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FILED

Los Angeles Superior Court

DEC 21 2009

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11 Attorneys for Wendy O'Connor,  
 12 Kimberly Dawn Cobain, Temporary  
 13 Co-Guardians of the Estate and Person

DATE OF HEARING  
JAN 22 2010 D9 10:00

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BY FAX

14 In re the Guardianship of the Person and  
15 Estate of,

16 FRANCES BEAN COBAIN,

17 a Minor.

Case No. BP 120026

NOTICE OF MOTION AND MOTION TO  
SEAL ALL DOCUMENTS AND TO FILE  
ALL FUTURE DOCUMENTS UNDER  
SEAL OR, IN THE ALTERNATIVE, TO  
FILE PORTIONS OF DOCUMENTS  
UNDER SEAL RELATING TO A MINOR  
AND ALLEGATIONS OF DOMESTIC  
VIOLENCE

Date: \_\_\_\_\_  
Time: 10:00 A.M.  
Dept: 9  
Judge: Reva Goetz, Judge Pro Tem

RECEIVED: 12/23/09 03:53:30  
 RECEIPT #: FHS0319027  
 DATE PAID: 12/21/09 03:53:30  
 PAYMENT: \$40.00  
 RECEIVED:  
 CHECK: 40.00  
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WATERMAKER

1 TO ALL INTERESTED PARTIES AND TO THEIR RESPECTIVE  
2 ATTORNEYS OF RECORD:

3 YOU ARE HEREBY NOTIFIED THAT on \_\_\_\_\_, at \_\_\_\_\_  
4 in Department 9 of this Court located at 111 North Hill Street, Los Angeles, California 90012,  
5 Wendy O'Connor and Kimberly Dawn Cobain, Temporary Co-Guardians of the Person and of  
6 the Estate of Frances Bean Cobain, by and through their attorneys of record (the "Guardians"),  
7 will move the Court for an Order pursuant to Family Code section 1818 and Cal. R. Court 2.550  
8 and 2.551 directing that all documents, information and records in this proceeding be filed under  
9 seal, including documents previously filed conditionally under seal and all future documents  
10 filed herein or, in the alternative, directing that portions of documents, information and records  
11 be filed under seal in furtherance of the public policy behind Family Code section 1818 and to  
12 protect the privacy of the minor, Frances Bean Cobain.

13 This Motion is made on the ground that the public policy behind Family Code  
14 section 1818, which dictates that all files in conciliation cases be sealed, is equally applicable in  
15 this case where the issues and privacy considerations are substantially aligned with those in  
16 family conciliation cases.

17 Furthermore, a sealing order is required under Cal. R. Court. 2550(d) because the  
18 facts establish:

- 19 1. There exists an overriding interest that overcomes the right of public  
20 access to the records;
- 21 2. The overriding interest supports sealing the record;
- 22 3. A substantial probability exists that the overriding interest will be  
23 prejudiced if the record is not sealed;
- 24 4. The proposed sealing is as narrowly tailored as possible to protect the  
25 privacy rights of a minor; and
- 26 5. No less restrictive means exist to achieve the overriding interest. *Id.*

27 This Motion is based on this Motion, the Memorandum of Points and Authorities  
28 and the Declaration of Geraldine A. Wyle in support of this Motion, as well as all papers,

1 pleadings and documents on file in this case, and on such oral testimony as may be offered at the  
2 time of the hearing on this Motion.

3  
4 Dated: December 21, 2009

Respectfully submitted,

5 **HOFFMAN, SABBAN & WATENMAKER**  
6 **A Professional Corporation**

7 By   
8 **GERALDINE A. WYLE**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

By this Motion, Wendy O'Connor and Kimberly Dawn Cobain, Temporary Co-Guardians of the Person and of the Estate of Frances Bean Cobain (the "Guardians"), respectfully request that the Court order the sealing of all documents, information and records in this proceeding that have been, to date, conditionally filed under seal and the sealing of all documents filed in the future in this proceeding or, in the alternative, the sealing of portions of documents, information and records revealing facts and circumstances which, as set forth in the documents conditionally filed under seal, led to the filing of the Petitions for Temporary and Permanent Guardianship.

The merits of this Motion cannot be fully argued here without disclosing the contents of the documents to be sealed. *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 778; *In re the Marriage of Lechowick* (1988) 65 Cal.App.4th 1406, 1416. Therefore, references will be made to documents filed herein conditionally under seal. Generally, the information to be protected includes the facts establishing the need for guardianship proceedings and the private and medical information relating to the minor.

