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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 In re the Conservatorship of the Person and
 Estate of

14 **BRITNEY JEAN SPEARS,**

16 Conservatee.

Case No. BP 108870

The Hon. Brenda Penny, Judge Dept. 4

**REPLY TO CONSERVATEE’S
 OPPOSITION TO: CONSERVATOR’S
 MOTION TO SEAL**

*[Filed concurrently with Evidentiary
 Objections to “Conservatee’s Opposition To:
 Conservator’s Motion To Seal”]*

Date: September 16, 2020

Time: 9:30 a.m.

Dept.: 4

23 James P. Spears, Conservator of the Estate of Britney Jean Spears (“Mr. Spears”) replies to
 24 the “Conservatee’s Opposition to: Conservator’s Motion to Seal” (the “Opposition”) filed by
 25 Samuel D. Ingham, III (“Mr. Ingham”), Court-appointed counsel for Britney Jean Spears (“Ms.
 26 Spears”), as follows.

27 **I. INTRODUCTION**

28 The Opposition mischaracterizes what has transpired in this case as it relates to the prior

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1 motions to seal requesting that certain information be sealed, each of which Mr. Ingham has either
2 unequivocally supported or brought himself, including his multiple requests over the last twelve
3 years to close the courtroom.

4 Here, as in prior motions to seal, Mr. Spears has requested only the minimum amount of
5 confidential information be sealed, consistent with the Court rules and Ms. Spears’ constitutional
6 rights to privacy. Contrary to the assertion in the Opposition that the Motion to Seal “flatly
7 assert[s] that the complete sealing of ‘all pleadings, reports, evaluations, document or other
8 information filed with the court related to the Petition for Appointment (collectively, the ‘Related
9 Pleadings’) and the reporter’s transcript of the hearing on the Petition for Appointment (the
10 ‘Transcript’), is necessary”, **virtually the entire Petition) was filed *without* sealing.** (Opposition,
11 6:23-26 through 7:1-3.)

12 The Motion to Seal was filed to (1) protect the privacy rights of a third party, specifically
13 the name and address of a third party where Lynne Spears has requested that she be served in this
14 proceeding, and to (2) take the precautionary step to allow for the Temporary Conservator of the
15 Person, Jodi Montgomery (“Ms. Montgomery”), to assert Ms. Spears’ personal privacy rights. To
16 date, Ms. Montgomery has not opposed the Motion to Seal and has not informed Mr. Spears or his
17 counsel that she will oppose it. Despite the fact that the requested sealing is minimal, the
18 Opposition to Mr. Spears’ Motion to Seal fails to distinguish between Ms. Spears’ privacy rights
19 and those of her minor children, whom the Opposition does not mention at all.

20 The Opposition also improperly argues the merits of the underlying Petition and the
21 competing Petition for Appointment of Conservator of the Estate filed by Mr. Ingham
22 (“Competing Petition”). The Opposition purports to rely on allegations that are unsupported by
23 any declaration or other admissible evidence, including that Ms. Spears herself is “adamantly
24 opposed” to the Motion to Seal.

25 Additionally, the Opposition argues that sealing is improper here because probate
26 proceedings are “presumptively” open to the public. This argument is somewhat surprising as it
27 conflates a probate proceeding (which involves the transfer of assets from a decedent/testator to
28 beneficiaries/heirs) with a conservatorship, which addresses the very fabric and intimate details of

1 the subject’s existence and life. (See, Opposition, 5:1-7, 7:12-14).

2 This Motion to Seal, which is narrowly tailored to protect only the most private, sensitive
3 and statutorily protected information of Ms. Spears and her minor children is supported by both
4 the facts and the law. It should be granted so that Ms. Spears’ private health information, sensitive
5 information of a personal nature relating to Ms. Spears and her minor children, her trade
6 secrets/proprietary information (as well as the privacy rights of third parties who have not sought
7 access to the courts and whose information has no bearing on any substantive of the
8 conservatorship), contained in or revealed in the Related Pleadings should be ordered sealed as
9 requested.

10 **II. THE OPPOSITION INACCURATELY PORTRAYS THE HISTORY OF SEALING**
11 **IN THIS MATTER**

12 The Opposition has inaccurately described the history of sealing in this matter. Most
13 glaringly, the Opposition accuses Mr. Spears’ of having aggressively used the sealing procedure
14 “over the years to minimize the amount of meaningful information made available to the public/”
15 Regrettably, the Opposition appears to be a grandstand aimed at engendering a response from
16 persons who have no direct interest in the conservatorship at the cost of Ms. Spears’ statutorily
17 protected right to medical privacy and the privacy of her minor children.

