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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**  
11

12 SHERA BECHARD,

13 Plaintiff,

14 v.

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

18 Defendants.  
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Case No. BC712913

Hon. Ernest M. Hiroshige, Dept. 54

**FILED CONDITIONALLY UNDER SEAL  
PURSUANT TO COURT ORDER DATED  
JULY 6, 2018 PROVISIONALLY SEALING  
COMPLAINT AND ALL REFERENCES  
THERE TO**

**SPECIALY APPEARING DEFENDANT  
ELLIOTT BROIDY'S NOTICE OF  
MOTION AND MOTION TO SEAL OR  
ALTERNATIVELY STRIKE SENSITIVE  
AND IMMATERIAL PORTIONS OF THE  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT**

Date: August 10, 2018

Time: 9:00 a.m.

Dept.: 54

**HEARING ORDERED BY THE COURT**

Action Filed: July 6, 2018

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 10, 2018 at 9:00 a.m. in Department 54 of the  
3 above-entitled court, located at 111 North Hill Street, Los Angeles, California, specially appearing  
4 defendant Elliott Broidy will and hereby does move for an order sealing portions of the verified  
5 complaint for damages and other relief, filed by plaintiff Shera Bechard. Specifically, Mr. Broidy  
6 moves to seal the following portions of the complaint: pages 2:5-9, 4:12, 4:16-17, 4:19, 4:22-6:8,  
7 7:6-7, 7:22-28, 8:1-7, 8:14-17, 13:12-13:14.

8 The portions requested to be sealed are further identified in Exhibit A to the declaration of  
9 Marvin S. Putnam, which is the proposed redacted complaint.

10 In the alternative, Mr. Broidy moves to seal the same portions *provisionally* until the Court  
11 hears Mr. Broidy's forthcoming motions to compel arbitration and to strike the same portions of  
12 the complaint pursuant to Code of Civil Procedure sections 435 and 436.

13 With respect to these other motions, Mr. Broidy notes that the Court has set an expedited  
14 briefing on motions to seal in this case, but has refused the scheduling of any other motions. At  
15 the time the Court issued its order, on July 18, 2018, counsel for Mr. Broidy had already begun  
16 preparing this motion as an alternative motion to strike, as counsel considers striking the  
17 challenged allegations of plaintiff's complaint altogether to be a more appropriate remedy than  
18 sealing. Mr. Broidy continues to include those arguments in this motion, but does not wish to  
19 impose on the Court's calendar or prejudice other parties' ability to respond to the alternative  
20 requested relief of striking.<sup>1</sup>

21 Mr. Broidy also attempted, on July 19, 2018, to file the motion to compel arbitration, but  
22 the Court refused to accept the filing and indicated its intent to hear all motions *after* the motion  
23 to seal. Mr. Broidy asserts that the issues of striking and arbitration are intertwined with the sealing  
24 issues in this case, such that they should appropriately be considered at the same time as a matter  
25 of due process. Accordingly, Mr. Broidy requests that if the Court is not inclined to brief the  
26 request to strike on the same schedule as the motion to seal, that it set the motion to strike for  
27

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28 <sup>1</sup> Should the Court prefer, Mr. Broidy will file a separate motion to strike.

1 hearing as soon as reasonably practicable, and that it keep the above portions of the complaint  
2 provisionally sealed until it hears the motion to strike, as well as the motion to compel arbitration.

3 This motion is made pursuant to sections 435 and 436 of the California Code of Civil  
4 Procedure and Rules 2.550 and 2.551 of the California Rules of Court. This motion is based on  
5 this notice of motion and motion, the attached memorandum of points and authorities, the  
6 pleadings on file in this action, and such further evidence as the court may consider at or before  
7 the hearing on this motion.

