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

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

16 CASE NO: D-18-[REDACTED]-D
17 DEPT NO: X
18 NO HEARING REQUESTED

19 [REDACTED] Obligee,
20 vs.
21 [REDACTED];
22 Obligor.
23 _____/

24 CASE NO: R-20-[REDACTED]-R
25 DEPT NO: X
26 NO HEARING REQUESTED

27 NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
28 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.

29 **MOTION TO UNSEAL**

30 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by
31 and through the undersigned counsel, and hereby files a motion to unseal.

32 This motion is based upon the following memorandum of points and
33 authorities, and the exhibits attached hereto.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 An SCR 229(1)(c) non-party news reporter may file a motion to unseal. SRCR
3 4(2).

4 Sealing the entire file interferes with an SCR 229(1)(c) news reporter’s ability to
5 monitor a case. The Clerk should be directed to restore access to the court indices¹,
6 which would most efficiently reveal the case numbers, docket codes, docket
7 numbers, and date that the action was commenced; and, the names of the parties,
8 counsel of record, and the assigned judge; the case type and cause(s) of action;
9 and, sealing orders (hereinafter ‘Court Access Information’). The extensive seal
10 imposed in these cases allows a clerk to refuse to disclose not only the hearing
11 dates and times, but also the existence of the case entirely, which unconstitutionally
12 interferes with press access to the courtroom. See *Falconi v. Eighth Jud. Dist. Ct.*,
13 140 Nev., Advance Op. 8 (2024).

14 SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of
15 NRS Chapters is provided, but the list is not exclusive² and actually manifests the
16 harmonious construction³ principle of statutory construction with the additional
17 caveat that the court rules⁴ give way to any “specific” statute governing sealing
18 and redaction. In other words, SRCR 1(4) is not categorically inapplicable to the
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23 ¹ <https://www.clarkcountycourts.us/Anonymous/default.aspx> and
24 <https://www.clarkcountycourts.us/portal>

25 ² SRCR 1(4): “These rules do not apply to the sealing or redacting of court records under
26 **specific** statutes, **such as...**” (emphasis added).

27 ³ *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)
28 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
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.”)

⁴ *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) (“[R]ules of
statutory construction apply to court rules.”)

1 unsealing of actions filed under NRS Chapters 125, but rather, yields to certain
2 “specific” statutes like NRS 125.110.

3 “A court's authority to limit or preclude public access to judicial records and
4 documents stems from three sources: constitutional law, statutory law, and
5 common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). See also
6 *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) (“domestic
7 press outlets unquestionably have standing to challenge access to court
8 documents.”) (citation omitted). The *Howard* Court pointed out at the time that the
9 common law generally favors public access but gives way to statutes and court
10 rules. While there were no constitutional issues relevant to the *Howard* Court’s
11 analysis at the time, the *Falconi* Court later clarified that a First Amendment right of
12 access to the underlying proceedings exists. See also *Civil Beat Law Ctr. for the*
13 *Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1180 (9th Cir. 2024) (Hawai’i Court rules
14 requiring all medical and health records be filed under seal without further order of
15 a judge are unconstitutionally overbroad).

16 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*
17 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)
18 from criminal proceedings to all civil proceedings, including family law
19 proceedings. Importantly, the *Stephens Media* Court recognized a powerful
20 distinction left untouched by the *Howard* Court; namely, that there was a
21 distinction between oral proceedings and documentation that “merely facilitate[s]
22 and expedite[s]” one of those oral proceedings, specifically, jury questionnaires
23 and *voir dire*. The *Stephens Media* Court recognized that the purpose of the jury
24 questionnaires was their direct connection to and facilitation of *voir dire*
25 proceedings such that they constituted access to the proceedings themselves and
26 thus implicated First Amendment concerns. Analogously, the court indices and
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1 Court Access Information ONJ seeks now go beyond mere court records and are
2 preliminarily required for monitoring and accessing any court file.

3 Even if this Court came to the conclusion that certain interpretations of law
4 could allow Court Access Information to be hidden from the press, this Court must
5 adopt the interpretation that is constitutional. This is because “when the language
6 of a statute admits of two constructions, one of which would render it
7 constitutional and valid and the other unconstitutional and void, that construction
8 should be adopted which will save the statute.” *State v. Castaneda*, 126 Nev. 478,
9 481, 245 P.3d 550, 553 (2010).

10 For all of the same reasons articulated above, ONJ is also requesting the
11 unsealing of all J.A.V.S. videos published in both cases for any hearings that
12 occurred on or after April 13, 2020. The J.A.V.S. videos are a distillation of
13 preceding motion practice and actual records of the hearings themselves. This
14 Court is required to reject any construction that would not incorporate and include
15 the strict scrutiny test mandated by the *Falconi Court*.

16 "People in an open society do not demand infallibility from their institutions,
17 but it is difficult for them to accept what they are prohibited from observing."
18 *Richmond Newspapers*, 448 U. S., at 572.

19 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
20 does not contain the social security number of any person.
21

22 **DATED** this Nov 26, 2024

23 By: /s/ Luke Busby
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