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DISTRICT COURT

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CLARK COUNTY, NEVADA

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BRITTANEY ROBERTSON, et al.

Case No.: A-22-859490-C

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Plaintiffs,

Dept. No. IX

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vs.

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KODY GORDEN, et al.

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Defendants.

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**ORDER DENYING DEFENDANTS' MOTION TO SEAL AND/OR REDACT ANY
REFERENCE TO DEFENDANTS' NAMES IN ALL FILINGS**

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On October 15, 2024, Defendant/Counterclaimants Kody Gorden and Tigers

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Baseball LV, Inc. ("TBLV") (together, the "Gorden Defendants") filed a motion asking

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this court to seal and/or redact all references to Kody or TBLV in the court records.

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On October 30, 2024, Plaintiffs Brittaney Robertson and Wesley Gordon filed a non-

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opposition to the motion. On November 13, 2024, non-party Our Nevada Judges, Inc.

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filed an opposition to the motion. On December 5, 2024, the Gorden Defendants filed

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a reply in support of the motion. Having considered the motion, all related briefs,

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and all pleadings and papers on file, the court finds that it does not need oral

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argument to decide the motion (EDCR 2.23), and **VACATES** the November 12, 2024,

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hearing on the motion, and **DENIES** the motion, consistent with the following:

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The Nevada Rules for Sealing and Redacting Court Records (SRCR) govern the

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propriety of sealing and/or redacting papers in a case. SRCR 3 provides as follows:

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The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest

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1 in privacy or safety interests that outweigh the public
2 interest in open court records include findings that:

3 (a) The sealing or redaction is permitted or required by
4 federal or state law;

5 (b) The sealing or redaction furthers an order entered
6 under NRCP 12(f) or JCRCP 12(f) or a protective order
7 entered under NRCP 26(c) or JCRCP 26(c);

8 (c) The sealing or redaction furthers an order entered in
9 accordance with federal or state laws that serve to protect
10 the public health and safety;

11 (d) The redaction includes only restricted personal
12 information contained in the court record;

13 (e) The sealing or redaction is of the confidential terms of a
14 settlement agreement of the parties;

15 (f) The sealing or redaction includes medical, mental
16 health, or tax records;

17 (g) The sealing or redaction is necessary to protect
18 intellectual proprietary or property interests such as trade
19 secrets as defined in NRS 600A.030(5); or

20 (h) The sealing or redaction is justified or required by
21 another identified compelling circumstance.

22 The Gorden Defendants propose that the sealing and/or redaction of all
23 references to Kody or TBLV in the court records is justified under subsections (a), (b),
24 (e), and (h) of SRCR 3. The Gorden Defendants argue that Plaintiffs' allegations and
25 claims of sexual coercion and assault are damaging to the Gorden Defendants
26 because they are involved in the coaching and training of little league baseball
27 players. The Gorden Defendants assert that a material term of their settlement with
28 Plaintiffs is that Plaintiffs must cooperate to seal and/or redact any and all references
to Kody and TBLV. Given this agreement, it is unsurprising that Plaintiffs did not
oppose and, instead, appear to support the motion.

Although Plaintiffs do not oppose the motion, there is an opposition from non-
party Our Nevada Judges, Inc. ("ONJ"). ONJ is a 501(c)(3) non-profit with a stated
mission to provide the general public with an effective means of evaluating Nevada
judges by providing cases, articles, election coverage, and videos to the public. To

1 that end, ONJ routinely seeks permission from courts to film proceedings in cases
2 ONJ believes to be of interest to the public. ONJ did so here, and the court granted
3 its request on March 6, 2023. (Document No. 66.) The Gorden Defendants assert
4 that ONJ's motion is premature, because the court has not yet ordered sealing, and
5 thus, a non-party cannot yet seek unsealing of the records. The Gorden Defendants
6 also argue that ONJ's assertions that any sealing order may be used to block camera
7 access or to claw back public videos are speculative, as the Gorden Defendants have
8 not made any request to block future camera access or claw back videos.