**II. BACKGROUND**

Wendy O'Connor is the paternal grandmother of Frances Bean O'Connor, a minor ("Frances") and Kimberly Dawn Cobain is the paternal aunt of Frances. Temporary Letters of Guardianship were issued to Wendy O'Connor and Kimberly Dawn Cobain on December 11, 2009 as Temporary Co-Guardians of the Person and of the Estate of Frances Bean Cobain. Corrected Letters of Temporary Guardianship were issued on December 14, 2009 (correcting a typographical error). Simultaneously with the issuance of Temporary Letters of Guardianship, a Temporary Restraining Order was issued, on December 11, 2009, restraining the minor's mother, Courtney Love Cobain, from certain behavior and from coming within a certain distance of Frances or her Guardians. A hearing is set for January 5, 2010 on the permanent restraining order, and a hearing is set for February 10, 2009 on the Petition for Appointment of

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1 (Permanent) Guardian of the Person and Estate.

2 All documents, records and information filed in this proceeding to date have been  
3 filed conditionally under seal. Those documents set forth facts establishing the need for a  
4 guardianship, which are private and include medical information concerning Frances.

5  
6 **III. LEGAL ARGUMENT**

7 **A. The Court Should Order the Sealing of All Documents Filed Herein to Date,**  
8 **and Order All Future Documents Be Filed under Seal.**

9 The issues involved in this case are substantially similar to issues heard and  
10 resolved in family conciliation court. (Cal. Fam. Code 1800 *et seq.*) The jurisdiction of the  
11 family conciliation court is established in Family Code section 1830.

12 The issues involved in these guardianship proceedings include one or more of the  
13 issues enumerated in Family Code section 1830. (See Declaration of Geraldine A. Wyle.) More  
14 details cannot be set forth herein, as this Motion is a public document.

15 Family conciliation court files are required to be kept under seal in their entirety.  
16 Family Code section 1818 (b) provides, "The files of the family conciliation court shall be  
17 closed."

18 The public policy behind the statute requiring all family conciliation court files  
19 sealed is obvious, especially when minor children are affected. The suitability of parents to have  
20 custody of minor children is determined, and household conditions and the conditions of family  
21 members are evaluated to determine how a minor child may be affected, emotionally and  
22 physically. Probate courts hearing guardianship proceedings often deal with these substantially  
23 related issues, as in this case. Thus, when these issues are prevalent in a guardianship case, the  
24 same public policy mandates that the guardianship file be completely sealed. Indeed, if a case  
25 with similar facts were heard in family conciliation court, this would be the case, automatically.  
26 The public's interest in access to public records is not stronger in a probate guardianship case  
27 than in family conciliation court, and a minor's right to privacy is no less important in a probate  
28 guardianship case. Therefore, in this case, where the issues being litigated are substantially

1 aligned with family conciliation cases, sealing the entire file is appropriate.

2 **B. California Rules of Court Provide Additional Authority for Sealing the File.**

3 The facts of this case also warrant the sealing of the entire file under the standards  
4 set forth in the California Rules of Court. The standards and procedures for obtaining an order  
5 sealing documents are set forth in California Rules of Court, Rules 2.550 and 2.551. Under Rule  
6 2.550(d), which is based on the standards enumerated by the California Supreme Court in *NBC*  
7 *Subsidiary (KNBC-TV) Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999), a court may seal the  
8 record "if it expressly finds facts that establish:"

- 9 (1) There exists an overriding interest that overcomes  
10 the right of public access to the record;
- 11 (2) The overriding interest supports sealing the record;
- 12 (3) A substantial probability exists that the overriding interest will be  
13 prejudiced if the record is not sealed;
- 14 (4) The proposed sealing is narrowly tailored; and
- 15 (5) No less restrictive means exist to achieve the overriding interest.  
16 *Id. See Advisory Committee Comment to Cal. R. Court 2.550 ("[c]ourts have  
found that, under appropriate circumstances, various statutory privileges, trade  
secrets, and privacy interests, when properly asserted and not waived, may  
constitute 'overriding interests'").*

17 [Emphasis added]

18 All five factors are present here.

19 Frances has an overriding interest in maintaining the confidentiality of and for  
20 sealing the Confidential Information to avoid disclosure to the public.

