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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 In re the Conservatorship of the Person of:

12 BRITNEY JEAN SPEARS,

13 Proposed Conservatee.

CASE NO. BP BP108870

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION TO SEAL RECORD RE
CONSERVATORSHIP OF THE PERSON**

Date: February 1, 2008
Time: 10:30 a.m.
Department: 11

18 **INTRODUCTION**

19 Applicant James P. Spears ("Applicant") has initiated these proceedings to appoint a
20 conservator of the person for his daughter, Britney Jean Spears ("Britney"). By this application,
21 Applicant respectfully asks the Court to seal the record of these proceedings to protect Britney's
22 constitutionally protected privacy rights and safety as well as her prospects for a medical
23 recovery.

24 The Court should seal the record of these proceedings because there is no First
25 Amendment right of public access to proceedings brought by a conservator for the purpose of
26 addressing the medical needs and personal care of a conservatee. Even if there were a First
27 Amendment right of public access to conservatorship proceedings – which there is not – the right
28 of public access may be overcome where there "exists an overriding interest that overcomes the

1 right of public access to the record.” Cal. R. Court 2.550(d). *See NBC Subsidiary (KNBC-TV),*
2 *Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999). Britney’s inalienable constitutional right to
3 privacy constitutes such an overriding interest. In balancing the constitutional right of privacy
4 against the right of access to court proceedings, the balance in this case must lie heavily on the
5 side of privacy right protection.

6 There is no legitimate reason for the public to have access to information about Britney’s
7 capacity to make medical decisions, her condition, or her treatment. Information about Britney’s
8 condition and the conservatorship would fuel widespread publicity, as is evidenced by the media
9 frenzy over her hospitalization on the morning of January 31, 2008. Publicity of this nature
10 would be highly injurious to Britney’s health and her prospects for recovery.

11 **FACTUAL BACKGROUND**

12 Because facts concerning Britney’s medical condition are set forth in the Petition for
13 Conservatorship and the declarations filed in support thereof, Applicant will not burden the
14 Court by repeating all of such facts here.

15 These proceedings were initiated because Britney is unable to care for herself and in
16 particular, her medical needs. Britney is currently in severe mental distress. As is more fully
17 discussed in the Confidential Supplemental Information, it is believed that Britney suffers from
18 several mental health disorders which are not being treated and which Britney does not have the
19 capacity to treat. The purpose of the Petition is to obtain the power to get Britney effective
20 medical treatment, including mental health treatment.

21 A google search for Conservatee’s name yields 82,900,000 hits. Any news about the
22 proposed Conservatee generates a media frenzy. She is constantly swarmed by photographers.
23 They vie for news and photographs of her. Photographs and personal information, particular
24 information of a highly confidential nature (such as her medical records) can potentially reap
25 thousands if not millions of dollars. The possibility of such enormous profits presents a
26 substantial risk that Britney’s most confidential medical and personal information will be
27 disclosed (for example, incredibly, the 5150 report has been leaked to the media virtually
28

1 verbatim). Because original documents carry a premium, there is also a substantial risk to the
2 security of the Court file.

3 Further, as discussed at length in the declaration of Lynne Spears, Britney's mother, the
4 Conservatee is currently subject to the influence of Osami Lutfi. Mr. Lutfi has been exerting
5 total control over Britney's life, home, and finances. *See* Declaration of Lynne Spears, ¶¶ 2-20.
6 Mr. Lutfi has disabled Britney's cars and has disconnected her home telephone line and disposed
7 of the chargers for her cell phones. *See id.*, ¶¶ 3, 7, 11, 14. He has been putting crushed pills
8 into Britney's food. *See id.*, ¶ 8. He has admitted paparazzi into Britney's home. *See id.*, ¶¶ 3,
9 5.

10 On the evening of January 29, 2008, Mr. Lutfi told Lynne Spears that "You'd better learn
11 that I control everything." *Id.*, ¶ 9. Mr. Lutfi told her that he controlled Britney's business
12 manager Howard Grossman, her attorneys, and the security guards at the gate. *See id.* He told
13 Lynne Spears that if he weren't in the house to give Britney her medication she would kill
14 herself, and that, if Lynne Spears tried to get rid of him, Britney will "be dead and I'll piss on her
15 grave." *Id.*, ¶ 10.