8

9 Dated: July 23, 2018

LATHAM & WATKINS LLP

Marvin S. Putnam  
Jessica Stebbins Bina

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By 

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Marvin S. Putnam  
Attorneys for Specially Appearing  
Defendant Elliott Broidy

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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page</b>
I. INTRODUCTION.....	6
II. FACTUAL BACKGROUND.....	6
III. PROCEDURAL BACKGROUND.....	7
IV. ARGUMENT.....	9
A. The Complaint Contains Irrelevant, Protected Personal Information. ....	9
B. The Requested Materials Should Be Stricken. ....	10
C. The Requested Portions Should Alternatively Be Sealed.....	12
1. Mr. Broidy’s Right Of Privacy Is A Compelling Interest Overriding Access.....	13
2. The Settlement Agreement Also Constitutes An Overriding Interest.....	15
3. The Proposed Sealing Is Narrowly Tailored To Achieve These Compelling Interests.....	16
4. The Court Should Alternatively Maintain The Requested Provisions Under Provisional Seal.....	16
V. CONCLUSION.....	17

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

1		
2		
3		
4	<i>AT&amp;T Mobility LLC v. Concepcion,</i>	
5	563 U.S. 333 (2011).....	17
6	<i>Boler v. Super. Ct.,</i>	
7	201 Cal. App. 3d 467 (1987) .....	13
8	<i>Doe v. Blue Cross &amp; Blue Shield United of Wisconsin,</i>	
9	112 F.3d 869 (7th Cir. 1997) .....	15
10	<i>Garcia v. Super. Ct.,</i>	
11	42 Cal. 4th 63 (2007) .....	13
12	<i>Mercury Interactive Corp. v. Klein,</i>	
13	158 Cal. App. 4th 60 (2007) .....	11, 12, 14, 16
14	<i>NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.,</i>	
15	20 Cal. 4th 1178 (1999) .....	14, 15
16	<i>Oiye v. Fox,</i>	
17	211 Cal. App. 4th 1036 (2012) .....	10, 11, 13, 14
18	<i>Overstock.Com, Inc. v. Goldman Sachs Grp., Inc.,</i>	
19	231 Cal. App. 4th 471 (2014) .....	12, 13, 14, 16
20	<i>People v. Jackson,</i>	
21	128 Cal. App. 4th 1009 (2005) .....	15
22	<i>Publicker Industries, Inc. v. Cohen,</i>	
23	733 F.2d 1059 (3d Cir. 1984).....	15
24	<i>Sanchez v. Carmax Auto Superstores Cal., LLC,</i>	
25	224 Cal. App. 4th 398 (2014) .....	17
26	<i>Universal City Studios, Inc. v. Super. Ct.,</i>	
27	110 Cal. App. 4th 1273 (2003) .....	15
28	<i>Warner v. Warner,</i>	
	135 Cal. App. 2d 302 (1955) .....	11
	<i>Winfred D. v. Michelin N. Am., Inc.,</i>	
	165 Cal. App. 4th 1011 (2008) .....	11

1  
2  
3  
4  
5  
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19  
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21  
22  
23  
24  
25  
26  
27  
28

**STATUTES**

Cal. Code Civ. Proc. § 426 .....11  
Cal. Code Civ. Proc. § 436 .....11

**RULES**

Cal. R. Ct. 2.550(d).....12

**OTHER AUTHORITIES**

Kate Briquet, “The Sex-Tape Lawyer Who Worked With Michael Cohen to  
Silence Trump’s Women,” *The Daily Beast*, April 23, 2018 .....7  
Rebecca Ruiz & Jim Rutenberg, “R.N.C. Official Who Agreed to Pay Playboy  
Model \$1.6 Million Resigns,” *The New York Times*, April 13, 2018.....7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff's sole claim against defendant Elliott Broidy is that he failed to pay her  
4 approximately \$1.2 million due under a Settlement Agreement between the parties.<sup>2</sup> See Compl.  
5 ¶¶ 56-62. She was required to bring any such claim in a confidential arbitration according to the  
6 very provisions of the very Settlement Agreement that she claims was *breached* here. Yet, she  
7 strategically chose not to do so, instead filing a complaint full of false, salacious, and irrelevant  
8 claims about Mr. Broidy, including intimate information about his health, his sexual history, and  
9 his interaction in romantic relationships, and asking the Court to make it public. *None of*  
10 *plaintiff's salacious allegations have anything to do with her breach of contract claim, or any*  
11 *other claim in this case.* Rather, they are an attempt to avoid the strictures of her confidentiality  
12 obligations under the Settlement Agreement, and to use the court system to embarrass and hurt  
13 Mr. Broidy.

