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11 *Elliott Broidy*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14 CENTRAL JUDICIAL DISTRICT

15 SIERA BECHARD

16 Plaintiff,

17 v.

18 ELLIOTT BROIDY, an individual;
19 KEITH DAVIDSON, an individual;
20 MICHAEL AVENATTI, an individual;
21 DAVIDSON & ASSOCIATES, PLC, a
22 professional limited liability company; and
23 DOES 1 through 20, inclusive,

24 Defendants.

Case No. BC712913
The Hon. Samantha P. Jessner (Dept. 31)

**NOTICE OF MOTION AND MOTION
TO COMPEL ARBITRATION AND
STAY FURTHER PROCEEDINGS
AGAINST MR. BROIDY;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Declaration of Elliott Broidy and Proposed
Order Filed Concurrently Herewith]*

Hearing Date: August 31, 2018
Time: 8:30 A.M.
Dept.: 31

**DATE APPROVED WITHOUT
RESERVATION PER DEPT. 31 CLERK**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 31, 2018, at 8:30 a.m., or as soon thereafter as it
3 may be heard, in Department 31 of the above-entitled court (located at 111 N. Hill Street, Los
4 Angeles, California 90012), defendant Elliott Broidy ("Mr. Broidy") will and hereby does move
5 for an order compelling arbitration of plaintiff's first cause of action in the above-captioned case
6 (the sole cause of action to which Mr. Broidy is a defendant), and staying any further proceedings
7 against Mr. Broidy.

8 Mr. Broidy makes this motion pursuant to Code of Civil Procedure section 1281 *et seq.*,
9 on the grounds that plaintiff is bound by a written agreement to arbitrate the subject matter of her
10 first cause of action. Code Civ. Proc. § 1281.2. In addition, while arbitration of plaintiff's first
11 cause of action is pending, further proceedings on that issue "shall" be stayed "until an arbitration
12 is had." Code Civ. Proc. § 1281.4.

13 This motion is based on this notice of motion, the attached memorandum of points and
14 authorities, the accompanying declaration of Elliott Broidy, the record and all pleadings and papers
15 on file in this action, any relevant matters that are judicially noticeable, and such other or further
16 argument or evidence as may be presented to the Court at or before the hearing hereof.

17 Dated: August 3, 2018

LATHAM & WATKINS LLP

Marvin S. Putnam
Jessica Stebbins Bina

18
19
20 By 

Jessica Stebbins Bina
Attorneys for Defendant Elliott Broidy

1 **MEMORANDUM OF POINTS AND AUTHORITIES.**

2 **I. INTRODUCTION.**

3 This case, at least as it relates to defendant Elliot Broidy, should have never been filed.
4 Plaintiff's sole claim against Mr. Broidy—for breach of contract—arises under a contract with a
5 valid, binding agreement to arbitrate. Because California law favors and *requires* the enforcement
6 of arbitration agreements, plaintiff's dispute with Mr. Broidy cannot proceed in this Court, and
7 must instead be ordered to arbitration. *See* Code Civ. Proc. § 1281.2. Furthermore, because the
8 courts of this state “shall . . . stay” an action, proceeding, or issue that has been ordered to
9 arbitration, Mr. Broidy respectfully requests that any further proceedings on plaintiff's case against
10 him be stayed pending the completion of arbitration. *See* Code Civ. Proc. § 1281.4.

11 **II. FACTUAL BACKGROUND AND AGREEMENT TO ARBITRATE.**

12 Plaintiff asserts a single cause of action against Mr. Broidy—for breach of contract. The
13 contract at issue is, in the phrasing of the complaint, a “Settlement Agreement” between plaintiff
14 and Mr. Broidy. Compl. ¶ 30.¹ The complaint concedes that plaintiff received substantial
15 payments from Mr. Broidy—hundreds of thousands of dollars—per the Settlement Agreement.
16 Compl. ¶¶ 32-33.

