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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF LOS ANGELES

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SHERA BECHARD,

Case No. BC712913

12

Plaintiff,

Hon. Elizabeth A. White (Dept. 48)

13

v.

**SPECIALLY APPEARING DEFENDANT
ELLIOT BROIDY'S NOTICE OF
MOTION AND MOTION TO COMPEL
ARBITRATION OF CROSS COMPLAINT
AND STAY PROCEEDINGS;
MEMORANDUM IN SUPPORT**

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ELLIOTT BROIDY, an individual; KEITH
DAVIDSON, an individual; MICHAEL
15 AVENATTI, an individual; DAVIDSON &
ASSOCIATES, PLC, a professional limited
16 liability company; and DOES 1 through 20,
inclusive,

Hearing Date: November 15, 2018

17

Defendants.

Time: 8:30 a.m.

18

Dept.: 48

19

HEARING ORDERED BY THE COURT

20

Action Filed: July 6, 2018

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KEITH M. DAVIDSON & ASSOCIATES,
22 PLC,

Trial Date: None Set

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Cross-Claimant,

Dept: 48

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v.

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SHERA BECHARD; and ELLIOTT BROIDY,

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Cross-Defendants.

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

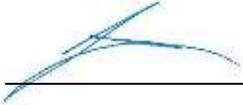
PLEASE TAKE NOTICE that on November 15, 2018, at 8:30 a.m., or as soon thereafter as it may be heard, in Department 48 of the above-entitled court (located at 111 N. Hill Street, Los Angeles, California 90012), defendant Elliott Broidy (“Mr. Broidy”) will and hereby does move for an order compelling arbitration of cross-claimant Keith M. Davidson & Associates, PLC’s (“Mr. Davidson”) cross-complaint, and staying any further proceedings.

Mr. Broidy makes this motion pursuant to Code of Civil Procedure section 1281 *et seq.*, on the grounds that cross-claimant is bound by a written agreement to arbitrate the subject matter of the cross-complaint. Code Civ. Proc. § 1281.2. In addition, while arbitration of cross-claimant’s cross-complaint is pending, further proceedings “shall” be stayed “until an arbitration is had.” Code Civ. Proc. § 1281.4.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the declaration of Elliott Broidy filed on August 3, 2018, the record and all pleadings and papers on file in this action, any relevant matters that are judicially noticeable, and such other or further argument or evidence as may be presented to the Court at or before the hearing hereof.

Dated: August 30, 2018

LATHAM & WATKINS LLP
Marvin S. Putnam
Jessica Stebbins Bina

By 

Jessica Stebbins Bina
Attorneys for Defendant Elliott Broidy

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Mr. Davidson’s sole claim against Mr. Broidy is for declaratory relief, and concerns
4 “settlement payments” that Mr. Davidson contends he is entitled to receive under a settlement
5 contract with a valid, binding agreement to arbitrate. Cross Compl. ¶ 20. Mr. Davidson’s claim
6 must be arbitrated. A “nonsignatory plaintiff” like Mr. Davidson who “brings a claim which
7 relies on contract terms” to assert an “entitle[ment] to recover for its breach” is bound to arbitrate
8 and “estopped from repudiating the arbitration clause contained in that agreement.” *JSM*
9 *Tuscany LLC v. Superior Court*, 193 Cal. App. 4th 1222, 1239-1240 (2011). Mr. Davidson is
10 also bound to arbitrate his dispute because he claims to be a third party beneficiary of the
11 settlement contract. *See, e.g., Harris v. Superior Court*, 188 Cal. App. 3d 475, 479 (1986). Mr.
12 Davidson’s cross-complaint thus cannot proceed in this Court, and must instead be ordered to
13 arbitration. Furthermore, because the courts of this state “shall . . . stay” an action, proceeding,
14 or issue that has been ordered to arbitration, Mr. Broidy respectfully requests that any further
15 proceedings on Mr. Davidson’s case be stayed pending the completion of arbitration. *See Code*
16 *Civ. Proc. § 1281.4.*