14 The immaterial and improper allegations included by plaintiff form no part of her causes  
15 of action against any party in this case, and should be stricken in their entirety and removed from  
16 the record in this case. In the alternative, however, Mr. Broidy requests that they be sealed, either  
17 permanently or until the Court can set a hearing on Mr. Broidy's motions to strike the allegations  
18 and to compel arbitration. Sealing is necessary and appropriate because the pertinent portions of  
19 the complaint contain sensitive, personal information about Mr. Broidy that is protected by his  
20 constitutional right to privacy. The request for sealing is narrowly tailored as Mr. Broidy seeks to  
21 seal only those portions of the complaint that contain his private information, and no other  
22 materials.

23 **II. FACTUAL BACKGROUND.<sup>3</sup>**

24 This case arises out of a Settlement Agreement entered last year between plaintiff Shera  
25 Bechard and Mr. Broidy. The Settlement Agreement relates to a relationship Mr. Broidy had with

26 \_\_\_\_\_  
27 <sup>2</sup> Because the entire complaint is provisionally sealed, Mr. Broidy redacts *all* references to the  
28 complaint in this motion to seal. However, Mr. Broidy himself only seeks to seal the materials  
identified in the notice of motion and Exhibit A to the Putnam Declaration.

<sup>3</sup> The facts contained in this section are public and thus not subject to this motion to seal.

1 plaintiff, during which she claimed to be pregnant with his child, a pregnancy she claims to have  
2 subsequently terminated. The Settlement Agreement required Mr. Broidy to pay plaintiff \$1.6  
3 million in eight installments of \$200,000. Plaintiff, in turn, was required to keep all matters  
4 relating to her relationship with Mr. Broidy confidential, and to submit any dispute between them  
5 to binding, confidential arbitration, in order to maintain this confidentiality.

6 On April 12, 2018, defendant Michael Avenatti began publishing information about the  
7 existence of the Settlement Agreement on Twitter. The next day, the *Wall Street Journal* published  
8 an article revealing the facts discussed above. A variety of articles repeating these facts—though  
9 with no further details about the affair between plaintiff and Mr. Broidy—were published between  
10 April 13 and June 30, 2018.<sup>4</sup> In these articles, plaintiff appeared to blame her former attorney,  
11 defendant Keith Davidson, for the leaked information.<sup>5</sup> Mr. Avenatti also claims to have obtained  
12 the information from Mr. Davidson. On July 1, 2018, the *Wall Street Journal* published a further  
13 article noting that Mr. Broidy now considered the Settlement Agreement to have been breached  
14 by plaintiff, and intended to stop making payments otherwise due thereunder.

15 The required confidential arbitration was expected to follow. Instead, plaintiff filed this  
16 lawsuit.

### 17 **III. PROCEDURAL BACKGROUND.**

18 Mr. Broidy brings this motion to seal because he has been left with no other choice, based  
19 on the procedural posture of this case. Plaintiff filed this action July 6, 2018. Pursuant to her  
20 request, the Court ordered the complaint provisionally sealed for a period of twenty days, until  
21 July 26, 2018. Putnam Decl. Ex. B. On July 18, 2018, in a response to a request by members of  
22 the media that the entire complaint be made public, this Court ordered that any motion to seal any

23 \_\_\_\_\_  
24 <sup>4</sup> The continued media attention stems largely from the fact that the attorney who negotiated the  
25 Settlement Agreement on behalf of Mr. Broidy, Michael Cohen, is under investigation by the  
26 FBI for work he did on behalf of President Donald Trump.

27 <sup>5</sup> See, e.g., Kate Briquetelet, “The Sex-Tape Lawyer Who Worked With Michael Cohen to Silence  
28 Trump’s Women,” *The Daily Beast*, April 23, 2018, <https://www.thedailybeast.com/the-sex-tape-lawyer-who-worked-with-michael-cohen-to-silence-trumps-women>; Rebecca Ruiz & Jim Rutenberg, “R.N.C. Official Who Agreed to Pay Playboy Model \$1.6 Million Resigns,” *The New York Times*, April 13, 2018, <https://www.nytimes.com/2018/04/13/us/politics/elliott-broidy-michael-cohen-payout.html>



1 portion of the complaint must be filed by noon on July 23, 2018, to be heard on August 10, 2018.  
2 Putnam Decl. Ex. C. Mr. Broidy was served with the complaint effective July 13, 2018. Putnam  
3 Decl. ¶ 4. Six days later, on July 19, 2018, Mr. Broidy sought to file his motion to compel the  
4 arbitration that the Settlement Agreement requires. Putnam Decl. ¶ 7; Ex. D.<sup>6</sup> This Court rejected  
5 the filing, and issued an order stating it would not consider any further motions until after  
6 determining whether any portion of the complaint should be sealed. Putnam Decl. Ex. E. The  
7 Court's order did not provide a reason for its decision to bar the parties from filing motions.