21 1. **The California Constitution guarantees the right to privacy.**

22 Frances has an interest that overcomes the public's right of general access. For  
23 that reason, the Guardians seek to seal the allegations made in support of the Petition for  
24 Guardianship and in support of the Request for a Temporary Restraining Order, the personal or  
25 medical information of Frances that is directly or indirectly revealed or referenced in the  
26 pleadings and other documents filed herein. The fact that guardianship proceedings are pending  
27 is, in itself, revealing of Frances's relationship with her mother, obviously making that  
28 relationship at issue.

1 The California Constitution guarantees Frances a right to privacy. See Cal.  
 2 Const., Art. I, § 1 ("All people are by nature free and independent and have inalienable rights.  
 3 Among these are . . . pursuing and obtaining safety, happiness and privacy.").

4 Frances has a right of privacy with respect to her personal and medical  
 5 information. The California Constitution guarantee's Frances's right to privacy. In addition,  
 6 California law recognizes that an individual has a privacy right to personal information.

7 In this proceeding, every document reveals details of Frances's relationship with  
 8 her mother. See the Declarations of Frances Bean Cobain, Wendy O'Connor and Tony  
 9 Dominguez filed in support of the Petitions for Appointment of Guardians. Details of Frances's  
 10 personal status are also included.

11 Frances's mother, Courtney Love Cobain, is a public figure whose private life has  
 12 often been reported in the media. If the details contained in the documents filed herein are open  
 13 to the public, they will most certainly be published and reported by the media. Indeed, there  
 14 have already been media reports of these proceedings and public conjecture regarding Ms.  
 15 Love's fitness as a parent. Frances has an overriding interest in maintaining the confidentiality  
 16 of her personal information and that of her mother's relationship with her and for those reasons,  
 17 the Guardians seek to seal all of the documents, records and information in this proceeding as all  
 18 such documents contain Frances's personal information, including medical information.

19 Unless this Court seals the case file, the information will undoubtedly be widely  
 20 disseminated, harming Francis by impinging on her right to privacy.

21 **2. The Overriding Interests Support Sealing the Record.**

22 Here, there are "overriding interests" in maintaining the confidentiality of  
 23 Frances's personal and medical information that overcome the public's general right of public  
 24 access to the record. See Cal. R. Court 2.550(d)(1).

25 A sealing order is necessary to protect the overriding privacy interests of  
 26 Frances. See Cal. R. Court 2.550(d)(2). Frances's medical information and the facts set forth in  
 27 the Declarations of Frances Bean Cobain, Wendy O'Connor and Tony Dominguez would be  
 28 disseminated to the public. The reporting of these experiences in the media and the intrusive

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1 questions and photographing of Frances by the media would cause mental anguish for Frances.  
 2 These proceeding are designed to improve Frances's life, and the only way to accomplish that is  
 3 to prevent media attention and dissemination of private information to the public. Furthermore,  
 4 Frances's safety will be jeopardized if the personal information contained in the Declarations  
 5 and is disclosed to the public. Sealing the record is the only way to protect Frances.

6  
 7 **3. There is a Substantial Probability that the Overriding Interests**  
**Will be Prejudiced if the Record is Not Sealed.**

8 As illustrated above, given the media attention consistently given to Frances's  
 9 mother, Courtney Love Cobain, dating back to the much-publicized death of Frances's father,  
 10 Kurt Cobain, Frances's interests will be prejudiced if the record is not sealed in the manner  
 11 requested. See Cal. R. Court 2.550(d)(2), (3). It is virtually certain that, in the absence of a  
 12 sealing order, Frances's private and medical information will be disseminated, to her prejudice.

13 **4. The Proposed Sealing is as Narrowly Tailored as Possible, and**  
**No Less Restrictive Means Exist to Achieve the Overriding**  
**Interests.**

14  
 15 The proposed sealing is as narrowly tailored as possible, and no less restrictive  
 16 means exist to achieve the overriding interest. See Cal. R. Court 2.550(d)(4), (5). All  
 17 information contained in the documents filed in these proceedings disclose the most confidential  
 18 information relating to Frances, her personal medical information and information concerning  
 19 her relationship with her mother. The very fact that a guardianship proceeding is pending while  
 20 her mother is living is an indication of personal problems in the family. This information is of  
 21 relatively minimal value to the public, but could be used by third parties to Frances's great  
 22 disadvantage. Accordingly, Rules 2.550 and 2.551 authorize the filing under seal of all  
 23 documents, records and information in these proceedings. For the reasons discussed above,  
 24 Frances's privacy interest in maintaining the confidentiality of her personal information may be  
 25 protected only by filing all pleadings under seal.

