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8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 In the Matter of THE DOE 1 TRUST, 11 _____/	12 CASE NO: PR23-00813 13 DEPT NO: PR
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14 **REPLY TO RESPONSES TO REQUEST FOR JUDICIAL REVIEW AND**
15 **OBJECTION TO PROBATE COMMISSIONER’S AMENDED RECOMMENDATION**

16 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation
17 (“ONJ”), by and through the undersigned counsel, and hereby files the following
18 reply to the responses filed by DOE 9 and joined by DOEs 1 and 2, to request for
19 judicial review and objection to the Probate Commissioner’s Amended
20 Recommendation filed by DOE 9 on August 26, 2024.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **a. The Applicability of the SRCR**

23 Doe 9 asserts the proceedings at issue in this case are “expressly exempt”
24 from the SRCR. SRCR 1(4) provides the scope of the rules on sealing and redacting
25 court records. In citing Title 13, Doe 9 misreads the language of SRCR 1(4) to
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1 categorically exclude whole swaths of proceedings. Although SRCR 1(4) lists
2 specific NRS Chapters, the list is not exclusive¹ and requires application of the
3 harmonious construction² principle of statutory construction, with the additional
4 caveat that the court rules³ give way to any “specific” statute governing sealing and
5 redaction. To the extent that NRS 164.041 and NRS 669A.256 conflict with the
6 SRCR, it is only where a specific conflict arises that SRCR are preempted. Even if
7 this Court were to construe SRCR 1(4) such that the SRCR were wholly inapplicable,
8 access is still independently available to the press on First Amendment grounds.
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11 The Constitution places restrictions on how legislatures and courts can
12 conceal records and court proceedings through statutes and court rules. In other
13 words, there are constitutional limits on the government's ability to keep information
14 from the public. *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). In *Howard*,
15 the Court pointed out that the common law generally favors public access but gives
16 way to statutes and court rules. The *Howard* Court's analysis expressly mentioned
17 the potential of constitutional considerations, even though there was no precise
18 example available at the time of its decision. Recently, the *Falconi v. Eighth Jud.*
19 *Dist. Ct.*, 140 Nev., Adv. Op. 8, 543 P.3d 92, 97 (2024) made abundantly clear that
20 the First Amendment guarantees a right of access to civil proceedings.
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24 ¹ SRCR 1(4): “These rules do not apply to the sealing or redacting of court records under
25 **specific** statutes, **such as...**” (emphasis added).

26 ² *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)
27 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
28 one another in accordance with the general purpose of those statutes' to avoid
unreasonable or absurd results and give effect to the Legislature's intent.”)

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

1 The *Falconi* Court expanded the scope of the ruling in *Stephens Media, LLC.*
2 *v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009) from criminal
3 proceedings to include ***all civil proceedings***, including family law proceedings.
4 Importantly, the *Stephens Media* Court recognized the distinction left untouched
5 by the *Howard* Court; namely, that there is a constitutional link between in court
6 proceedings and documentation that “merely facilitate[s] and expedite[s]” one of
7 those oral proceedings. Specifically, access to jury questionnaires raises First
8 Amendment considerations because they constituted access to the *voir dire*
9 proceedings themselves. Analogously, court indices, motion practice, the
10 pleadings, and other similar filings implicate the very same First Amendment rights
11 of access.

12 **b. NRS 164.041 and NRS 669A.256 cannot be construed to permit automatic**
13 **closure of court proceedings**

14 DOE 9 argues that NRS 164.041 and NRS 669A.256 are constitutional
15 because trust proceedings do not meet the "experience and logic" test for a First
16 Amendment right of access, as they have historically been private matters rooted in
17 equity rather than open proceedings.
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19 NRS 164.041 and NRS 669A.256 do not mandate the complete closure of
20 trust proceedings before a court, but rather provide mechanisms for protecting
21 specific confidential information within those proceedings. Both statutes focus on
22 the redaction and sealing of particular documents and information, rather than
23 closing entire proceedings to the public. NRS 164.041 specifically allows for the
24 redaction and sealing of "confidential information relating to trusts" in petitions and
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1 related findings, while NRS 669A.256 provides a process for sealing specific trust
2 documents upon petition to the court.