18 Until this summer, Mr. Ingham never opposed and in fact, on behalf of his client, has
19 almost always supported a motion to seal his client’s private and confidential information. As Ms.
20 Spears’ counsel, he has brought several such motions himself and has made numerous oral
21 motions to close the courtroom. Furthermore, as the Opposition admits (Opposition, 4:1-3)
22 virtually all of the current Petition (except for a single address of an unrelated party) and much of
23 the prior pleadings are in the public file, which include over twelve years of accountings, fee
24 petitions, petitions involving the Estate’s investments and investment strategies, and other matters
25 relating to the Estate.

26 It is simply inaccurate for the Opposition to claim that Mr. Spears is trying to “bootstrap”
27 anything by his Motion to Seal. (See Opposition, 4:6-8). As in all prior motions, the Motion to
28 Seal seeks to seal only the minimum amount of information in the Petition, any Related Pleadings

1 filed prior to the hearing, and the Transcript that “contain[s] *or will contain* private information
2 that relates to or reveals details relating to Ms. Spears’ private health and medical information, Ms.
3 Spears’ attorney-client privileged information, personal and private information relating to Ms.
4 Spears and her minor children, as well as Ms. Spears’ trade secrets and proprietary information
5 (collectively, the ‘Confidential Information’). (See Motion, 7:8-14). As Ms. Spears’ Temporary
6 Conservator of the Person, it is Ms. Montgomery who holds certain of Ms. Spears’ personal
7 powers, and she has not opposed the Motion to Seal.

8 **III. THE OPPOSITION IS UNSUPPORTED BY ANY EVIDENCE**

9 The Opposition improperly argues the merits of the underlying Petition and Competing
10 Petition, and does so without any evidentiary support. (See, concurrently filed Evidentiary
11 Objections). The Opposition does not include any admissible evidence, notwithstanding the
12 allegations laced through the Opposition that Ms. Spears’ herself “strongly believes it is consistent
13 not only with good public policy”, that it is “in her best interest” to deny the Motion to Seal, and
14 that she is “adamantly opposed” to it. Yet there is no declaration by Ms. Spears (See Opposition,
15 2:24; See also, concurrently filed Evidentiary Objections.) The only purported support filed with
16 the Opposition is a “Page Six” article dated September 1, 2020 which is inadmissible hearsay.
17 (See Opposition, 2:FN 2, Exhibit “A”; See also, concurrently filed Evidentiary Objections.)

18 Moreover, the Opposition unconvincingly argues that the Motion to Seal should be denied
19 because the underlying Petition concerns the Estate and not the Person. (Opposition, 3:14-24, 6:8-
20 10.) Once again, the Opposition inaccurately draws a distinction between the conservatorship of
21 the person and of the estate, as if they were two independent entities, but they are not. The
22 conservatorship of the person and the estate are inextricably entwined as they are both conducted
23 in the best interests of the conservatee, and involve issues that necessarily pertain to the
24 conservatee’s medical condition, her competence to manage her personal financial affairs, and her
25 susceptibility to undue influence. (Probate Code §1801.) In fact, one of the issues in this case is
26 going to be whether Ms. Spears has the sufficient capacity to form an intelligent preference in
27 order to make an effective nomination of a conservator. (Probate Code §1810.) And contrary to
28 the Opposition’s claims, personal autonomy is not the issue in this Motion to Seal (Opposition,

1 8:11-15). In fact, as the Opposition states, this is a voluntary conservatorship, and Ms. Spears can
2 apply to the Court at any time she wishes to terminate the conservatorship of either the person or
3 the estate, or both. To date, she has not done so.

4 **IV. THE MOTION TO SEAL IS SUPPORTED BY THE FACTS AND THE LAW**

5 As in all prior motions to seal in this matter, only the minimum amount is requested to be
6 sealed in the Petition, in any Related Pleadings, and the Transcript that “will or many contain
7 Confidential Information” consistent with the Court rules and Ms. Spears’ (and her minor
8 children’s) constitutional rights to privacy. (See Motion, 7:8-14; 21:22-22:12.) By comparison,
9 and contrary to the inflammatory allegations of the Opposition, Mr. Spears did not seek to seal the
10 Petition for Appointment nor has he sought to wholesale seal petitions relating to Mr. Spears’
11 management of the Estate’s assets, investment strategies and structure.

