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OBJ
CHRISTOPHER P. FORD, ESQ.
Nevada Bar No. 11570
TONY T. SMITH, ESQ.
Nevada Bar No. 12096
FORD & FRIEDMAN
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Attorneys for Defendant

**EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA**

[REDACTED]

Plaintiff,

vs.

[REDACTED]

Defendant.

CASE NO.: D-21-[REDACTED]-D

DEPT.: N

Hearing Date: September 10, 2024
Hearing Time: 11:00 a.m.

**DEFENDANT’S OBJECTION TO MEDIA REQUEST AND ORDER
ALLOWING CAMERA ACCESS**

COMES NOW, Defendant, [REDACTED] by and through his counsel of record, Christopher P. Ford, Esq., and Tony T. Smith, Esq., of the law firm of Ford & Friedman, who hereby files this *Defendant’s Objection to Media Request and Order Allowing Camera Access*. [REDACTED] requests that this Honorable Court

1 enter the following orders:

- 2
- 3 1. For an order denying the Media Request and Order Allowing Camera
- 4 Access;
- 5
- 6 2. For an order that the hearing on the pending motions will be sealed;
- 7
- 8 3. For an order, in the alternative, prohibiting camera access to the hearing
- 9 on the pending motions; and
- 10 4. Any other relief as this Court deems necessary and proper.

11 The foregoing Objection is based upon the attached Memorandum of Points

12 and Authorities, the pleadings, and papers on file herein, and any oral argument

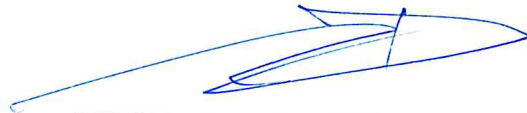
13 the Court elects to entertain at the hearing on this Objection.

14

15 DATED this 9th day of September, 2024.

16

17 **FORD & FRIEDMAN**

18 

19

20 **CHRISTOPHER P. FORD, ESQ.**

21 Nevada Bar No. 11570

22 **TONY T. SMITH, ESQ.**

23 Nevada Bar No. 12096

24 2200 Paseo Verde Pkwy, Suite 350

25 Henderson, Nevada 89052

26 *Attorneys for Defendant*

27

28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS

3
4 Defendant, [REDACTED] (hereinafter [REDACTED]) and Plaintiff, [REDACTED]

5 [REDACTED] (hereinafter “Plaintiff”) were married on or about February 15, 2019. The
6 parties were divorced before this Court on September 13, 2023.

7
8 **A. THE CLOSURE OF PROCEEDINGS WHEREIN THE CONFIDENTIAL TERMS OF THE PARTIES’ MSA ARE TO BE**
9 **ADDRESSED SERVES A COMPELLING/OVERRIDING STATE INTEREST, AND ANY SUCH CLOSURE WOULD BE NARROWLY**
10 **TAILORED TO MEET THIS COMPELLING/OVERRIDING STATE INTEREST.**

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12
13 “[F]amily law proceedings are, and have been, presumptively open.”¹
14 However, this does not mean that all family law proceedings are automatically
15 open to the public, and the foregoing presumption “can be overcome when the
16 closure is necessary to preserve a compelling interest and is narrowly tailored to
17 serve that interest.”²

18
19
20 Additionally, “to overcome the presumption, one must show three things:
21 (1) closure serves a compelling interest; (2) there is a substantial probability that,
22 in the absence of closure, this compelling interest could be harmed; and (3) there
23 are no alternatives to closure that would adequately protect the compelling
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¹ *Falconi v. District Court*, 140 Nev. Adv. Op. 8, 543 P.3d 92, 97 (2024) (citations omitted).

² *Id.* (citations omitted).