3 These statutes demonstrate a nuanced approach to balancing privacy
4 concerns with the principle of open courts. They allow for the protection of sensitive
5 information such as trust instruments, beneficiary details, and financial records,
6 while potentially leaving other aspects of the proceedings open to public scrutiny.
7 Notably, both statutes involve judicial discretion, either in determining what
8 additional information should be deemed confidential (NRS 164.041(4)(f)) or in
9 deciding whether to grant a petition to seal documents (NRS 669A.256(1)). This
10 discretionary element shows that the legislature intended for courts to make
11 case-by-case determinations about the appropriate level of confidentiality, rather
12 than imposing a blanket closure of all trust proceedings, such as “super sealing⁴” an
13 entire case, which occurred here.

14 Insofar as a Court interprets NRS 164.041 and NRS 669A.256 to permit
15 complete closure of court proceedings sans strict scrutiny, these statutes would be
16 unconstitutional.

17 The *Falconi Court’s* striking down of NRS 125.080 does not render this case
18 distinguishable simply because NRS 125.080 applied to family law proceedings. The
19 *Falconi Court* raised significant concerns about the language and application of
20 NRS 125.080, which pertains to family law proceedings. These concerns, however,
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28 ⁴ The term “super-seal” originated in 2007 in articles published by the Las Vegas Review Journal, and mentioned further in 2008 and 2014 publications. One of the articles, specifically, included remarks from Former District Court Judge Brent Adams. <https://www.reviewjournal.com/news/courts-still-keeping-documents-sealed/>

1 are not limited to family law matters alone. They extend to other areas of law,
2 particularly trust proceedings governed by NRS 164.041 and NRS 669A.256. The
3 issues related to secrecy in family law cases under NRS 125.080 have direct
4 parallels in trust-related matters. The way courts interpret and apply NRS 164.041
5 and NRS 669A.256 in trust proceedings mirrors the problematic aspects highlighted
6 by the *Falconi Court* in family law contexts. Given the analogous nature of the
7 concerns, this same level of rigorous examination should be applied when courts
8 deal with trust-related statutes NRS 164.041 and NRS 669A.256. The underlying
9 principle is that the careful consideration required in family law matters should be
10 equally present in trust proceedings, ensuring consistent and fair application of the
11 law across different legal domains.
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14 The strict scrutiny test mandated by the *Falconi Court* applies as much to NRS
15 125.080 as it does to NRS 164.041 and NRS 669A.256. Whatever findings this
16 Court has made in imposing such an extensive⁵ seal are wholly unknown to ONJ
17 because the sealing order itself has been sealed. See also SRCR 3(5)(c)(iv). The
18 *Falconi Court* declared that simply invoking NRS 125.080 is not enough to justify
19 closing a court to the public and the press. The court emphasized that a party's
20 mere demand or request for closure is insufficient grounds because such an action
21 foreclosed the required constitutional analysis.
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27 ⁵ ONJ is hard pressed to come up with a reason that this Court has seen fit, for
28 example, to seal the identities of the attorneys themselves. Doing so has rendered ONJ
unable to communicate and even serve Parties in this case, aside from blindly relying
on the automated electronic service.

1 This principle extends beyond family law proceedings. When parties in
2 trust-related cases invoke NRS 164.041 or NRS 669A.256 as the sole reason for
3 requesting court closure, it is equally unconstitutional. The underlying issue is the
4 same across these different areas of law. Whether in family court or trust
5 proceedings, the constitutional right to open courts cannot be overridden simply
6 because a party cites a particular statute and requests closure. The Falconi Court's
7 ruling makes it clear that more substantial justification is required to close a court,
8 regardless of the type of case or the specific statute invoked.
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11 **c. The Nevada Supreme Court Has Already Determined that History and**
12 **Logic Support Open Proceedings in all Civil Cases.**