16 LEGAL ARGUMENT

17 I. THERE IS NO CONSTITUTIONAL RIGHT OF PUBLIC ACCESS TO 18 CONSERVATORSHIP PROCEEDINGS.

19 In *NBC Subsidiary (KNBC-TV), Inc.*, 20 Cal. 4th at 1212 & n.30, the California Supreme
20 Court held that "in general, the First Amendment provides a right of access to ordinary civil
21 trials and proceedings," but it acknowledged that its opinion "address[ed] . . . the right of access
22 to ordinary civil proceedings in general, and not any right of access to particular proceedings
23 governed by specific statutes." *Id.*

24 *NBC Subsidiary* recognized that, as a matter of United States Supreme Court authority,
25 the determination whether "proceedings are sufficiently different from 'ordinary civil trials and
26 proceedings' to justify a different conclusion on the right of access" requires consideration of
27 whether open proceedings (1) are supported by historical tradition and (2) would promote
28 utilitarian considerations. *In re Marriage of Burkle*, 135 Cal. App. 4th 1045, 1054-57 (2006).

1 Put otherwise, “[i]n determining whether the constitutional right of access attaches to a particular
2 proceeding, the United States Supreme Court has set forth two related considerations: first,
3 whether the place and process historically have been open to the public and, second, whether
4 public access plays a significant positive role in the particular process.” *People v. Dixon*, 148
5 Cal. App. 4th 414, 425 (2007) (citing *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8
6 (1986) (“*Press-Enterprise I*”). Consideration of these two factors demonstrates that there is no
7 First Amendment right of public access to the conservatorship proceedings at issue in this case.

8 This is a proceeding brought under Cal. Prob. Code § 1820 for the appointment of a
9 conservator of the person because the proposed conservatee – Britney – is unable to provide for
10 certain of her needs. This proceeding involves a determination relating to mental health and
11 medical conditions and treatments, which are very personal and confidential matters, with a long
12 history of constitutional protection.

13 Furthermore, the legislative history to Cal. Prob. Code § 2357, the statute authorizing the
14 Court to order that a conservator has the authority to consent on behalf of the conservatee to
15 certain medical treatment, indicates that there is no “historical tradition” of public access to such
16 proceedings. The Law Revision Commission Comment to the 1990 Enactment of Section 2357
17 states that “Section 2357 serves the same purpose as Section 5358.2 of the Welfare and
18 Institutions Code (Lanterman-Petris-Short Act).” *Id.* Because there is no right of public access
19 to proceedings under the Lanterman-Petris-Short Act, *see Dixon*, 148 Cal. App. 4th at 427 (noting
20 that by statute, civil commitment proceedings under the Lanterman-Petris-Short Act are private
21 unless the parties request otherwise) (discussing Cal. Welf. & Inst. Code § 5118)), it follows that
22 there is no historical right of access to the same sort of proceedings when brought pursuant to the
23 conservatorship statutes.

24 Turning to the second factor, public access would undermine the goal OF proceedings
25 brought by a conservator to obtain court-ordered medical treatment. As the *Dixon* court recently
26 noted in the context of a civil commitment proceeding brought pursuant to the Sexually Violent
27 Predators Act (the “SVPA”), Cal. Welf. & Inst. Code §§ 6600 *et seq.*:

28 . . . [I]nvoluntary civil commitment proceedings typically are closed proceedings.
Because such proceedings are aimed at determining the status of a person’s

1 *mental health, they involve primarily personal and confidential matters.* As
2 with juvenile dependency proceedings, while *openness* would expose any
deficiencies and allow for improvements in the process, it *would seriously*
3 *undermine the goals involved in these cases.*

4 *Dixon*, 148 Cal. App. 4th at 427-28 (emphasis added).

5 The Court in *Dixon* noted that there is no right to attend juvenile dependency
6 proceedings. Based upon this same analysis, the *Dixon* court found that “[t]he two
7 considerations . . . set forth in *Press-Enterprise II* . . . appear to weigh against extending the
8 public right of access to involuntary civil commitment proceedings.” *Id.* at 428. The *Dixon*
9 court further noted that “the court cannot serve as a conduit through which confidential
10 information is transmitted to other members of the public,” and that “confidential reports . . .
11 used during civil commitment proceedings . . . nonetheless retain their confidential nature and
12 should not be made available to the public.” *Id.* at 429.

13 Although the *Dixon* court recognized that there is “a compelling basis for arguing that
14 involuntary civil commitment proceedings under the SVPA are not ordinary civil proceedings
15 that must be open to the public,” it declined to require absolute closure in cases involving civil
16 commitment absent specific statutory authority because: (1) “[o]ur Supreme Court has made it
17 clear that courts should attempt to safeguard the defendant’s rights through less restrictive means
18 rather than completely barring public access”; (2) “while civil commitment proceedings involve
19 a determination of the defendant’s mental health, the case also involves the defendant’s past
20 convictions, which are a matter of public concern and the records of which already are available
21 to the public”; and (3) “a sexually violent predator has a lesser expectation of privacy in his
22 psychological records.” *Id.* at 430.