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

18 Mr. Davidson brings two claims—one against Mr. Broidy and the other against
19 plaintiff/cross-defendant Shera Bechard—each asserting declaratory relief based on contract.
20 Cross Compl. ¶¶ 18-22. Ms. Bechard’s complaint explains that she received substantial
21 payments from Mr. Broidy—hundreds of thousands of dollars—per the settlement agreement.
22 Compl. ¶¶ 32-33. According to Mr. Davidson, he is entitled to “receive 35% of any settlement
23 proceeds” paid to Ms. Bechard under the settlement agreement, including an additional \$70,000
24 he claims he is still owed for remaining payments. Cross Compl. ¶¶ 2-3, 12. In his action
25 against Mr. Broidy, Mr. Davidson thus asks the Court to declare that a settlement agreement he
26 negotiated with Mr. Broidy on behalf of Ms. Bechard is valid and enforceable. *Id.* ¶¶ 18-20
27 (alleging that, without declaratory relief, Mr. Davidson will continue to lose “settlement
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1 payments under the [settlement] agreement”).¹ In his action against Ms. Bechard, Mr. Davidson
2 asks the Court to declare that 35 percent of Ms. Bechard’s receipts under that agreement must be
3 paid to him. *Id.* ¶¶ 21-23.

4 As established in Mr. Broidy’s pending motion to compel arbitration vis-à-vis Ms.
5 Bechard’s original complaint, and conceded by Ms. Bechard, *see* Opp. to Mot. to Compel
6 Arbitration at 7-8, the parties’ agreement contains an express agreement to arbitrate.
7 Specifically, the agreement contains a broad and unambiguous agreement to arbitrate, which
8 binds “DD” and “PP” (pseudonyms for Mr. Broidy and Ms. Bechard, respectively) to
9 “confidential resolution of all disputes that may arise between them” such that “any and all
10 claims and controversies . . . shall be resolved by binding confidential Arbitration to the greatest
11 extent permitted by law.” Decl. of Elliot Broidy, filed August 3, 2018 (“Broidy Decl.”), ¶¶ 2-3
12 (attached as Exhibit 1 to Decl. of Jessica Stebbins Bina (“Bina Decl.”), filed concurrently
13 herewith).

14 That agreement to arbitrate provides in full:

15 5.2 Dispute Resolution. In recognition of the mutual benefits
16 to DD and PP of a voluntary system of alternative dispute
17 resolution which involves binding confidential arbitration of all
18 disputes which may arise between them, it is their intention and
19 agreement that any and all claims or controversies arising between
20 DD on the one hand, and PP on the other hand, shall be resolved
21 by binding confidential Arbitration to the greatest extent permitted
22 by law. Arbitration shall take place before JAMS ENDISPUTE
23 (“JAMS”) pursuant to JAMS Comprehensive Arbitration Rules
24 and Procedures (including Interim Measures) (“JAMS Rules”) and
25 the law selected by DD, (such selection shall be limited to either,
26 California, Nevada or Arizona), or before ACTION DISPUTE
27 RESOLUTION SERVICES (“ADRS”) pursuant to the ADRS
28 Rules (including Interim Measures) and the law selected by DD
(whichever the claimant elects upon filing an arbitration), in a [*sic*]
the location selected by DD, and will be heard and decided by a
sole, neutral arbitrator (“Arbitrator”) selected either by agreement
of the Parties, or if the Parties are unable to agree, then selected
under the Rules of the selected arbitration service. The costs and
fees associated with any Arbitrator and/or Arbitration service shall
be split equally among the parties to any such dispute. The Parties
shall have the right to conduct discovery in accordance with the
California Code of Civil Procedure Section 1283.05 *et. seq.* or any

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 Mr. Davidson’s
claims.