17 The complaint also acknowledges that confidentiality was the essential requirement of the
18 Settlement Agreement, *id.* at ¶¶ 26(c)-(d), 41, but fails to mention the obvious and intuitive
19 corollary: disputes under the Settlement Agreement must be resolved by binding, and *confidential*,
20 arbitration. Unsurprisingly, the Settlement Agreement thus contains a broad and unambiguous
21 agreement to arbitrate, which binds “DD” and “PP” (pseudonyms for Mr. Broidy and plaintiff,
22 respectively) to “confidential resolution of all disputes that may arise between them” such that
23 “any and all claims and controversies . . . shall be resolved by binding confidential Arbitration to
24 the greatest extent permitted by law.” Declaration of Elliot Broidy, filed concurrently herewith
25 (“Broidy Decl.”), ¶¶ 2-3.

26
27
28 ¹ In reciting some of the complaint's factual allegations in this motion, Mr. Broidy does not
concede (and in fact, vigorously contests) the legal or factual merit of any of plaintiff's claims.

1 That agreement to arbitrate provides in full:

2 5.2 Dispute Resolution. In recognition of the mutual benefits to
3 DD and PP of a voluntary system of alternative dispute resolution
4 which involves binding confidential arbitration of all disputes which
5 may arise between them, it is their intention and agreement that any
6 and all claims or controversies arising between DD on the one hand,
7 and PP on the other hand, shall be resolved by binding confidential
8 Arbitration to the greatest extent permitted by law. Arbitration shall
9 take place before JAMS ENDISPUTE ("JAMS") pursuant to JAMS
10 Comprehensive Arbitration Rules and Procedures (including
11 Interim Measures) ("JAMS Rules") and the law selected by DD,
12 (such selection shall be limited to either, California, Nevada or
13 Arizona), or before ACTION DISPUTE RESOLUTION
14 SERVICES ("ADRS") pursuant to the ADRS Rules (including
15 Interim Measures) and the law selected by DD (whichever the
16 claimant elects upon filing an arbitration), in a [sic] the location
17 selected by DD, and will be heard and decided by a sole, neutral
18 arbitrator ("Arbitrator") selected either by agreement of the Parties,
19 or if the Parties are unable to agree, then selected under the Rules of
20 the selected arbitration service. The costs and fees associated with
21 any Arbitrator and/or Arbitration service shall be split equally
22 among the parties to any such dispute. The Parties shall have the
23 right to conduct discovery in accordance with the California Code
24 of Civil Procedure Section 1283.05 *et. seq.* or any similar provision
25 existing in the jurisdiction selected by DD and the written discovery
26 requests and results of discovery shall be deemed to constitute
27 Confidential Information. The Arbitrator shall have the right to
28 impose all legal and equitable remedies that would be available to
any Party before any governmental dispute resolution forum or court
of competent jurisdiction, including without limitation temporary,
preliminary and permanent injunctive relief, compensatory
damages, liquidated damages, accounting, disgorgement, specific
performance, attorneys fees [sic] and costs, and punitive damages.
It is understood and agreed that each of the Parties shall bear his/its
own attorneys' fees, expert fees, consulting fees, and other litigation
costs (if any) ordinarily associated with legal proceedings taking
place in a judicial forum, subject to the Arbitrator's reassessment in
favor of the prevailing party to the extent permitted by law. Each
of the Parties understands, acknowledges and agrees that by
agreeing to arbitration as provided herein, each of the Parties is
giving up any right that he/she/it may have to a trial by judge or
jury with regard to the matters which are required to be
submitted to mandatory and binding Arbitration pursuant to
the terms hereof. Each of the Parties further understands,
acknowledges and agrees that there is no right to an appeal or a
review of an Arbitrator's award as there would be a right of
appeal or review of a judge or jury's decision.

26 Broidy Decl. ¶ 3 (emphasis in original).

27 Notwithstanding this all-encompassing arbitration agreement, plaintiff tactically chose to
28 ignore her agreement to arbitrate and thereby keep this matter confidential, instead filing suit in

1 this Court on July 6, 2018. Mr. Broidy therefore brings this motion to vindicate his rights to an
2 arbitral forum—the most essential benefit for which he bargained (and paid) under the Settlement
3 Agreement. Broidy Decl. ¶ 2.