8 At the time the Court issued its order setting the sealing motion schedule, counsel for Mr.  
9 Broidy had already prepared its motion to compel arbitration, and had begun preparing this motion  
10 as an alternative motion to strike or seal. Putnam Decl. ¶ 6. Counsel did so because the most  
11 appropriate way to address plaintiff's claims against Mr. Broidy would be to order the agreed-  
12 upon arbitration, and to strike *all* allegations relating to Mr. Broidy from the operative complaint.  
13 Mr. Broidy further contends, as detailed below, that the next-most-appropriate remedy would be  
14 for the Court to strike the *requested portions* of the complaint as irrelevant and improper, pursuant  
15 to Code of Civil Procedure section 426—something it can do even before determining the  
16 arbitration issue. ***Either of these remedies would moot the sealing issue entirely.*** Thus, Mr.  
17 Broidy contends it is appropriate for the Court to consider these potential remedies at the same  
18 time it considers whether to seal.

19 Mr. Broidy recognizes, however, that the Court has ordered expedited briefing only on the  
20 issue of sealing, and has otherwise frozen the parties' rights as to any other form of judicial relief.  
21 Mr. Broidy does not wish to impose on the Court's calendar or prejudice the other parties' ability  
22 to respond to the alternative requested relief in this motion. Accordingly, Mr. Broidy requests that  
23 if the Court is not inclined to brief the below request to strike on the same schedule as the motion  
24 to seal, that it instead set the motion to strike for hearing as soon as reasonably practicable. In the  
25 interim, Mr. Broidy requests that the Court keep the requested materials *provisionally* sealed until  
26 it hears the motion to strike, and, ideally, also the motion to compel arbitration. In the alternative,

27 \_\_\_\_\_  
28 <sup>6</sup> A true and correct copy of the motion Mr. Broidy attempted to file is attached as Exhibit D to  
the Putnam Declaration.

1 and as further detailed below, Mr. Broidy contends that this Court can and should permanently  
2 seal the requested portions of the complaint. Not only does disclosure of Mr. Broidy’s sensitive,  
3 *constitutionally-protected* private information directly breach the Settlement Agreement and  
4 violate his constitutional right of privacy, it has absolutely no bearing on *any* cause of action in  
5 this matter. The requested sealing is appropriate, narrowly tailored, entirely consistent with the  
6 First Amendment and the public right of access, and should be granted.

7 **IV. ARGUMENT.**

8 Plaintiff concedes—as she must—that the Settlement Agreement includes a confidentiality  
9 provision barring her from publicizing the details of her relationship with Mr. Broidy and thus  
10 from bringing this matter in a public forum. *See, e.g.*, Compl. ¶¶ 8, 9, 26, 42, 60, 64, 97. She  
11 seeks to avoid her agreed-upon confidentiality obligations, however, by including in her complaint  
12 numerous statements that improperly reveal confidential information about Mr. Broidy, despite  
13 these allegations forming *no* part of her substantive legal claims. These statements have been  
14 included for no lawful purpose, but rather solely to publicly embarrass and hurt Mr. Broidy by  
15 revealing highly confidential and private information about him to the public. These portions of  
16 the complaint should be stricken, or, in the alternative, sealed.