1 similar provision existing in the jurisdiction selected by DD and
2 the written discovery requests and results of discovery shall be
3 deemed to constitute Confidential Information. The Arbitrator
4 shall have the right to impose all legal and equitable remedies that
5 would be available to any Party before any governmental dispute
6 resolution forum or court of competent jurisdiction, including
7 without limitation temporary, preliminary and permanent
8 injunctive relief, compensatory damages, liquidated damages,
9 accounting, disgorgement, specific performance, attorneys fees
10 [*sic*] and costs, and punitive damages. It is understood and agreed
11 that each of the Parties shall bear his/its own attorneys' fees, expert
12 fees, consulting fees, and other litigation costs (if any) ordinarily
13 associated with legal proceedings taking place in a judicial forum,
14 subject to the Arbitrator's reassessment in favor of the prevailing
15 party to the extent permitted by law. **Each of the Parties
16 understands, acknowledges and agrees that by agreeing to
17 arbitration as provided herein, each of the Parties is giving up
18 any right that he/she/it may have to a trial by judge or jury
19 with regard to the matters which are required to be submitted
20 to mandatory and binding Arbitration pursuant to the terms
21 hereof. Each of the Parties further understands, acknowledges
22 and agrees that there is no right to an appeal or a review of an
23 Arbitrator's award as there would be a right of appeal or
24 review of a judge or jury's decision.**

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

26 Notwithstanding this all-encompassing arbitration agreement—an agreement, it should be
27 noted, that Mr. Davidson admits he “negotiate[d]” as Ms. Bechard’s attorney, *see* Cross Compl.
28 ¶ 1—Mr. Davidson chose to file suit in this Court. Mr. Broidy therefore brings this motion to
vindicate his rights to an arbitral forum—the most essential benefit for which he bargained (and
paid) under the settlement agreement. Broidy Decl. ¶ 2.

29 **III. ARGUMENT.**

30 **A. Legal Standard.**

31 Because the arbitration agreement expressly invokes it, the California Arbitration Act
32 (Code of Civil Procedure sections 1280-1294.4) governs here. *See* Broidy Decl. ¶ 3 (“The
33 Parties shall have the right to conduct discovery in accordance with the California Code of Civil
34 Procedure Section 1283.05 *et. seq.*[.]”). Under section 1281.2 of the Code of Civil Procedure, a
35 court “shall” order parties to arbitrate if it “determines that an agreement to arbitrate exists,
36 unless it finds that (a) the right to compel arbitration has been waived by the moving party, (b)
37 grounds exist for revocation of the agreement, or (c) a party to the arbitration is also a party to a
38

1 pending court action with a third party arising out of the same transaction.” *Sargon Enterprises,*
2 *Inc. v. Browne George Ross LLP*, 15 Cal. App. 5th 749, 762 (2017). Thus, a party seeking to
3 compel arbitration meets its burden by “proving the existence of a valid arbitration agreement by
4 the preponderance of the evidence[.]” *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951,
5 972 (1997); *see also Avery v. Integrated Healthcare Holdings, Inc.*, 218 Cal. App. 4th 50, 59
6 (2013). The inquiry concludes upon the demonstration of the *existence* of an arbitration
7 agreement; questions of the agreement’s scope “are for the arbitrators and not for the court to
8 resolve.” *Felner v. Meritplan Ins. Co.*, 6 Cal. App. 3d 540, 543 (1970).² Once that initial burden
9 is met, the burden shifts to the party opposing arbitration, who must establish one of the limited
10 statutory exceptions to arbitrability in sections 1281.2(a)-(d). *See Engalla*, 15 Cal. 4th at 972.
11 The denial of a motion to compel arbitration is immediately appealable, and determinations of
12 arbitrability are subject to *de novo* review. *See* Code Civ. Proc. § 1294(a); *Stirlen v. Supercuts,*
13 *Inc.*, 51 Cal. App. 4th 1519, 1527 (1997).