4 **III. ARGUMENT.**

5 **A. Legal Standard.**

6 Because the arbitration agreement expressly invokes it, the California Arbitration Act
7 (Code of Civil Procedure sections 1281-1294.4) governs here. See Broidy Decl. ¶ 3 (“The Parties
8 shall have the right to conduct discovery in accordance with the California Code of Civil Procedure
9 Section 1283.05 *et. seq.*”). Under section 1281.2 of the Code of Civil Procedure, a court “shall”
10 order parties to arbitrate if it “determines that an agreement to arbitrate exists, unless it finds that
11 (a) the right to compel arbitration has been waived by the moving party, (b) grounds exist for
12 revocation of the agreement, or (c) a party to the arbitration is also a party to a pending court action
13 with a third party arising out of the same transaction.” *Sargon Enterprises, Inc. v. Browne George*
14 *Ross LLP*, 15 Cal. App. 5th 749, 762 (2017). Thus, a party seeking to compel arbitration meets its
15 burden by “proving the existence of a valid arbitration agreement by the preponderance of the
16 evidence[.]” *Engalla v. Permanente Medical Group, Inc.*, 15 Cal. 4th 951, 972 (1997); *Avery v.*
17 *Integrated Healthcare Holdings, Inc.*, 218 Cal. App. 4th 50, 59 (2013). The inquiry concludes
18 upon the demonstration of the *existence* of an arbitration agreement; questions of the agreement’s
19 scope “are for the arbitrators and not for the court to resolve.” *Felner v. Meritplan Ins. Co.*, 6 Cal.
20 App. 3d 540, 543 (1970).²

21 Once that initial burden is met, the burden shifts to the party opposing arbitration, who
22 must establish one of the limited statutory exceptions to arbitrability in sections 1281.2(a)-(d). See
23 *Engalla*, 15 Cal. 4th at 972. The denial of a motion to compel arbitration is immediately
24 appealable, and determinations of arbitrability are subject to *de novo* review. See Code Civ. Proc.
25 § 1294(a); *Stirlen v. Supercuts, Inc.*, 51 Cal. App. 4th 1519, 1527 (1997).

27 ² Thus, a “court should order [the parties] to arbitrate unless it is clear that the arbitration
28 clause cannot be interpreted to cover the dispute.” *United Transportation Union v. So. Cal. Rapid*
Transit Dist., 7 Cal. App. 4th 804, 808 (1992).

1 **B. Plaintiff Agreed to Arbitrate Her Dispute with Mr. Broidy.**

2 Plaintiff indisputably agreed to arbitrate her dispute with Mr. Broidy. Her sole claim
3 against him alleges the breach of a contract (the Settlement Agreement) that contains an express
4 agreement to arbitrate. The scope of that agreement is comprehensive—covering “any and all
5 claims and controversies” as well as “all disputes that may arise between” plaintiff and Mr. Broidy
6 and there are no exceptions to its reach. Broidy Decl. ¶ 3. Even if there were any “[d]oubts as to
7 whether [this] arbitration clause applies to [this] particular dispute” (and there are not), settled law
8 requires them to “be resolved in favor of sending the parties to arbitration.” *United Transportation*,
9 7 Cal. App. 4th at 808; *see also Coast Plaza Doctors Hospital v. Blue Cross of California*, 83 Cal.
10 App. 4th 677, 686 (2000) (same).

11 Mr. Broidy therefore meets his burden to “prov[e] the existence of a valid arbitration
12 agreement” by a preponderance of the evidence. *Engalla*, 15 Cal. 4th at 972. “Typically, those
13 who enter into arbitration agreements expect that their dispute will be resolved without necessity
14 for any contact with the courts.” *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9 (1992) (“[T]he
15 Legislature has expressed a ‘strong public policy in favor of arbitration[.]’” (citations omitted)).
16 That expectation is especially important where, as here, *confidentiality* was an essential component
17 of the arbitration agreement—and the contract overall—and the allegations of the complaint touch
18 on matters implicating Mr. Broidy’s constitutional right to privacy.³ *See* Compl. ¶¶ 26(c)-(d), 41.
19 Accordingly, the “court ‘shall’ order” plaintiff’s dispute with Mr. Broidy to arbitration, unless
20 plaintiff can establish that the dispute is not arbitrable. *Sargon*, 15 Cal. App. 5th at 762.