13 “We take this opportunity to expand our discussion in *Stephens Media*, which
14 concluded that there is a right to access criminal proceedings, and hold that the
15 right to access also applies in civil proceedings, including family law proceedings.”
16 *Falconi v. Eighth Judicial Dist. Court*, 543 P.3d 92, 97 (Nev. 2024). The *Falconi Court*
17 also held that “...every federal circuit court that has considered the issue has
18 concluded that the constitutional right applies in both criminal and civil proceedings.
19 *Id.* at 96 citing *Courthouse News Serv. v. Planet (Planet III)*, 947 F.3d 581, 590 (9th
20 Cir. 2020).
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23 DOE 9's attempts to distinguish trust proceedings as historically private
24 matters rooted in equity contradicts this broad application of the right of access. By
25 arguing that trust proceedings are exempt from the presumption of openness, DOE
26 9 ignores the *Falconi Court's* intention to extend this right beyond criminal cases to
27 civil matters generally. Not just family law matters. The *Falconi* decision does not
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1 carve out exceptions for particular types of civil proceedings, such as those
2 involving trusts. Furthermore, DOE 9's reliance on historical practices of the Court of
3 Chancery to justify closure disregards the Court's emphasis on the evolution of legal
4 principles and the importance of transparency in modern judicial proceedings. *The*
5 *Falconi* ruling suggests that any limitations on public access should be narrowly
6 tailored and based on compelling contemporary interests, not broad historical
7 analogies.
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9 DOE 9's exegesis on the history of equity proceedings and its inference that
10 family law proceedings are somehow distinct from trust proceedings because trust
11 proceedings were a matter for secret Chancery Courts in 19th century England is a
12 red herring. Family law proceedings are also proceedings in equity under Nevada
13 Law. "[E]quitable jurisdiction refers to a court's power to entertain claims and award
14 remedies that are equitable in nature." *Clevenger v. Welch Foods Inc.*, No. SACV
15 23-00127-CJC (JDEx), 2023 U.S. Dist. LEXIS 38305, at *8 (C.D. Cal. Mar. 7, 2023)
16 citing *Schlesinger v. Councilman*, 420 U.S. 738, 754, 95 S. Ct. 1300, 1311 (1975). It
17 is evident that family law proceedings are equitable in nature, as they involve
18 remedies and procedures rooted in the principles of equity, such as specific
19 performance, injunctions, and other non-monetary relief (child support, alimony,
20 visitation orders, etc.) tailored to address unique family situations and relationships.
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23 In sum, DOE 9's argument conflates trust proceedings with broader equitable
24 proceedings. Even accepting DOE 9's claims that trusts have historical roots in
25 equity, modern trust litigation is distinct from the general equity proceedings of the
26 past. DOE 9 cites practices from the English Court of Chancery, such as private
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1 testimony and secrecy-oriented proceedings, as evidence that trust matters should
2 be closed. However, this overgeneralizes equity's historical secrecy to all trust
3 proceedings today. DOE 9 fails to account for the specific nature of the September
4 Proceedings and the public interests that may be served by open access.
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6 DOE 9's argument for secrecy in trust proceedings as a means to avoid
7 probate is fundamentally irrational when applied to *litigated trust matters*. By
8 bringing trust disputes into the court system, parties are inherently invoking public
9 resources and the judicial process to resolve their conflicts. This act transforms
10 what might have been a private arrangement into a matter of public concern, as it
11 utilizes Nevada taxpayer-funded courts, judges, and legal infrastructure. The very
12 purpose of trusts to avoid public probate proceedings, as claimed by DOE 9, is
13 negated when parties choose to litigate trust issues in a public forum. Moreover,
14 court proceedings, including those involving trusts, serve important public interests
15 such as establishing legal precedents, ensuring judicial accountability, and
16 maintaining public confidence in the legal system. To claim secrecy in this context
17 contradicts the public nature of the dispute resolution process *the parties have*
18 *chosen to engage in*. It is inconsistent to seek the benefits of the public judicial
19 system and its associated constitutional protections while simultaneously
20 attempting to shield the proceedings from public scrutiny and constitutional
21 protections of the press' right to access. This approach is self contradictory and
22 undermines the principles of open justice and transparency that are fundamental to
23 the American legal system.
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28 **d. Challenging Sealing Order is Necessary and Appropriate**