14 **B. Mr. Broidy Meets His Initial Burden of Proving the Existence of an**
15 **Arbitration Agreement.**

16 The settlement contract on which Mr. Davidson bases his claim contains a broad and
17 unambiguous agreement to arbitrate. Broidy Decl. ¶ 3. The scope of that agreement is
18 comprehensive—covering “any and all claims and controversies” as well as “all disputes that
19 may arise between” plaintiff and Mr. Broidy, and there are no exceptions to its reach. Broidy
20 Decl. ¶ 3.

21 Mr. Broidy therefore meets his burden to “prov[e] the existence of a valid arbitration
22 agreement” by a preponderance of the evidence. *Engalla*, 15 Cal. 4th at 972. “Typically, those
23 who enter into arbitration agreements expect that their dispute will be resolved without necessity
24 for any contact with the courts.” *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9 (1992) (“[T]he
25 Legislature has expressed a ‘strong public policy in favor of arbitration[.]’”) (citations omitted).
26 That expectation is especially important where, as here, *confidentiality* was an essential

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

1 component of the arbitration agreement—and the contract overall—and the allegations of the
2 complaint touch on matters implicating Mr. Broidy’s constitutional right to privacy.³ See Compl.
3 ¶¶ 26(c)-(d), 41.

4 **C. Mr. Davidson Is Bound by the Arbitration Agreement.**

5 Although Mr. Davidson signed the settlement contract at issue here only “as to form,”
6 “arbitration agreements are enforced with regularity against nonsignatories.” *Cty. of Contra*
7 *Costa v. Kaiser Found. Health Plan, Inc.*, 47 Cal. App. 4th 237, 242 (1996). “[T]here are six
8 theories by which a nonsignatory may be bound to arbitrate: (a) incorporation by reference; (b)
9 assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third-party
10 beneficiary.” *Suh v. Superior Court*, 181 Cal. App. 4th 1504, 1513 (2010). Here, Mr. Davidson
11 is bound to arbitrate his claim against Mr. Broidy pursuant to the latter two longstanding
12 doctrines: estoppel and third-party beneficiary.

13 Arbitration is required under principles of *estoppel* if the non-party asserts claims that are
14 “dependent upon, or inextricably intertwined with, the obligations” imposed by the agreement
15 containing the arbitration clause. *JSM Tuscan, LLC*, 193 Cal. App. 4th at 1239. The test is
16 whether the non-party “relies on the agreement” containing the arbitration provision “to establish
17 its cause of action.” *Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 229-30 (2009). “The
18 fundamental point” is that a party is “not entitled to make use of [a contract containing an
19 arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its
20 application in defining the forum in which [his or] her dispute should be resolved.” *NORCAL*
21 *Mut. Ins. Co. v. Newton*, 84 Cal. App. 4th 64, 84 (2000). “*The plaintiff’s actual dependence on*
22 *the underlying contract*” is “*always the sine qua non*” of the inquiry. *Goldman*, 173 Cal. App.
23 4th at 229 (italics in original).

24 Mr. Davidson’s cause of action against Mr. Broidy expressly seeks to *enforce the benefits*

25 ³ See, e.g., *Vinson v. Superior Court*, 43 Cal. 3d 833, 841 (1987), citing Cal. Const. art. 1, § 1;
26 see also *Janvey v. Alguire*, 847 F.3d 231, 247 (5th Cir. 2017) (“Arbitration as we presently know
27 it was built on a bedrock interest of autonomy and its correlative, privacy.”) (concurring
28 opinion); *Perdue v. Citigroup Glob. Mkts., Inc.*, No. 1:07-cv-2721, 2008 WL 11336459, at *4
(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 of the underlying contract containing an arbitration agreement between Mr. Broidy and Ms.
2 Bechard. Cross-Compl. ¶¶ 20. It is hard to imagine a clearer example of a claim “dependent
3 upon, or founded in and inextricably intertwined with” an underlying contract than a claim to
4 *enforce the terms* of that contract. *See, e.g., Goldman*, 173 Cal. App. 4th at 231 (equitable
5 estoppel requires arbitration when allegations “rely on or depend on the terms of the written
6 agreement” containing the arbitration provision); *Boucher v. All. Title Co., Inc.*, 127 Cal. App.
7 4th 262, 272 (2005) (equitable estoppel required arbitration of claim alleging *inter alia* that
8 “defendant breached the June 5, 2003, employment contract causing plaintiff damages,” when
9 that agreement contained an arbitration provision). Mr. Davidson is “not entitled to make use
10 of” the settlement agreement to enforce his claim to 35 percent of its proceeds and “then attempt
11 to avoid its application in defining the forum in which [his or] her dispute should be resolved.”
12 *NORCAL Mut. Ins. Co.*, 84 Cal. App. 4th at 84.