23 Here, in contrast to *Dixon*, there is no need to defer to the Legislature for a determination
24 whether there is a right of public access to proceedings brought by a conservator for the purpose
25 of addressing the medical and personal care needs of a conservatee. Denial of public access is
26 supported by not only historical factors – the historical lack of public access to such proceedings,
27 which are wholly statutory in nature – but by the fact that such access would impede the
28 willingness of the conservator and the medical professionals to provide the personal and
confidential information concerning the conservatee’s mental and physical health that the Court

1 needs in order to make an informed decision. Furthermore, unlike in *Dixon*: (1) a conservatee's
2 medical information is not a matter of public concern and has not previously been disclosed to
3 the public; and (2) a conservatee – unlike a sexually violent predator – has a full expectation of
4 privacy with respect to his or her mental and physical health and medical records.

5 For these reasons, the Court should find that there is no First Amendment right of public
6 access to proceedings brought by a conservator to obtain court-ordered medical treatment for a
7 conservatee, and it therefore should seal these proceedings without the need to consider the
8 factors set forth in Cal. R. Court 2.550.

9
10 **II. THE COURT SHOULD SEAL THE RECORD OF THESE PROCEEDINGS IN**
11 **ORDER TO PROTECT BRITNEY'S OVERRIDING INTERESTS IN PRIVACY**
AND SAFETY AND HER ABILITY TO RECEIVE REQUIRED EFFECTIVE
MEDICAL TREATMENT.

12 Assuming *arguendo* that the public has a First Amendment right of access to
13 conservatorship proceedings – which it does not – this motion to seal would be subject to the
14 standard and procedures set forth in Cal. R. Court 2.550 and 2.551.¹ Under Cal. R. Court
15 2.550(d), which is based on the standards enunciated by the Supreme Court in *NBC Subsidiary*
16 (*KNBC-TV, Inc.*, 20 Cal. 4th 1178, a court may seal the record “if it expressly finds facts that
17 establish”:

18 (1) There exists an overriding interest that overcomes the right of
19 public access to the record;

20 (2) The overriding interest supports sealing the record;

21 (3) A substantial probability exists that the overriding interest will be
prejudiced if the record is not sealed;

22 (4) The proposed sealing is narrowly tailored; and

23 (5) No less restrictive means exist to achieve the overriding interest.

24 *Id.* See Advisory Committee Comment to Cal. R. Court 2.550 (“[c]ourts have found that, under
25 appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when
26 properly asserted and not waived, may constitute ‘overriding interests’”).

27
28 ¹ Prior to January 1, 2007, these standards and procedures were designated as Cal. R. Court
243.1 and 243.2, respectively.

1 All five factors are present here.

2
3 **A. There Exists Overriding Interests that Overcome the Right of Public Access to the Record.**

4 Here, Britney has three overriding interests, any of which, by itself, is sufficient to
5 support the sealing of these proceedings: (1) Britney's right of privacy with regard to her
6 capacity to make medical decisions, her medical condition, and her treatment; (2) the potential
7 danger to Britney that would be posed by the release of information concerning the
8 conservatorship; and (3) the detrimental effect that public disclosure of such information is likely
9 to have on Britney's treatment. *See* Cal. R. Court 2.550(d)(1).

10 **1. Sealing is Necessary to Protect Britney's Right of Privacy.**

11 The California Constitution guarantees Britney a right of privacy. *See* Cal Const., Art. 1,
12 § 1 ("All people are by nature free and independent and have inalienable rights. Among these
13 are . . . pursuing and obtaining safety, happiness and privacy."). "A person's medical history
14 undoubtedly falls within the recognized zones of privacy." *Johnson v. Superior Court*, 80 Cal.
15 App. 4th 1050, 1068 (2000). *See, e.g., Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652,
16 656 (1975) (the "right of privacy extends to . . . the details of one's personal life"); *Pettus v.*
17 *Cole*, 49 Cal. App. 4th 402, 440-41 (1996) ("[i]t is well settled that the zone of privacy created by
18 [the California Constitution] extend[s] to the details of a patient's medical and psychiatric
19 history"); *Board of Medical Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 678 (1979)
20 ("[a] person's medical profile is an area of privacy infinitely more intimate, more personal in
21 quality and nature than many areas already judicially recognized and protected").