1 interest.”³

2
3 “[I]n Nevada, before a district court can close those proceedings (1) the
4 party seeking to close the hearing must advance an overriding interest that is
5 likely to be prejudiced; (2) the closure must be no broader than necessary to
6 protect the overriding interest; (3) the trial court must consider reasonable
7 alternatives to closing the proceeding; and (4) the trial court must make findings
8 adequate to support the closure.”⁴
9
10

11 *1. Falconi found that certain local rules and provisions of NRS 125 were*
12 *unconstitutional since they provided for a mandatory and broad closure*
13 *of family law proceedings without the exercise of judicial discretion.*

14 *Falconi* determined that EDCR 5.207, EDCR 5.212, and NRS 125.080 were
15 unconstitutional as these foregoing provisions generally mandated broad closure
16 of certain family law proceedings without the ability of a Court to exercise
17 discretion regarding the closure of proceedings.⁵
18

19 *2. Falconi indicated that the privacy interests of litigants can be a*
20 *consideration in determining whether to close certain family court*
21 *proceedings.*

22 The Nevada Supreme Court has indicated “there is an interest in protecting
23 litigants’ privacy rights in family law proceedings, as those proceedings apply
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28 ³ Id., 543 P.3d at 99 (citations omitted).

⁴ Id.

⁵ Id., 543 P.3d at 94.

1 wholly to their private lives.”⁶ “It should be noted that the closure of various
2 family law proceedings can and will be warranted in various instances.”⁷ “The test
3 that district courts apply on a case-by-case basis in closing proceedings in all other
4 matters in Nevada can and will sufficiently protect family court parties’ privacy
5 interests.”⁸

6
7
8 Here, the privacy interests of the parties are tied to the strong public policy
9 in Nevada supporting the settlement of domestic relations litigation.⁹ Specifically,
10 the issue to be addressed at the upcoming Motion hearing is Plaintiff’s alleged
11 breach of the parties’ confidential Marital Settlement Agreement (“MSA”) due to
12 Plaintiff disclosing information to third parties which was intended by the parties
13 to remain private/confidential as part of their agreement to settle the divorce
14 matter. Further, James entered into the MSA, in part, to prevent the wider
15 disclosure of certain information contained within the MSA as he believed absent
16 such issues being made confidential per the terms of the MSA, Plaintiff would
17 disclose such information in an effort to harm James’ business interests.

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22 If the upcoming Motion hearing were open to the public, then the
23 confidentiality provisions of the parties’ MSA would be rendered meaningless.

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25 Put differently, the parties’ ability to enter into the confidential MSA is

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⁶ Id. (citations omitted).

28 ⁷ Id.

⁸ Id., 543 P.3d at 99.

⁹ See *Grisham v. Grisham*, 128 Nev. 679, 683, 289 P.3d 230, 233 (2012).

1 what resulted in the parties settling the initial divorce matter. If the Motion
2 hearing is open to the public, then the provisions of the MSA which the parties
3 intended to be confidential will be known to the wider public. Such disclosure of
4 confidential settlement terms, which Our Nevada Judges presumably intends to
5 widely publicize, will create a strong chilling effect among future family court
6 litigants by making them reluctant to enter into settlements containing
7 confidentiality terms since the same may later become widely known among the
8 broader public.
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12 *3. This Court has already determined the strong public policy favoring*
13 *settlement of domestic relations litigation is a compelling/overriding*
14 *state interest.¹⁰*

15 In anticipation of filing his Motion for an Order to Show Cause, James
16 sought a narrowly tailored order sealing portions of this action which address the
17 confidential terms of the MSA, with ██████ premising this request on the
18 compelling/overriding state interest in encouraging the settlement of domestic
19 relations litigation.
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22 Upon review of ██████ request to seal portions of this action which address
23 the confidential terms of the MSA, this Court then entered an Order sealing
24 portions of the record which address the confidential terms of the parties' MSA.
25 Accordingly, this Court has already indicated that the strong public policy
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28 ¹⁰ ██████ believes the terms in the relevant caselaw requiring the demonstration of a “compelling
interest” and “overriding interest” are essentially interchangeable.

