the “collateral purpose” of challenging secrecy. *United Nuclear Corp. v. Cranford Ins.*
19 *Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990); *see Pansy*, 23 F.3d at 779; *Pub. Citizen*, 858 F.2d at 786.
20 Unlike intervention on the merits, intervention to challenge the sealing of court records does not
21 affect the underlying case at all. Any delay in seeking such intervention, therefore, cannot possibly
22 “prejudice the adjudication of the rights of the original parties.” *Meyer Goldberg, Inc., of Lorain v.*
23 *Fisher Foods, Inc.*, 823 F.2d 159, 162 (6th Cir. 1987); *see United Nuclear*, 905 F.2d at 1427.²

24
25 ² The question whether delay in seeking *intervention* is prejudicial is distinct from the question
26 whether the existing parties will be prejudiced if *unsealing* is ultimately granted. “[A]ssuming
27 an intervenor does assert a legitimate, presumptive right to open the court record of a particular
28 dispute, the potential burden or inequity to the parties” of doing so “should affect not the right
to intervene but, rather, the court’s evaluation of the merits of the applicant’s motion” to unseal
Pub. Citizen, 858 F.2d at 787; *accord San Jose Mercury News*, 187 F.3d at 1101; *see also Turn*
Key Gaming, Inc. v. Oglala Sioux Tribe, 164 F.3d 1080, 1081 (8th Cir. 1999) (“An application

B. NCBRC Satisfies The Standard For Granting Permissive Intervention For the Purpose of Unsealing Court Records.

NCBRC easily satisfies the relaxed standard for granting permissive intervention for the sole purpose of seeking public access to court records. Because NCBRC only seeks to challenge the sealing of court records, it need not show an independent basis of jurisdiction. And it shares sufficiently common questions of law with the parties to the underlying suit: the application of the Sealed Documents in discharge disputes generally, and whether the public’s right of access to court records may be abrogated with respect to the Sealed Documents.

The motion to intervene also is timely. The documents were sealed this year, and the motion for summary judgment to which they relate is still pending. Moreover, because NCBRC does not seek to intervene on the merits, any delay in its intervention could not possibly prejudice the adjudication of the existing parties’ rights.³ The motion to intervene, therefore, easily satisfies the minimal timeliness required for intervention for the purpose of unsealing court records.

Finally, NCBRC has satisfied the requirements of Rule 24(c), which requires that an intervention motion “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Concurrently with the filing of this motion, NCBRC has also filed its motion to unseal the Sealed Documents, which sets forth the basis for that relief, including Bankruptcy Code section 107 and the public’s First Amendment right to access court records. Given that this is the sole basis for which NCBRC seeks to intervene, this more than satisfies the requirement that it describe “the basis for intervention with sufficient specificity.” *Beckman Indus.*, 966 F.2d at 474-75.

for intervention cannot be resolved by reference to the ultimate merits of the claim the intervenor seeks to assert unless the allegations are frivolous on their face.”).

³ Denying intervention, however, would prejudice NCBRC—as well as the public. The existing parties to this case agreed to file the records under seal. *See* Dkt Nos. 36, 42. They cannot, therefore, adequately represent the public’s interest in access to these court records. *See San Jose Mercury News*, 187 F.3d at 1101 (explaining that where parties stipulate to secrecy they do not “effectively represent[]” the public interest in access). If NCBRC is not permitted to intervene, the interest in access will continue to go unrepresented. *Id.* (explaining that refusing to permit intervention to challenge court records on timeliness grounds would “stym[ie] the public’s right of access”).

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CONCLUSION

This Court should permit NCBRC to intervene for the limited purpose of seeking to unseal the Sealed Documents.

Dated: November 15, 2019



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