22 For purposes of the sealing analysis, the courts recognize that "in appropriate
23 circumstances, the right to privacy may be properly described as a compelling or overriding
24 interest." *Burkle*, 135 Cal. App. 4th at 1063. In order to protect the right of privacy, "it is
25 appropriate to seal certain records when those particular records contain highly sensitive and
26 potentially embarrassing personal information about individuals." *People v. Jackson*, 128 Cal.
27 App. 4th 1009, 1024 (2005).

1 Britney's right to maintain in confidence her medical information is also protected under
2 the Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et seq.*² While that Act
3 imposes disclosure restrictions only on health care providers, *see* Cal. Civ. Code § 56.10(a), the
4 Act's privacy protections are relevant to the Court's determination as to seal these proceedings
5 under the doctrine that (1) "the court cannot serve as a conduit through which confidential
6 information is transmitted to other members of the public" and (2) "confidential reports . . . used
7 during civil commitment proceedings . . . nonetheless retain their confidential nature and should
8 not be made available to the public," *Dixon*, 148 Cal. App. 4th at 429.

9 **2. Sealing is Necessary to Protect Britney's Safety.**

10 As the facts set forth above and spelled out in more detail in the declaration of Lynne
11 Spears demonstrate, there is a real possibility that Mr. Lutfi may pose a danger to Britney. The
12 release of information concerning the conservatorship over Britney – and, in particular, the
13 detailed and specific allegations concerning Mr. Lutfi's conduct with regard to Britney, as well
14 as the psychological issues relating to his influence over her – would increase the likelihood that
15 Mr. Lutfi will act violently against Britney or those associated with her.

16
17 **3. Sealing is Necessary to Protect Britney's Interest in Medical Treatment.**

18 The Court should seal these proceedings in order to protect Britney's overriding interest
19 in receiving effective and necessary medical treatment. In *Estate of Hearst*, 67 Cal. App. 3d 777,
20 781, 784-85 (1977), the court recognized that the First Amendment right of public access must
21 yield to a showing that disclosure of information would place individuals "in serious danger of
22 loss of life or property." *See id.* (holding that a sealing order might be appropriate where
23 disclosure of information concerning the location of homes and property of beneficiaries of the
24 testamentary trust of William Randolph Hearst might expose the beneficiaries to the risk of
25 terrorist attack).

26
27
28 ² Britney's privacy interests in information concerning her medical condition and treatment is further evidenced by the fact that under HIPAA, the Health Insurance Portability and Accountability Act of 1996, medical personnel are prohibited from releasing such information.

1 As stated above, these proceedings have been initiated in order to obtain treatment for
2 Britney's very serious mental health disorders. The effective treatment of mental health issues
3 necessarily depends upon the subject's confidence in the confidentiality of her relationship with
4 her care providers and treating physicians. Here, were the information towards which this
5 motion to seal is directed to be made public, such information would certainly be disseminated
6 widely by television and print media and over the Internet. Public disclosure of such information
7 would be likely to harm the effectiveness of Britney's treatment.

8 **B. The Overriding Interests Support Sealing the Record.**

9 A sealing order is necessary to protect all three of Britney's overriding interests. *See* Cal.
10 R. Court 2.550(d)(2). First, Britney's overriding interest in privacy would be compromised by
11 public disclosure of the records of – or the existence of – these proceedings. Second, Britney's
12 overriding interest in safety would be threatened if Mr. Lutfi were to learn of these proceedings
13 and the allegations made herein. Third, Britney's overriding interest in effective medical
14 treatment would be impaired by public disclosure of her capacity to make medical decisions, her
15 medical condition, and her treatment.

16
17 **C. There is a Substantial Probability that the Overriding Interests Will be
18 Prejudiced if the Record is Not Sealed.**

19 Given the large amount of past and current media attention given to Britney and her
20 medical condition, there is far more than a substantial probability that her overriding interests
21 will be prejudiced if the record is not sealed. *See* Cal. R. Court 2.550(d)(2), (3). It is virtually
22 certain that, in the absence of a sealing order, Britney's capacity to make medical decisions, her
23 medical condition, and her treatment conservatorship will receive widespread publicity, thereby
24 destroying her right of privacy with regard to such matters and increasing the risk that Mr. Lutfi
25 will act violently. There is also a substantial probability that such publicity will disrupt Britney's
26 ability to receive effective medical treatment.
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