21 **C. Plaintiff Cannot Establish Grounds to Avoid Arbitration.**

22 Plaintiff cannot meet her burden of proving any of the legally cognizable grounds to refuse
23 arbitration under sections 1281.2(a)-(d) of the Code of Civil Procedure.

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25
26 ³ *See, e.g., Vinson v. Superior Court*, 43 Cal. 3d 833, 841 (1987), *citing* Const. art. 1, § 1;
27 *see also Janvey v. Alguire*, 847 F.3d 231, 247 (5th Cir. 2017) (“Arbitration as we presently know
28 it was built on a bedrock interest of autonomy, and its correlative, privacy.”) (concurring opinion);
Perdue v. Citigroup Global Mkts. No. 1:07-cv-2721, 2008 U.S. Dist. LEXIS 128434, at *9-10
(N.D. Ga. May 14, 2008) (“Indeed, courts have recognized that arbitration proceedings are
inherently private, and there is a strong public policy in favor of preserving the confidentiality of
such private proceedings.”).

1 Plaintiff cannot meet the terms of section 1281.2(a) because Mr. Broidy has not waived his
2 right to compel arbitration; by this timely motion, brought shortly after the filing of the complaint,
3 he seeks to *vindicate* that right. Code Civ. Proc. § 1281.2(a); *Zamora v. Lehman*, 186 Cal. App.
4 4th 1, 17 (2010) (motion to compel arbitration “should be brought within a reasonable time,” *i.e.*,
5 no earlier than four months after filing of complaint) (citations omitted).

6 Nor can plaintiff meet the terms of section 1281.2(b) by establishing that “[g]rounds exist
7 for revocation of the agreement.” Code Civ. Proc. § 1281.2(b); *see also id.* at § 1281. To avoid
8 arbitration, grounds for revocation “must be such as renders the entire contract illegal and
9 unenforceable;” a challenge to one of the contract’s “incidental clauses” is not enough. *Green v.*
10 *Mt. Diablo Hospital Dist.* 207 Cal. App. 3d 63, 71 (1989); *see also Moncharsh*, 3 Cal. 4th at 30
11 (“When . . . the alleged illegality goes to only a portion of the contract (that does not include the
12 arbitration agreement), the entire controversy . . . remains arbitrable.”); *Duffens v. Valenti*, 161
13 Cal. App. 4th 434, 449-50 (2008) (same).

14 Plaintiff cannot possibly meet this standard. Far from claiming that the Settlement
15 Agreement is illegal, plaintiff *seeks to enforce* it against Mr. Broidy, claiming substantial damages.
16 Compl. ¶¶ 56-62. At most, plaintiff asserts that the Settlement Agreement contains certain
17 unconscionable terms that she seeks to strike from the Settlement Agreement, while leaving the
18 balance of the contract intact. *Id.* at ¶¶ 26, 29, 50-52. None of these allegedly unconscionable
19 terms relate to plaintiff’s cause of action against Mr. Broidy; they relate only to other causes of
20 action against other defendants. *Id.* ¶¶ 83, 84, 86, 91. But even if plaintiff’s “unconscionability”
21 argument did relate to her claim against Mr. Broidy, that too would be irrelevant for purposes of
22 this motion. Plaintiff does not contend, nor could she, that the arbitration agreement—which
23 provides full substantive procedural rights to plaintiff—is independently unconscionable, or that
24 the Settlement Agreement as a whole is unconscionable. Under California law, that is the end of
25 the inquiry. *Green*, 207 Cal. App. 3d at 71; *Moncharsh*, 3 Cal. 4th at 30.

26 Also irrelevant is plaintiff’s contention that she signed the Settlement Agreement without
27 reading it carefully. Compl. ¶¶ 26, 30. Plaintiff acknowledges that she signed the Settlement
28 Agreement, and that she was represented by counsel in connection with its negotiations. *Id.* ¶¶ 23-

1 26, 30. It is black letter law that “[a] party cannot avoid the terms of a contract on the ground that
2 he or she failed to read it before signing.” *Marin Storage & Trucking, Inc. v. Benco Contracting*
3 *& Engineering, Inc.*, 89 Cal. App. 4th 1042, 1049 (2001); *Union Bank v. Ross*, 54 Cal. App. 3d
4 290, 296 (1976) (“The bank herein was not responsible for Ross’ failure to read the contract.”)

