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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**
10 **FAMILY DIVISION**

11 [REDACTED] Plaintiff,
12 vs.
13 [REDACTED] Defendant.
14 _____/

15 CASE NO: D-20-[REDACTED]-D
16 DEPT NO: D
17 NO HEARING REQUESTED

18 [REDACTED] Plaintiff,
19 vs.
20 [REDACTED] Defendant.
21 _____/

22 CASE NO: D-22-[REDACTED]-D
23 DEPT NO: Q
24 NO HEARING REQUESTED

25 [REDACTED] Plaintiff,
26 vs.
27 MICHAEL MCDONALD;
28 Defendant.
_____/

CASE NO: D-15-[REDACTED]-D
DEPT NO: C
NO HEARING REQUESTED

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

1 District Court Judge Bryce Duckworth is allowing comprehensive electronic
2 coverage of D-22 [REDACTED] D. ONJ is requesting all existing J.A.V.S. videos be
3 unsealed or released to ONJ.¹
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5 The release of the requested J.A.V.S. videos will allow ONJ to fill the gaps in
6 the ongoing coverage series and give the viewership context that only the domestic
7 relations matters can provide. Consistent with internal policy, ONJ will continue to
8 redact the names and faces of parents and children, with the exception² of Michael
9 McDonald.
10

11 II. Analysis

12 An SCR 229(1)(c) non-party news reporter may file a motion to unseal. SRCR
13 4(2). See also *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash.
14 2009) (“Domestic press outlets unquestionably have standing to challenge access to
15 court documents.”) (citation omitted). See also *Neb. Press Ass’n v. Stuart*, 427 U.S.
16 539, 560-61 (1976) (the right to access judicial proceedings and records recognized
17 by the Supreme Court, the United States Supreme Court, and courts across the
18 country, is a right of contemporaneous access).
19

20 SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of
21 NRS Chapters is provided, but the list is not exclusive³ and actually manifests the
22
23

24 ¹ Also connected is an apparently sealed criminal proceeding dismissed for lack or
25 reluctance of victim testimony. A similar series of circumstances and outcome occurred
26 in the *State of Nevada v Leo Blundo*, covered electronically by ONJ.

27 ² Michael McDonald self-published a number of his own J.A.V.S. videos and has
28 participated in numerous interviews; protection of his identity would be futile as he is
now a prolific internet figure and the viewership knows his voice.

³ SRCR 1(4): “These rules do not apply to the sealing or redacting of court records under
specific statutes, **such as...**” (emphasis added).

1 harmonious construction⁴ principle of statutory construction with the additional
2 caveat that the court rules⁵ give way to any “specific” statute governing sealing and
3 redaction. In other words, SRCR 1(4) is not categorically inapplicable to the
4 unsealing of actions filed under NRS Chapters 125 or 126, but rather, yields to
5 certain “specific” statutes like NRS 126.211 and NRS 125.110. Should Parties or the
6 Court assert otherwise, ONJ proceeds *in arguendo*. “A court's authority to limit or
7 preclude public access to judicial records and documents stems from three sources:
8 constitutional law, statutory law, and common law.” *Howard v. State*, 128 Nev. 736,
9 291 P. 3d 137 (2012). The *Howard* Court pointed out at the time that the common
10 law generally favors public access but gives way to statutes and court rules. While
11 there were no constitutional issues relevant to the *Howard* Court’s analysis at the
12 time, the *Falconi* Court later clarified that a First Amendment right of access to the
13 underlying proceedings exists. *Falconi v. Eighth Jud. Dist. Ct.*, 543 P.3d 92, 97 (Nev.
14 2024) (citing *NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.*, 20 Cal. 4th 1178, 86
15 Cal. Rptr. 2d 778, 980 P.2d 337, 359-61 (Cal. 1999) (concluding that “in general, the
16 First Amendment provides a right of access to ordinary civil trials and proceedings”
17 after recognizing that the United States Supreme Court “has not accepted review of
18 any of the numerous lower court cases that have found a general First Amendment
19 right of access to civil proceedings” and providing that “we have not found a single
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25 ⁴ *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)
26 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
27 one another in accordance with the general purpose of those statutes' to avoid...
28 ...unreasonable or absurd results and give effect to the Legislature's intent.”)

⁵ *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) (“[R]ules of
statutory construction apply to court rules.”)

1 lower court case holding that generally there is no First Amendment right of access
2 to civil proceedings”); see also *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555,
3 580, 100 S. Ct. 2814, 65 L. Ed. 2d 973 & n.17 (1980). 448 U.S. at 580, n. 17
4 (“historically both civil and criminal trials have been presumptively open”).
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6 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*
7 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)
8 from criminal proceedings to all civil proceedings, including family law
9 proceedings. Importantly, the *Stephens Media* Court recognized a powerful
10 distinction left untouched by the *Howard* Court; namely, that there was a
11 distinction between oral proceedings and documentation that “merely facilitate[s]
12 and expedite[s]” one of those oral proceedings, specifically, jury questionnaires
13 and *voir dire*. The *Stephens Media* Court recognized that the purpose of the jury
14 questionnaires was their direct connection to and facilitation of *voir dire*
15 proceedings such that they constituted access to the proceedings themselves and
16 thus implicated First Amendment concerns. Analogously, the J.A.V.S. videos are a
17 distillation of preceding motion practice and actual records of the hearings
18 themselves.

19 Even if this Court came to the conclusion that certain interpretations of
20 statutes and rules could allow court records to be hidden from the press, this
21 Court must apply the interpretation that is constitutional. This is because “when
22 the language of a statute admits of two constructions, one of which would render it
23 constitutional and valid and the other unconstitutional and void, that construction
24 should be adopted which will save the statute.” *State v. Castaneda*, 126 Nev. 478,
25 481, 245 P.3d 550, 553 (2010).
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27 **III. Conclusion**

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DECLARATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, declare that I have read the forgoing *Motion* and that the contents are true and correct of my own personal knowledge, except for those matters I have stated that are not of my own personal knowledge, but that I only believe them to be true, and as for those matters, I do believe they are true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this Aug 6, 2024



Alexander M. Falconi
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