12 The Opposition represents the redacted address in the Petition as a family member’s
13 address, but it is not. Lynne Spears requested in the past that she be served at the address of third
14 parties who are not public figures and that the address be redacted. At the time of the filing of this
15 Reply , Lynne Spears has not authorized the release of the address of this unrelated third party.
16 The Opposition also fails to address that it is Ms. Montgomery who holds certain of Ms. Spears’
17 personal powers, and who should have a voice in the sealing issue. Ms. Montgomery has not
18 opposed the Motion to Seal nor has she opposed protecting Ms. Spears’ privacy rights. And the
19 Opposition makes no mention of the privacy rights of Ms. Spears’ minor children.

20 Moreover, the application of the law set forth in the Opposition is both incorrect and
21 unpersuasive. The Opposition cites to the California Constitution Article I, §3 for the proposition
22 that “[p]robate records generally fall within the presumption of public access” citing to both
23 *Copley Press Inc. v. Sup. Ct.* (1998) 63 Cal.App.4th 367; *Estate of Hearst* (1977) 67 Cal.App.3d
24 777 , which are both distinguishable since neither concern conservatorship proceedings. (See
25 Opposition, 4:11-24) As discussed as length in the Motion to Seal, the public has no
26 constitutional right of access to conservatorship proceedings (*NBC Subsidiary (KNBC-TV), Inc.*
27 *v. Superior Court* (1999) 20 Cal. 4th 1178, 1212 & n.30 (*NBC Subsidiary (KNBCTV)*).

28 The Opposition’s conclusory contention that the following cases cited in the Motion to

1 Seal are inapplicable is unpersuasive. In *Burkle v. Burkle* (2006) 135 Cal.App.4th 1045, 1054-57
2 the Court discusses the guidelines laid out in *NBC Subsidiary (KNBCTV)* concerning the
3 determination of whether divorce proceedings are presumptively open to public access. While the
4 appellate court makes a passing reference to “probate proceedings” in its analysis, “probate
5 proceedings” are not identical to “conservatorship proceedings”. In *People v. Dixon* (2007) 148
6 Cal.App.4th 414, 425 (citing *Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1, 8 (“*Press-*
7 *Enterprise II*”), the appellate court explains that “[i]n determining whether the Constitutional right
8 of public access attaches to a particular proceeding, the United States Supreme Court has set forth
9 two related considerations: (1) whether the place and process historically have been open to the
10 public and, (2) whether public access plays a significant positive role in the particular process.”
11 Notably, this conservatorship is a court process that Ms. Spears did not seek in the first place. As
12 set forth in detail in the Motion to Seal, consideration of these two factors demonstrates that there
13 is no First Amendment right of public access to the Related Pleadings and Transcript at issue in
14 this conservatorship proceeding.

15 The Court’s reasoning in *Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 430,
16 that an LPS conservatorship is a “‘special proceeding’ that is a creature of statute” is directly
17 analogous to a conservatorship proceeding. The Related Pleadings and Transcript, which disclose
18 or will disclose Ms. Spears’ Confidential Information (including her private health information
19 and private information concerning her minor children), are part of a conservatorship proceeding
20 governed by Probate Code §1800 *et seq.* which have a long history of Constitutional protection.
21 Similarly, the Court’s reasoning in *People v. Dixon* (2007) 148 Cal.App.4th 414, 415, involving an
22 involuntary civil commitment proceeding, is directly analogous here as Ms. Spears’ private health
23 information, as well as private information concerning her minor children and unrelated third
24 parties, will necessarily be discussed on the record in order to assist the Court’s ruling on the
25 Petition and facilitate the Court’s supervision of the Conservatorship. There is no constitutional
26 right of public access to these conservatorship proceedings where Ms. Spears’ medical privacy,
27 the privacy of her minor children and the privacy rights of unrelated third parties are at issue.

28 Moreover, California Rules of Court Rule 2.550(2) states that “[t]hese rules do not apply to

1 records that are required to be kept confidential by law.” Documents that contain health and
2 medical information are *precisely* the type of confidential records which are required by law in
3 numerous contexts to be confidential. Pursuant to HIPAA, federal law dictates that persons have
4 the right to maintain the confidentiality of their medical information and Ms. Spears’ right to
5 maintain confidence in her medical information is protected under the CMIA, California Code
6 §§56, *et seq.*