1 ONJ is in a difficult position, unable to challenge the terms of a sealing order
2 that is itself sealed, and which ONJ has not seen. To address this, ONJ has filed a
3 Limited Motion to Unseal, seeking only the minimum information required by SRCR
4 3(5)(c). This includes basic case details, the existence of the sealing order, and the
5 identity of who requested it.
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7 If granted, this minimal disclosure would unseal the sealing orders themselves,
8 allowing ONJ to review them and decide whether to pursue further unsealing efforts.
9 This approach aligns with SRCR 3's emphasis on using the least restrictive means
10 for sealing and maintaining some level of public access.
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12 Given the unusual circumstances and imminent hearing dates, the Court has
13 the discretion - and the constitutional duty - to consider unsealing and opening the
14 proceedings in whole or in part on its own initiative where the original sealing was
15 unlawful. This would uphold the principle of open courts and ensure that any sealing
16 orders meet the required standard of compelling interests outweighing public
17 access. SRCR 4(2) ("A sealed court record in a civil case shall be unsealed only
18 upon stipulation of all the parties, upon the court's own motion, or upon a motion
19 filed by a named party or another person.") See also *United States v. Yazzie*, 743
20 F.3d 1278, 1287 (9th Cir. 2014) citing *Presley v. Georgia*, 558 U.S. 209, 214, 130
21 S.Ct. 721, 175 L.Ed.2d 675 (2010) (a court is "...required to consider alternatives to
22 closure even when they are not offered by the parties.")
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25 **e. The Objection to the Sealing Order Was Timely and Proper**

26 DOE 9 contends that ONJ's challenge to the Sealing Order is both untimely
27 and procedurally improper under NRCP 60. They argue that nearly seven months
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1 have passed since the order's entry, exceeding the six-month limit for seeking relief,
2 and that no motion for leave to reconsider has been filed. However, DOE 9's
3 invocation of NRCP 60 is misplaced. ONJ is not seeking relief from a judgment or
4 order against itself. Rather, as a third party, ONJ is challenging the Court's Sealing
5 Order in the interest of public access. This type of challenge falls outside the scope
6 and intent of Rule 60's provisions for relief from judgments or orders.

8 Ultimately, SRCR 4(2) is the controlling authority in this situation. SRCR 4(2)
9 provides the appropriate basis for a non-party to move to unseal court records.
10 SRCR 4(4) sets a time limit on such motions: "No motion to unseal court records
11 may be made more than 5 years after a final judgment has been entered in an action
12 or, if an appeal is taken, after the issuance of the remittitur, whichever is later."

14 Further, Doe 9 cannot reasonably expect to bind a party to an order that 1)
15 would not have been served upon the non-party by virtue of its non-party status;
16 and, 2) the relevance and value of unsealing in the first instance could change
17 dramatically depending on the newsworthiness of the case. Doe 9's interpretation of
18 NRCP 60 is absurd, and would obligate non-party press outlets to somehow intuit
19 which cases are being sealed whilst simultaneously speculating as to whether or not
20 access to the records would ever be of any public interest. In this particular case
21 DOE 9's argument is particularly absurd given the entire case information and file
22 was super sealed and rendered wholly invisible.

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1 **f. There Are No Compelling Interests That Warrant Total Closure Of The**
2 **Proceedings**

3 DOE 9's claim that complete closure of the proceedings is necessary lacks
4 sufficient justification. The Court has the ability to implement narrowly tailored
5 measures to protect sensitive information while still allowing public access to certain
6 portions of the proceedings, such as arguments of counsel or the final ruling. While
7 some witnesses or evidence may warrant privacy protections, a blanket closure of
8 all evidentiary portions is excessive without specific findings for each instance of
9 closure. The *Falconi* decision emphasizes the need for such particularized findings,
10 weighing public interest against privacy concerns on a case-by-case basis.
11

12 The trust matter in question directly involves Rupert Murdoch, who is
13 undeniably a prominent public figure, and concerns the future leadership and
14 control of News Corp., a major global media conglomerate. These circumstances
15 elevate the case to one of substantial public interest and importance. Allowing some
16 degree of public access would serve important interests in transparency, especially
17 given the high-profile nature of the case and its potential impact on a widely
18 influential company. Complete closure would prevent the public and press from
19 obtaining valuable information about this consequential matter, undermining
20 principles of open justice and informed public discourse.
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23 **Conclusion**

24 “The free press is the guardian of the public interest, and the independent
25 judiciary is the guardian of the free press. Thus, courts have a duty to conduct a
26 thorough and searching review of any attempt to restrict public access.” *Leigh v.*
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2 **CERTIFICATE OF SERVICE**

3 I certify that on the date shown below, I caused service to be completed of a
4 true and correct copy of the foregoing document by:

5 _____ personally delivering;

6 _____ delivery via Reno/Carson Messenger Service;

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8 _____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;

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10 or,

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12 x delivery via electronic means (fax, eflex, NEF, etc.) to:

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27 **DATED** this Sep 3, 2024

28 By: /s/ Luke Busby