13 The same facts also require Mr. Davidson to arbitrate on grounds that he is—or at least
14 claims to be—a ***third party beneficiary*** of the settlement agreement with a “preexisting”
15 relationship to Ms. Bechard. *See* Cross. Compl. ¶¶ 2, 3, 20 (Mr. Davidson’s allegations
16 asserting intended benefits from the settlement agreement based on his prior representation of
17 Ms. Bechard); *Crowley Maritime Corp. v. Boston Old Colony Ins. Co.*, 158 Cal. App. 4th 1061,
18 1069-70 (2008) (explaining that non-signatory third party beneficiaries will be bound to arbitrate
19 when a “preexisting” relationship existed between the nonsignatory and one of the parties to the
20 arbitration agreement, making it equitable to compel the nonsignatory to arbitrate). “California
21 cases” consistently “bind[] nonsignatories to arbitrate their claims” where “a benefit was
22 conferred on the nonsignatory as a result of the contract” containing the arbitration provision,
23 “making the nonsignatory a third party beneficiary of the arbitration agreement.” *Kaiser Found.*
24 *Health Plan, Inc.*, 47 Cal. App. 4th at 242. The rationale is that when “the contracting parties
25 which procur[e] [a] benefit” for a third party “waiv[e] their rights to trial and agre[e] to
26 arbitration,” they bind the third party to that arbitration provision because “[a] third party
27 beneficiary of a contract can gain no greater rights under that contract than the contacting
28 parties.” *Harris*, 188 Cal. App. 3d at 479.

1 Accepting arguendo Mr. Davidson’s contention that he is entitled to a 35 percent share of
2 settlement proceeds, since “the contracting parties which procured this benefit for him waived
3 their rights to trial and agreed to arbitration,” Mr. Davidson’s “rights are no greater,” and he too
4 is required to arbitrate his claim to enforce the agreement. *Id.* Additionally, because “[a]
5 voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the
6 obligations arising from it,” Cal. Civ. Code § 1589, Mr. Davidson’s admission that he has
7 already voluntarily accepted *two* intended beneficiary payments arising from the settlement
8 agreement, *see* Cross Compl. ¶ 2, confirms that he is bound “to all the obligations arising from
9 it,” including its arbitration provision. *See Harris*, 188 Cal. App. 3d at 479 (because
10 nonsignatory third-party beneficiary’s “acceptance of [a] benefit necessarily entailed acceptance
11 of the agreement that members’ claims would be subject to binding arbitration,” it constituted an
12 additional but related ground to compel nonsignatory third-party beneficiary into arbitration).

13 These black-letter doctrines *twice over* require Mr. Davidson to arbitrate his claim against
14 Mr. Broidy in the private and confidential forum that Mr. Broidy and Ms. Bechard agreed upon
15 when they formed the settlement agreement Mr. Davidson now seeks to enforce, and claim
16 benefits from.

17 **D. There Are No Grounds to Invalidate The Arbitration Agreement.**

18 Mr. Davidson cannot meet his burden of proving any of the legally cognizable grounds to
19 defeat the validity of the underlying arbitration agreement between Mr. Broidy and Ms. Bechard
20 under sections 1281.2(a)-(d) of the Code of Civil Procedure.