1 favoring settlement of domestic relations litigation serves as a
2 compelling/overriding state interest.
3

4 4. The privacy interests of the parties, coupled with the need to protect the
5 compelling/overriding state interest in fostering settlement of domestic
6 relations litigation, favor closing the upcoming Motion hearing and
7 related proceedings which address the terms of the MSA.

8 As noted above, the Nevada Supreme Court has indicated that the privacy
9 interests of the parties to a family court proceeding may be considered when
10 determining whether to close family court proceedings.
11

12 Here, if the upcoming Motion hearing and related proceedings are not
13 closed to the public, then the private information of the parties as
14 contained/referenced within the MSA will become public, which will defeat the
15 intentions of the parties in entering into the MSA.
16

17 This scenario will also result in a chilling effect among the wider public
18 which will strongly disincentivize parties to domestic relations litigation from
19 settling when the settlement contains confidential terms, which is not an unusual
20 scenario in family court proceedings which involve the most intimate portions of
21 people's lives.
22

23 Accordingly, the privacy interests of the parties in not having the
24 confidential provisions of the MSA widely disseminated, coupled with the need to
25 preserve the strong public policy in Nevada of encouraging settlement of domestic
26 relations matters, serves as a compelling/overriding state interest which
27
28

1 overcomes the presumption of open proceedings.

2
3 5. The current Order sealing portions of the record referencing the
4 confidential provisions of the MSA is narrowly tailored, and,
5 accordingly, the closure of proceedings wherein the confidential terms
6 of the MSA are addressed is also narrowly tailored.

7 Here, the Order entered by this Court sealing portions of the record related
8 to the confidential terms of the MSA is narrowly tailored in that it only seals
9 limited portions of the record so as to protect the parties' privacy interests in the
10 confidential terms of the MSA and to protect the strong public policy favoring the
11 settlement of domestic relations matters.
12

13 Similarly, an Order closing the proceedings in this matter wherein the
14 confidential terms of the MSA are addressed would also be narrowly tailored.
15 Further, there are no alternatives to closure that would adequately protect the
16 compelling/overriding interest articulated herein, and there are no reasonable
17 alternatives to closing the proceeding.
18
19

20 6. The factors provided under SCR 230(2) favor closing the proceedings
21 related to the confidential terms of the parties' MSA.

22 An analysis of the factors provided for in SCR 230(2) favors closing the
23 proceedings in this matter wherein the confidential terms of the parties' MSA will
24 be addressed. Specifically:
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1 a. Coverage of proceedings wherein the confidential terms of the MSA are
2 addressed will negatively impact the right of James to a fair trial if one
3 is set regarding his Motion for OSC.

4 The central issue at present is [REDACTED] allegation that Plaintiff has violated
5 the confidentiality terms of the parties' MSA by disclosing confidential
6 information to third parties. If these proceedings wherein the confidential terms of
7 the MSA are addressed were to be publicly disclosed, then Plaintiff would feel
8 emboldened in her efforts to disclose confidential information to third parties
9 leading up to any trial that may be set in this matter, which could negatively
10 impact [REDACTED] right to a fair trial.

11 Accordingly, this factor strongly favors [REDACTED] request to close the
12 proceedings.

13 b. Coverage of proceedings wherein the confidential terms of the MSA are
14 addressed will seriously harm [REDACTED] right of privacy.

15 The point of entering into the confidential MSA was to settle the parties'
16 divorce matter while also protecting certain information which was intended to
17 remain confidential. If the public is allowed access to proceedings wherein the
18 confidential terms of the MSA are addressed, then the purpose of the MSA will be
19 defeated and information which James intended to remain private pursuant to the
20 MSA will be widely publicized.

21 Accordingly, this factor strongly favors [REDACTED] request to close the
22 proceedings.

1 c. Coverage of proceedings wherein the confidential terms of the MSA are
2 addressed will seriously harm James' well-being.