9 Regardless of ONJ's opposition and assertions or the Gorden Defendants'
10 response thereto, the court finds that the Gorden Defendants have failed to set forth a
11 prima facie basis for sealing and/or redacting references to Kody and TBLV. The
12 court explains why below, addressing each of the Gorden Defendants' claimed bases
13 for sealing and/or redacting.

14 Subsection (a) provides a ground for sealing and/or redacting when doing so is
15 permitted by federal or state law. The Gorden Defendants state that Ninth Circuit
16 federal case law set forth in *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d
17 1058, 1068 (9th Cir. 2000) "made clear that a party may proceed under a pseudonym
18 when anonymity is necessary to preserve privacy in a matter of sensitive and highly
19 personal nature." Mot. at 5:6-8.

20 The Gorden Defendants misstate and cherry pick *Advanced Textile*. The Ninth
21 Circuit did not issue a blanket holding that a party may proceed under a pseudonym
22 when anonymity is necessary to preserve privacy in a matter of sensitive and highly
23 personal nature. Indeed, that is not even direct language from the Ninth Circuit.
24 That is language from the Fourth Circuit in a case styled *James v. Jacobson*, 6 F.3d
25 233(4th Cir. 1993) that *Advanced Textile* quotes in identifying situations where, after
26 applying a balancing test, other federal courts have allowed plaintiffs to use
27 pseudonyms.

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1 Rather, the Ninth Circuit holds that “a party may *preserve* his or her
2 anonymity in judicial proceedings in special circumstances when the party’s need for
3 anonymity outweighs prejudice to the opposing party and the public’s interest in
4 knowing the party’s identity.” *Advanced Textile*, 214 F.3d at 1068 (emphasis added).
5 The Ninth Circuit goes on to hold that where a party seeks to use a pseudonym, the
6 district court must evaluate the following factors to determine whether the need for
7 anonymity outweighs any prejudice to the opposing party and the public’s interest in
8 disclosure: “(1) the severity of the threatened harm ... (2) the reasonableness of the
9 anonymous party’s fears ... and (3) the anonymous party’s vulnerability to such
10 retaliation.” *Id.* Further, the district court must evaluate the prejudice at each stage
11 of the proceedings, as well as decide whether the public’s interest in the case would be
12 best served by requiring that the litigants reveal their identities. *Id.*

13 This court points out what should be obvious here: there is no anonymity for
14 the Gorden Defendants to “preserve.” This case has been pending since October 6,
15 2022, with over two years passed and one hundred eighty documents containing their
16 names filed on the docket before they made the underlying sealing motion. The
17 Gorden Defendants make no effort to address why it took so long for them to ask to
18 proceed anonymously and seal and/or redact filed records. The court recalls Plaintiffs
19 raising the issue of using a pseudonym (initials) for their minor child in early motion
20 practice.¹ Accordingly, it is not as if the Gorden Defendants were not aware of the
21 ability to ask to proceed under a pseudonym.

22 The Gorden Defendants were also fine with having this case publicized by
23 ONJ, as they made no objection to its media request. Accordingly, the court finds
24 *Advanced Textile* unpersuasive and inapplicable (even if *Advanced Textile* could be
25 considered the type of federal law contemplated by SRCR 3(a)), as there is no

26 ¹ Even in directing that parties use the child’s initials in filings moving forward
27 (given that all parties agreed to do so), the court did not order sealing and/or
28 redaction of prior filings given that the case had already been publicized.

1 anonymity to preserve.² It follows that there is no basis to seal and/or redact under
2 SRCR 3(a).

3 The Gorden Defendants also assert that subsection (b) provides a basis for
4 sealing and/or redaction. Subsection (b) allows sealing and/or redaction where it
5 furthers an order entered under NRCP 12(f) or a protective order entered under
6 NRCP 26(c). NRCP 12(f) concerns motions to strike. The court is not aware of any
7 order granting a motion to strike in this case. NRCP 26(c) concern protective orders.
8 The court is not aware of any protective order or stipulated protective order
9 applicable to the Gorden Defendants.³ Indeed, the Gorden Defendants fail to support
10 this purported ground for sealing and/or redacting.