17 **A. The Complaint Contains Irrelevant, Protected Personal Information.**

18 Plaintiff asserts just one cause of action against Mr. Broidy—for failure to pay monies  
19 owed under a written contract. Compl. ¶¶ 55-62. Yet, numerous paragraphs of the complaint go  
20 into graphic, sordid detail about Mr. Broidy’s purported sexual history, health, and romantic  
21 relationship with plaintiff. Plaintiff asserts, for example, that Mr. Broidy has genital herpes,  
22 Compl. ¶ 3, that he enjoys masturbating, *id.* ¶ 20(b), and that he postponed treatment for cancer  
23 because it would interfere with his enjoyment of sex, *id.* ¶ 20(c). The complaint also contains  
24 numerous other false statements designed to malign and embarrass Mr. Broidy; *e.g.*, that he was a  
25 “violent misogynist,” Compl. ¶¶ 3, 20(d), 22, that he prevented plaintiff from working, *id.* ¶ 20(d),  
26 and that he claimed to have connections who would make people “disappear,” *id.* ¶ 22. The  
27 complaint further includes statements intended solely to hurt Mr. Broidy’s family; *e.g.*, Mr. Broidy  
28

1 referred to plaintiff as “mommy,” “shared personal information about his children” with her, and  
2 called his wife a “bitch.” *Id.* ¶ 20 (b), (f).

3 None of these vicious accusations have *anything* to do with plaintiff’s legal claims in this  
4 case, against Mr. Broidy or anyone else. To the contrary, plaintiff accuses Mr. Broidy only of  
5 breaching the Settlement Agreement, and accuses the other defendants, ironically, of leaking  
6 information required to be kept confidential pursuant to her Settlement Agreement with Mr.  
7 Broidy.<sup>7</sup> *None* of the information included by plaintiff and challenged here has previously been  
8 reported in the media or otherwise made publicly available. Plaintiff’s aspersions against Mr.  
9 Broidy thus appear to have been included for one purpose and one purpose alone—to improperly  
10 shakedown yet more money from Mr. Broidy by threatening to disparage him and to reveal his  
11 heretofore private and personal information to the public.

12 **B. The Requested Materials Should Be Stricken.**

13 California courts are empowered to “prevent court files from becoming the conduits of  
14 disclosure of sensitive private information,” and have full authority to strike such “scandalous and  
15 abusive statements in pleadings.” *Oiye v. Fox*, 211 Cal. App. 4th 1036, 1069, 1070 (2012). The  
16 situation confronting Mr. Broidy today—with plaintiff threatening to expose intimate information  
17 about Mr. Broidy to the world unless he again pays for her silence—is the exact situation that the  
18 Settlement Agreement was supposed to prevent. Mr. Broidy paid for—and was promised—  
19 absolute confidentiality and a private forum to address disputes. *See* Putnam Decl. Ex. D at 2-3.  
20 Instead, plaintiff’s actions have led here, to the point where Mr. Broidy must file multiple motions  
21 to avoid exposing his most intimate information about his health, his family, and sexual  
22 relationships to the public. To be clear, plaintiff’s *only* legal claim against Mr. Broidy is that he

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24 <sup>7</sup> *See, e.g.*, Compl. ¶¶63-68 (plaintiff alleges the remaining defendants interfered with her  
25 Settlement Agreement by disclosing confidential information); *id.* ¶¶ 69-72 (defendants allegedly  
26 breached fiduciary duties by revealing confidential information); *id.*, ¶¶ 75-84, 93-98 (seeking  
27 indemnity and relief from fees otherwise owed to defendant Davidson as a result of the  
28 aforementioned breaches). Plaintiff also alleges that her former attorney Keith Davidson  
committed malpractice and a breach of fiduciary duty by failing to act in her best interests in  
connection with the negotiation of the contract’s liquidated damages provision and failure to  
return her client file to her. *Id.* ¶¶ 85-88, 89-92. *None of this has anything to do with her  
salacious allegations against Elliott Broidy.*

1 stopped making payments she contends remain due under the Settlement Agreement. Compl.  
2 ¶¶ 56-62. The salacious and personal details she includes throughout the complaint have no  
3 relationship whatsoever to this straightforward breach of contract claim. Plaintiff seeks to use this  
4 Court to make her malicious and irrelevant allegations public, so that she can continue to claim  
5 damages while vitiating the entire purpose of the Settlement Agreement. This Court should decline  
6 to further plaintiff's breaches of the Settlement Agreement, and should strike this extraneous and  
7 irrelevant material.