3 A key point raised in James' Motion for OSC is that Plaintiff's disclosure of
4 certain information to third parties which was intended to remain private pursuant
5 to the confidential MSA is causing harm to ██████████ business interests. If the
6 proceedings wherein the confidential terms of the MSA are addressed are open to
7 the public, then ██████████ well-being will be severely harmed as the information
8 which is contained in the MSA will be widely known and could result in harm to
9 his business interests.
10

11 Accordingly, this factor favors ██████████ request to close the proceedings
12 wherein the confidential terms of the MSA are addressed.
13

14 d. Coverage of proceedings wherein the confidential terms of the MSA are
15 addressed creates a strong likelihood the participants would be
16 distracted and/or the coverage would detract from the dignity of the
17 proceedings.
18

19 The parties should be able to appear before this Court and have an open
20 argument/discussion regarding the confidential terms of the MSA without the
21 publicity of such a hearing being used by one party to place undue pressure on
22 another party. Put differently, if the proceedings wherein the confidential terms of
23 the MSA are addressed are not closed, then there is a high likelihood Plaintiff will
24 use the publicization of the proceedings to place additional pressure on ██████████
25 which will in turn detract from the dignity of the proceedings and distract the
26

1 parties from the issues raised in the pending Motions.

2 Accordingly, this factor favors ██████ request to close the proceedings
3
4 wherein the confidential terms of the MSA are addressed.

5 *e. The adequacy of the physical court facilities is not an impediment to*
6 *coverage of the proceedings.*

7 The physical court facilities do not prevent coverage of the proceedings,
8
9 however, for the reasons provided herein, other factors weigh more strongly and
10 should properly result in the closure of proceedings wherein the confidential terms
11 of the MSA are addressed.
12

13 *f. The strong public policy favoring settlement of domestic relations*
14 *matters supports closing the proceedings wherein the confidential terms*
15 *of the MSA are addressed.*

16 ██████ reincorporates his prior arguments regarding how closing these
17 proceedings wherein the confidential terms of the MSA are addressed is essential
18 to preserving the strong public policy in Nevada encouraging settlement of
19 domestic relations matters. This strongly supports closing these proceedings
20 wherein the confidential terms of the MSA are to be addressed.
21
22

23 **B. IN THE ALTERNATIVE, IF THIS COURT WILL PERMIT MEDIA**
24 **COVERAGE OF THE PROCEEDINGS WHEREIN THE CONFIDENTIAL**
25 **TERMS OF THE MSA ARE TO BE ADDRESSED, THEN THERE IS NO**
26 **NEED FOR THE PRESS TO BE AFFORDED CAMERA ACCESS.**

27 ██████ has demonstrated that his request to close the proceedings wherein
28 the confidential terms of the MSA are to be addressed would serve a

1 compelling/overriding state interest, and the same would be narrowly tailored to
2 meet this interest.

3
4 However, in the event this Court disagrees with James' position, then, in the
5 alternative, he requests that any press coverage of the proceedings wherein the
6 terms of the MSA are to be addressed not include camera coverage. The holding
7 in *Falconi* was intended generally to preserve public access to court proceedings
8 wherein there did not exist a compelling/overriding interest to protect via a
9 narrowly tailored closure of the proceedings. If this Court disagrees with [REDACTED]
10 position, then the policy goal of *Falconi* can certainly be served by allowing press
11 access to the proceedings. There is no additional public interest that would be
12 served by broadcasting via audio and/or visual means the proceedings.
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17 **III. CONCLUSION**

18 Based on the foregoing, James respectfully requests that this Honorable
19 Court enter the following Orders:
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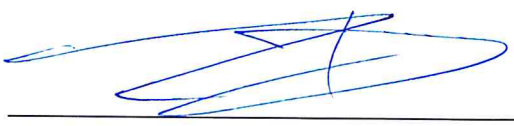
- 21 1. For an order denying the Media Request and Order Allowing Camera
22 Access;
- 23 2. For an order that the hearing on the pending motions will be sealed;
- 24 3. For an order, in the alternative, prohibiting camera access to the hearing
25 on the pending motions; and
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4. Any other relief as this Court deems necessary and proper.

DATED this 9th day of September, 2024.

FORD & FRIEDMAN



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