7 As set forth in the Motion to Seal and above, Mr. Spears does not believe the public has a
8 First Amendment right of access to conservatorship proceedings and Ms. Spears’ health
9 information, and therefore that Rules of Court 2.550 and 2.551 are not applicable here. However,
10 under Rule of Court 2.550(d), which is based on the standards set forth by the California Supreme
11 Court in *NBC Subsidiary (KNBC-TV)*, *supra*, at 1178, all five factors -- set forth below -- are
12 present and support sealing the record as requested in the Motion to Seal:

- 13 (1) There exists an overriding interest that overcomes the right of public access
- 14 to the record;
- 15 (2) The overriding interest supports sealing the record;
- 16 (3) A substantial probability exists that the overriding interest will be
- 17 prejudiced if the record is not sealed;
- 18 (4) The proposed sealing is narrowly tailored; and
- 19 (5) No less restrictive means exist to achieve the overriding interest.

20 As discussed at length in the Motion to Seal, Ms. Spears has two overriding interests,
21 either of which, by itself, is sufficient to support the sealing of the Related Pleadings and
22 Transcript: (1) Ms. Spears’ right of privacy with regard to her personal and private information, as
23 well as her medical information, and (2) the detrimental affect the public disclosure of such
24 medical and personal information is likely to have on Ms. Spears. (See Rule of Court 2.550(d)(1);
25 *People v. Jackson*, *supra*, at 1024.) (See Motion, 15-20) Ms. Spears has a right to privacy that
26 overcomes the public’s right of general access to the conservatorship proceeding. And given the
27 frequently pernicious use of sensitive and private information of celebrities, Mr. Spears has sought
28 through the years to protect the conservatee – his daughter – from the pain that such free access to

1 the information inevitably would cause her. Before Ms. Spears waives her right to privacy
2 regarding her medical information and sensitive personal information and makes it subject to
3 public exposure, it must be determined that she has the capacity to understand the consequences of
4 her waiver.

5 The Opposition falsely asserts that in the Motion to Seal and supporting declaration, Mr.
6 Spears' counsel "flatly assert[s]" that "the complete sealing of all 'pleadings, reports,
7 evaluations....filed with the Court related to" the Petition, and the reporter's transcript...is
8 necessary." (Opposition, 6:23-26 – 7:3) This is both absolutely untrue and directly contrary to the
9 Motion to Seal and the pleadings. To the contrary, the Motion to Seal seeks to redact the
10 minimum amount necessary to protect Ms. Spears' constitutionally-protected privacy interests,
11 including her medical privacy, the privacy rights of her minor children, and the privacy rights of
12 unrelated third parties who have not waived their right to privacy.

13 In support of his Opposition, Mr. Ingham also contends that the Motion only seeks to seal
14 the "address of BRITNEY'S mother in Attachment 11" and does not raise any specific issues that
15 relate to Ms. Spears' private medical information, information regarding her minor children,
16 proprietary and trade secrets and (Opposition, 4:1-4) Undoubtedly, however, resolution of the
17 Petition and the re-appointment of Mr. Wallet as Co-Conservator of the Estate, will inevitably lead
18 to issues being raised that relate to Ms. Spears' health, her capacity to make informed decisions,
19 and her relationships (including business relationships), as well as the impact of the upcoming
20 changes to the Conservatorship on Ms. Spears and her children. The Motion to Seal necessarily
21 includes issues that will be addressed on the record at the hearing in order to facilitate and assist
22 with the Court's determination of the merits of the Petition. The Court will be in the best position
23 to judge whether or not to grant the Motion to Seal at the time of the hearings on the Petition.

24 **V. CONCLUSION**

25 For the foregoing reasons and as set forth in the Motion to Seal, the Conservator
26 respectfully requests that the Court issue an Order sealing the Related Pleadings and Transcript.
27 The Related Pleadings and Transcript currently or will disclose and relate to Ms. Spears'
28 constitutionally, statutorily and otherwise protected health information, personal information

1 regarding Ms. Spears and her minor children, as well as trade secrets and proprietary information,
2 and the privacy of unrelated third parties, and on those bases, sealing the Related Pleadings and
3 Transcript is appropriate and proper.

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DATED: September 9, 2020

FREEMAN, FREEMAN & SMILEY, LLP

By: _____



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1888 Century Park East, Suite 1500, Los Angeles, California 90067.

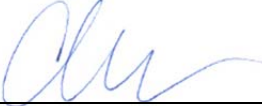
On September 9, 2020, I served true copies of the following document(s) described as **REPLY TO CONSERVATEE’S OPPOSITION TO MOTION TO SEAL** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address clare.goldwasser@ffslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 9, 2020, at Los Angeles, California.



Clare Goldwasser

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