21 First, Mr. Davidson cannot meet the terms of section 1281.2(a) because Mr. Broidy has
22 not waived his right to compel arbitration. Mr. Broidy timely moved to compel arbitration of
23 Ms. Bechard’s original action shortly after the filing of her complaint to *vindicate* that right, and
24 moves here to do so *again*. Code Civ. Proc. § 1281.2(a); *Zamora v. Lehman*, 186 Cal. App. 4th
25 1, 17 (2010) (motion to compel arbitration “should be brought within a reasonable time,” *i.e.*, no
26 earlier than four months after filing of complaint) (citations omitted).

27 Second, Mr. Davidson cannot meet the terms of section 1281.2(b) by establishing that
28 “[g]rounds exist for revocation of the agreement.” Code Civ. Proc. § 1281.2(b); *see also id.* at

1 § 1281. To avoid arbitration, grounds for revocation “must be such as renders the entire contract
2 illegal and unenforceable;” a challenge to one of the contract’s “incidental clauses” is not
3 enough. *Green v. Mt. Diablo Hosp. Dist.*, 207 Cal. App. 3d 63, 71 (1989); *see also Moncharsh*,
4 3 Cal. 4th at 30 (“[W]hen . . . the alleged illegality goes to only a portion of the contract (that
5 does not include the arbitration agreement), the entire controversy . . . remains arbitrable.”);
6 *Duffens v. Valenti*, 161 Cal. App. 4th 434, 449-50 (2008) (same). Mr. Davidson cannot possibly
7 meet this standard. Put aside the fact that Mr. Davidson admits to having negotiated this
8 agreement himself. Cross-Compl. ¶ 1. Far from claiming that the settlement agreement is
9 illegal, Mr. Davidson *seeks to enforce* it against Mr. Broidy, claiming “substantial damage
10 moving forward” absent a court order that it “*is valid and fully enforceable.*” Cross-Compl. ¶ 20
11 (emphasis added). Under California law, that is the end of the inquiry. *Green*, 207 Cal. App. 3d
12 at 71; *Moncharsh*, 3 Cal. 4th at 30.

13 Third, Mr. Davidson also has no argument under section 1281.2(c). This section—a rare
14 exception to the general policy in favor of arbitration applied only in certain “peculiar
15 situation[s],” *Cronus Investments, Inc. v. Concierge Servs.*, 35 Cal. 4th 376, 393 (2005)—
16 requires a party resisting arbitration to demonstrate that there are *non-arbitrable third party*
17 *claims* that risk *conflicting rulings* in some “pending court action.” Code Civ. Proc. § 1281.2(c).
18 The only “pending court action” is this one, however, and neither of the other two parties to this
19 litigation, Ms. Bechard and Mr. Avenatti, present such a claim. At the outset, Ms. Bechard is not
20 a “third party” within the meaning of section 1281.2(c) because she is a party to the arbitration
21 agreement with Mr. Broidy. *See Rowe v. Exline*, 153 Cal. App. 4th 1276, 1290 (2007) (holding
22 that anyone with a right or obligation to arbitrate pursuant to an arbitration agreement *cannot* be
23 a third party for the purposes of section 1281.2(c) as a matter of law). Mr. Davidson therefore
24 cannot invoke section 1281.2(c) based on her involvement in the case.

25 That leaves Mr. Avenatti, who is a party to the underlying case but not Mr. Davidson’s
26 cross-complaint. Section 1281.2(c) does not provide a basis for keeping Mr. Davidson’s claims
27 in court, because Mr. Davidson has no claims against Mr. Avenatti, and vice versa. Rather, Mr.
28 Avenatti is a defendant—with a pending special motion to strike—in two claims brought by

1 plaintiff in the underlying action.⁴ Moreover, for the reasons detailed in Mr. Broidy’s reply in
2 support of his motion to compel arbitration of Ms. Bechard’s claims (filed August 30, 2018), Ms.
3 Bechard’s claims against Mr. Avenatti present no possibility of a conflicting “ruling” vis-à-vis
4 any other claim in the case, and certainly not vis-à-vis Mr. Davidson’s cross-claims.⁵ *See*
5 *Cronus Investments, Inc.*, 35 Cal. 4th at 382, 392.