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1 C. In the Alternative, this Court Should Order the Sealing of Portions of  
 2 Documents to Protect the Privacy of the Minor.  
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 4 If the court is not inclined to order the sealing of the entire file in these  
 5 proceedings, the Court should order sealed all of those portions of documents containing  
 6 information, facts or allegations relating to the reasons for filing the Guardianship petitions, the  
 7 personal and medical information relating to Frances. For example, the Declarations of Frances  
 8 Bean Cobain, Wendy O'Connor and Tony Dominguez contain facts relating to Frances's private  
 9 life and her medical information, and should be completely sealed. If this court is not inclined to  
 10 order a complete sealing of the file, the documents and information relating to the issues  
 11 substantially similar to those issues identified in Family Code section 1830 should be sealed.  
 12 Should the court find that any portions of the documents in this file may be filed under seal, the  
 13 Guardians request ten court days to submit the pleadings with proposed redactions.

14 IV. CONCLUSION

15 For the foregoing reasons, the Guardians respectfully request this Court to order  
 16 all documents, reports and information to be filed under seal. In the alternative, the Guardians  
 17 respectfully request that this Court order all documents relating to Frances's personal and  
 18 medical information be filed under seal in order to protect Frances, and that the Guardians be  
 19 granted ten court days to resubmit the pleadings previously filed conditionally under seal with  
 20 proposed redactions.

21  
 22 Dated: December 21, 2009

Respectfully submitted,

HOFFMAN, SABBAN & WATENMAKER  
 A Professional Corporation

By:   
 GERALDINE A. WYLE

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**PROOF OF SERVICE**

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I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address and place of employment is HOFFMAN, SABBAN & WATENMAKER, 10880 Wilshire Blvd., Suite 2200, Los Angeles, CA 90024.

On December 21, 2009, I served the document(s) described as NOTICE OF MOTION AND MOTION TO SEAL ALL DOCUMENTS AND TO FILE ALL FUTURE DOCUMENTS UNDER SEAL OR, IN THE ALTERNATIVE, TO FILE PORTIONS OF DOCUMENTS UNDER SEAL RELATING TO A MINOR AND ALLEGATIONS OF DOMESTIC VIOLENCE on the interested parties in this action by placing:

the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

James A. Janowitz, Esq. Attorney for: Courtney Love Cobain  
Pryor Cashman LLP  
7 Times Square  
New York, NY 10036-6569

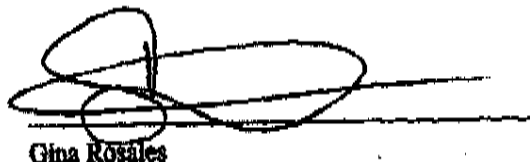
**BY MAIL, STATE OR FEDERAL:** I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to that practice, the above-referenced documents would be deposited with the United States Postal Service, First Class, Postage Prepaid, in the ordinary course of business on this date. The above-referenced document was sealed and placed for collection and mailing with this office's First Class, Postage Prepaid Mail on this date, at my above address in accordance with ordinary office practice.

**BY OVERNIGHT DELIVERY:** I am readily familiar with the practice of this office for collection and processing for overnight delivery by Federal Express. Pursuant to that practice, I placed a true and correct copy of the document(s) listed above in sealed envelope(s) addressed as set forth above with all fees prepaid.

**BY FACSIMILE:** I caused a true and correct copy of the document(s) listed above to be transmitted on this date by facsimile transmission from facsimile number (310) 470-6735 to the addressee(s) at the facsimile number(s) set forth above. The transmission was reported as complete and without error.

**BY EMAIL:** I caused a true and correct copy of the document(s) listed above to be transmitted by email on this date before 5:00 p.m. PST to the person(s) at the email address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Los Angeles, California on December 21, 2009.



Gina Rosales

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**DECLARATION OF GERALDINE A. WYLE**

I, Geraldine A. Wyle, declare:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Hoffman, Sabban & Watenmaker, counsel of record for Frances bean Cobain, Wendy O'Connor and Kimberly Dawn Cobain, petitioners in the Guardianship proceedings for Frances Bean O'Connor. Except as otherwise stated, the statements contained herein are based on my personal knowledge and experience. If called as a witness, I could and would testify competently to those facts.

2. The confidential information contained in the Petitions for Appointment of (Temporary and Permanent) Guardian and all related documents filed relate to Frances's personal and confidential information, including medical information -- matters as to which Frances has an overriding privacy interest that would be prejudiced unless the documents are filed under seal.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on December 21, 2009, at Los Angeles, California.

  
GERALDINE A. WYLE