8 The Code of Civil Procedure provides this Court with full authority to “[s]trike out any  
9 irrelevant, false, or improper matter inserted in any pleading.” Cal. Code Civ. Proc. § 436(a). The  
10 tawdry personal details plaintiff alleges about Mr. Broidy have *absolutely no* relevance to the legal  
11 issue of whether Mr. Broidy breached the terms of the Settlement Agreement “by failing to make  
12 the required contractual payments.” Compl. ¶ 59. These extraneous facts, which serve only to  
13 embarrass and harass Mr. Broidy, should be stricken from the record. *Oiye*, 211 Cal. App. 4th at  
14 1070; *accord Warner v. Warner*, 135 Cal. App. 2d 302, 304 (1955) (“There can be no doubt of the  
15 power of a . . . court to strike from its file a brief or other document containing disrespectful,  
16 scandalous, or abusive language, directed against . . . litigants. . . . [I]t has been exercised from  
17 the earliest times[.]”)

18 California law is clear that, in this situation and as discussed further below, sealing is  
19 warranted, *but striking the extraneous material altogether is preferred*. In *Mercury Interactive*  
20 *Corp. v. Klein*, 158 Cal. App. 4th 60 (2007), for example, the Court of Appeal observed that it  
21 would have been appropriate for the trial court to simply strike certain extraneous material from  
22 the complaint rather than engaging in a lengthy dispute over whether such materials should be  
23 sealed:

24 We observe that in this instance, the Complaint's exhibits appear to  
25 have been entirely unnecessary to the pleading and that the sealing  
26 controversy could have been avoided by either a stipulation or an  
27 order amending the Complaint to strike the exhibits and to strike any  
28 quotes from, or references to them. The required contents of a  
complaint are ‘a statement of the facts constituting the cause of  
action, *in ordinary and concise language*, and a demand for  
judgment for the relief to which the pleader claims to be entitled.’  
It is obvious from a review of the 35-page Complaint and attached

1 48 pages of exhibits that the pleading contains far more than simply  
2 an allegation of the ultimate facts ‘in ordinary and concise language’  
3 setting for the cause of action.

4 *Id.* at 104 n. 35 (emphasis original, internal citations omitted.) Similarly, in *Overstock.Com, Inc.*  
5 *v. Goldman Sachs Group, Inc.*, 231 Cal. App. 4th 471, 506-510 (2014), the Court of Appeal  
6 advised that numerous extraneous materials attached to a motion “were **irrelevant and should**  
7 **have been struck and either removed from the record or sealed for good cause.**” (Emphasis  
8 original).

9 The Court should strike the requested materials here, and require plaintiff to refile her  
10 complaint *without* these irrelevant and improper allegations.

11 **C. The Requested Portions Should Alternatively Be Sealed.**

12 Alternatively, the Court should order the requested portions of the complaint sealed, either  
13 permanently or until after their irrelevance can be established through full briefing on the motions  
14 to strike and to compel arbitration.

15 Sealing is a rare remedy, but it is manifestly warranted here. Under California Rule of  
16 Court 2.550(d), a court may seal civil court records if it “expressly finds facts that establish: (1)  
17 there exists an overriding interest that overcomes the right of public access to the records; (2) the  
18 overriding interest supports sealing the record; (3) a substantial probability exists that the  
19 overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is  
20 narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.” Cal.  
21 R. Ct. 2.550(d); *Overstock.Com, Inc.*, 231 Cal. App. 4th at 487.

22 Each of these is true here. The information that Mr. Broidy seeks to seal relates to his  
23 intimate personal relationships, his sexual history, and his health. Mr. Broidy possesses a  
24 fundamental right of privacy in these matters under both the United States and California  
25 Constitutions, and that right of privacy is sufficient to overcome the right of access here. In  
26 addition, Mr. Broidy’s legal right to enforce the Settlement Agreement—a right that would be  
27 utterly vitiated by the public filing of the complaint here—likewise constitutes a compelling  
28 interest sufficient to overcome the right of access here, where the information is irrelevant to

1 plaintiff's claims and where the matter is subject to arbitration and should never have been brought  
2 in court. The requested restrictions are narrowly tailored, and no less restrictive means exist to  
3 protect these overriding interests.