11 The Gorden Defendants assert that subsection (e) provides a basis for sealing
12 and/or redaction. Subsection (e) allows sealing and/or redaction where it is of
13 confidential terms of the parties' settlement agreement. The Gorden Defendants
14 misinterpret the meaning of this subsection, which allows for sealing of a confidential
15 term (e.g., settlement amount), not merely because the settlement agreement
16 provides that the parties will agree to sealing and/or redaction. That the parties have
17 agreed to sealing and/or redaction is not in and of itself a confidential term. In fact,
18 the Gorden Defendants have publicly disclosed that term in the public version of its
19 motion to seal.

20 Finally, the Gorden Defendants assert that subsection (h) provides a basis for
21 sealing and/or redaction. Subsection (h) is a "catch-all," that allows sealing and/or
22 redaction where it is justified or required by another identified compelling

23 ² Even if a party after years of consistently failing to use a pseudonym could reverse
24 course to seek anonymity, the Gorden Defendants have failed to provide sufficient
information for this court to apply the *Advanced Textile* balancing test.

25 ³ The only order akin to a protective order the court has entered is that portion of the
26 October 5, 2024, order granting in part and denying in part Defendant Fraser
27 Inouye's motion to compel, where the court set forth certain procedures for the
28 production and maintenance of intimate photographs of Plaintiff Brittany
Robertson.

1 circumstance. The Gorden Defendants assert that Plaintiffs' stigmatizing allegations
2 of sexual coercion and assault are particularly bad for Kody because he earns a living
3 coaching and training little league baseball players. The Gorden Defendants state
4 that the publicized allegations have negatively impacted Kody's reputation and
5 livelihood.

6 The court has no reason to dispute Kody's assertions of having been financially
7 impacted as a result of this lawsuit. But that, alone, does not present a justified or
8 compelling circumstance for sealing and/or redaction, particularly when he has been
9 proceeding publicly for years. If the court acknowledged pecuniary loss as a basis for
10 sealing and/or redaction, the court would be sealing and/or redacting a wide swathe of
11 cases, including cases where pharmaceutical companies are alleged to have marketed
12 a dangerous drug, cases where one business partner accuses another business
13 partner of fraud, etc.

14 Having found that the Gorden Defendants have failed to establish any basis for
15 sealing and/or redacting, the court does not need to balance whether the public
16 interest in privacy or safety interests outweighs the public interest in open court
17 records. The court, however, addresses this point, because it touches upon ONJ's
18 presence in this case. Even if the court found that the Gorden Defendants had set
19 forth a sufficient privacy interest in having their names sealed and/or redacted, the
20 court finds that the privacy interest would not outweigh the public interest in
21 maintaining open court records given that this case has long been publicized.⁴

22 The Gorden Defendants suggest in their reply brief that they would not seek to
23 have ONJ blocked from future filming or its past videos clawed back, but this alone
24 shows the weakness in the Gorden Defendants' motion and cuts against their
25 requested relief. Indeed, it makes little sense that a person could learn of the

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27 ⁴ The Gorden Defendants acknowledge that this case has been publicized. Mot. at p.
28 5:23.

1 Gorden Defendants through ONJ videos but then be precluded from seeing their
2 names in court documents. It seems to this court that the average member of the
3 public is more likely to learn of this case and the factual allegations of this case from
4 an ONJ video than through court records, which a member of the public would need
5 to know how to access. Thus, where the information the Gorden Defendants seek to
6 restrict is readily available through the ONJ website and, presumably, an internet
7 search engine, it is entirely unclear how limiting access to court records would
8 meaningfully alleviate any of the alleged harm. These circumstances support public
9 access to court records, as opposed to restricting such access.

10 For the foregoing reasons, the court DENIES the motion in its entirety.

11 **IT IS SO ORDERED.**

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Dated this 11th day of December, 2024



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Maria Gall
District Court Judge

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Brittaney Robertson, Plaintiff(s) | CASE NO: A-22-859490-C
7 vs. | DEPT. NO. Department 9
8 Kody Gorden, Defendant(s)

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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Denying was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 12/12/2024

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