5 Plaintiff also has no argument under section 1281.2(c). Mr. Broidy is not “[a] party to a
6 pending court action or special proceeding with a third party, arising out of the same transaction
7 or series of transactions” such that “a possibility of conflicting rulings on a common issue of law
8 or fact” exists. Code Civ. Proc. § 1281.2(c). The only “pending court action” is this one; plaintiff’s
9 claims against the other defendants raise separate issues and do not risk conflicting rulings on
10 common questions of law or fact; and more fundamentally, plaintiff cannot evade arbitration
11 merely by adding different parties under different theories of liability to her dispute with Mr.
12 Broidy. “[I]f arbitration defenses could be foreclosed simply by adding as a defendant a person
13 not a party to an arbitration agreement, the utility of such agreements would be seriously
14 compromised.” *Hilti, Inc. v. Oldach*, 392 F. 2d 368, 369 n.2 (1st Cir. 1968); *Bos Material*
15 *Handling, Inc. v. Crown Controls Corp.*, 137 Cal. App. 3d 99, 112 (1982) (quoting *Hilti*); *Henry*
16 *v. Alcove Investment, Inc.*, 233 Cal. App. 3d 94, 102 (1991) (same). Under longstanding California
17 law, plaintiff is “not entitled to make use of the [contract containing an arbitration clause] as long
18 as it worked to [her] advantage, then attempt to avoid its application in defining the forum in which
19 [her] dispute . . . should be resolved.” *Metacled Corp. v. Ventana Environmental Organizational*
20 *Partnership*, 109 Cal. App. 4th 1705, 1714 (2003) (internal citations omitted).

21 Lastly, plaintiff cannot avoid arbitration under section 1281.2(d). That subdivision, dealing
22 with “a state or federally chartered depository institution,” is facially inapplicable here.

23 Accordingly, plaintiff cannot meet her burden, and her dispute with Mr. Broidy must be
24 arbitrated.

25 **IV. PLAINTIFF’S CASE AGAINST MR. BROIDY MUST BE STAYED.**

26 Where a court has compelled arbitration of an issue, any further proceedings on that issue
27 “shall” be stayed upon motion by an involved party. Code Civ. Proc. § 1281.4. The purpose of
28 the stay is “to protect the jurisdiction of the arbitrator by preserving the status quo until the

1 arbitration is resolved . . . since, in the absence of such a stay, a party could simply litigate claims
2 that it had agreed to arbitrate.” *MKJA, Inc. v. 123 Fit Franchising, LLC*, 91 Cal. App. 4th 643,
3 660 (2011). “Any party to a judicial proceeding is entitled to [such] a stay” upon a showing that
4 the parties have agreed to submit to arbitration even “a single question of law or fact.” *Heritage*
5 *Provider Network, Inc. v. Superior Court*, 158 Cal. App. 4th 1146, 1152-53 (2008).

6 Applying these principles to the facts at hand, any further proceedings on plaintiff’s first
7 cause of action—and her entire case against Mr. Broidy—must be stayed “until an arbitration is
8 had.” Code Civ. Proc. § 1281.4.

9 **V. CONCLUSION.**

10 For the foregoing reasons, Mr. Broidy respectfully requests that this Court order plaintiff
11 to submit her dispute with Mr. Broidy to arbitration on the terms of the Settlement Agreement, and
12 further order that proceedings on her first cause of action (and her entire case against Mr. Broidy)
13 be stayed for the duration of that arbitration.

14 Dated: August 3, 2018

LATHAM & WATKINS LLP

Marvin S. Putnam
Jessica Stebbins Bina

16 By _____

17 Jessica Stebbins Bina
18 Attorneys for Defendant Elliott Broidy
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071-1560. My email address is elizabeth.tanner@lw.com.

On August 3, 2018, I served the following document described as:

**NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND STAY
FURTHER PROCEEDINGS AGAINST MR. BROIDY; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

by serving a true copy of the above-described document in the following manner:

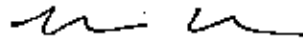
BY OVERNIGHT MAIL

The above-described document was transmitted via overnight mail to the following individuals on August 3, 2018:

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 3, 2018, at Los Angeles, California.



Elizabeth M. Tanner