6 Finally, Mr. Davidson cannot avoid arbitration under section 1281.2(d). That
7 subdivision, dealing with “a state or federally chartered depository institution,” is facially
8 inapplicable here.

9 Accordingly, Mr. Davidson cannot meet his burden to defeat the validity of the
10 underlying arbitration agreement, and the Court should order his cross-complaint to arbitration.

11 **IV. THE CROSS-COMPLAINT MUST BE STAYED.**

12 Where a court has compelled arbitration of an issue, any further proceedings on that issue
13 “shall” be stayed upon motion by an involved party. Code Civ. Proc. § 1281.4. The purpose of
14 the stay is “to protect the jurisdiction of the arbitrator by preserving the status quo until the
15 arbitration is resolved . . . since, in the absence of such a stay, a party could simply litigate claims
16 that it had agreed to arbitrate.” *MKJA, Inc. v. 123 Fit Franchising, LLC*, 191 Cal. App. 4th 643,
17 660 (2011). “Any party to a judicial proceeding is entitled to [such] a stay” upon a showing that
18 the parties have agreed to submit to arbitration even “a single question of law or fact.” *Heritage*
19 *Provider Network, Inc. v. Superior Court*, 158 Cal. App. 4th 1146, 1152-53 (2008).

20 Applying these principles to the facts at hand, any further proceedings on Mr. Davidson’s
21 cross-complaint must be stayed “until an arbitration is had.” Code Civ. Proc. § 1281.4.

22
23 ⁴ If the Court grants Mr. Avenatti’s motion and dismisses him from the case, *see* Avenatti’s
24 Spec. Mot. to Strike (filed Aug. 13, 2018), that would end the discussion by eliminating the only
25 remaining “third party” who Mr. Davidson could possibly claim raises a risk of conflict. *See RN*
26 *Sol., Inc. v. Catholic Healthcare West*, 165 Cal. App. 4th 1511, 1521 (2008) (holding that where
27 “all of the parties involved in the lawsuit are bound by the arbitration agreement, the
28 fundamental condition for the application of section 1281.2(c)—a pending court action or special
proceeding between a party to the arbitration agreement and a third party—is absent”).

⁵ This is because the elements of Ms. Bechard’s sole well-pleaded claim against Mr. Avenatti—
tortious interference with contract—do not overlap with the elements of Ms. Bechard’s claims
against Mr. Broidy or Mr. Davidson. Similarly, Mr. Davidson’s claims that the settlement
agreement remains enforceable and that he is entitled to a share of plaintiff’s proceeds thereunder
do not raise any possible conflict with plaintiff’s ancillary claims against Mr. Avenatti.

1 **V. CONCLUSION.**

2 For the foregoing reasons, Mr. Broidy respectfully requests that this Court order Mr.
3 Davidson to submit his cross-complaint against Mr. Broidy to consolidated arbitration with
4 Plaintiff's claim against Mr. Broidy on the terms of the settlement agreement with which he is
5 equitably obligated to comply, and further order that proceedings on his cross-complaint be
6 stayed for the duration of that arbitration.

7

8 Dated: August 30, 2018

LATHAM & WATKINS LLP
Marvin S. Putnam
Jessica Stebbins Bina

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By  _____

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Jessica Stebbins Bina
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 jeeah.yang@lw.com.

On August 30, 2018, I served the following document described as:

SPECIALLY APPEARING DEFENDANT ELLIOT BROIDY'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION OF CROSS COMPLAINT AND STAY PROCEEDINGS; MEMORANDUM IN SUPPORT

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

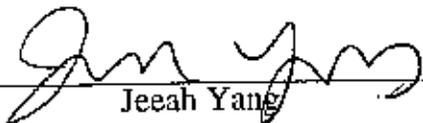
BY OVERNIGHT MAIL

The above-described document was transmitted via overnight mail to the following individuals on August 30, 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 30, 2018, at Los Angeles, California.



Jeeah Yang