4 **1. Mr. Broidy's Right Of Privacy Is A Compelling Interest Overriding**  
5 **Access.**

6 For motions to seal, the court must "engage in a balancing analysis, weighing the  
7 presumption of access against a variety of competing interests." *Overstock.Com, Inc.*, 231 Cal.  
8 App. 4th at 484; *see also Garcia v. Super. Ct.*, 42 Cal. 4th 63, 72 (2007) ("In ruling on a request  
9 to file under seal, a trial court must carefully weigh these competing concerns."). Although the  
10 First Amendment right of access to the courts is important, it is not an absolute right and can be  
11 overridden by other compelling interests. Such interests include the fundamental right of  
12 privacy—a right that includes, under both the United States and California Constitutions, "sexual  
13 privacy, both within and without the marital relationship," *Boler v. Super. Ct.*, 201 Cal. App. 3d  
14 467, 473 (1987), as well as medical privacy, *Oiye*, 211 Cal. App. 4th at 1070; *see also, e.g., Winfred*  
15 *D. v. Michelin N. Am., Inc.*, 165 Cal. App. 4th 1011, 1040 (2008) ("federal and state Constitutions  
16 protect the right of sexual privacy, including evidence of extramarital affairs, in civil litigation.").  
17 As a fundamental right, the right to privacy is often an "overriding interest" that warrants the  
18 sealing of a record. *Oiye*, 211 Cal. App. 4th at 1070. "The party seeking the disclosure of such  
19 information must shoulder the 'heavy burden' of showing that the evidence serves 'a compelling  
20 interest in facilitating the ascertainment of truth in connection with legal proceedings.'" *Winfred*,  
21 165 Cal. App. 4th at 1040 (citation omitted).

22 Here, Mr. Broidy's right to privacy is undoubtedly at stake, and he will be irreparably  
23 harmed if this information is not held under seal. The complaint contains numerous highly  
24 personal details about Mr. Broidy's purported private sex acts, health, and relationships. As there  
25 is already considerable media attention surrounding this case, the release of these facts will be  
26 widely reported on all major news channels throughout the nation. The publication of these  
27 salacious details will cause considerable damage to Mr. Broidy's reputation, work, and his family.  
28 It is precisely cases such as this one, when highly sensitive and embarrassing personal information

1 is filed with the court, where sealing is particularly appropriate. *Oiye*, 211 Cal. App. 4th at 1070  
2 (explaining it is “appropriate to seal certain records when those particular records contain highly  
3 sensitive and potentially embarrassing personal information about individuals”) (citation omitted).

4 The Media Interveners cannot meet their “heavy burden” to show that disclosure serves a  
5 “compelling interest in facilitating the ascertainment of truth” here. The First Amendment right  
6 of access is designed to (i) “promot[e] public confidence in governmental proceedings, (ii) provide  
7 a means by which citizens scrutinize and check the use and abuse of judicial power, and (iii)  
8 enhance the truth-finding function of the proceeding.” *NBC Subsidiary (KNBC-TV), Inc. v. Super.*  
9 *Ct.*, 20 Cal. 4th 1178, 1219 (1999). As detailed above, the allegations relating to Mr. Broidy’s  
10 intimate relationships have no bearing on plaintiff’s actual cause of action against him. Whether  
11 Mr. Broidy “refused to wear a condom,” likes to “skull fuck,” or engages in the “rhythm and  
12 withdrawal method to prevent pregnancy” has *no* import *whatsoever* on whether plaintiff’s claims  
13 in this case have merit: *i.e.*, whether Mr. Broidy breached the Settlement Agreement or whether  
14 Mr. Davidson or Mr. Avenatti improperly disclosed it. *See* Compl. ¶¶ 3, 20, 56-98. The “argument  
15 that the public has a generalized right to be informed [] cannot serve as a substitute for a showing  
16 of *specific utility of public access to the information.*” *Mercury Interactive Corp.*, 158 Cal. App.  
17 4th at 105 (emphasis added). Here there can be no such showing. Widespread public knowledge  
18 of deeply personal details about Mr. Broidy cannot possibly promote any of the stated goals of  
19 public access, since these facts are unrelated to any of the claims at issue.

20 The public right of access “does not extend to irrelevant material submitted to the court,”  
21 and allowing the press access to “impertinent, redundant or scandalous material that is without  
22 legal effect . . . serves a negative rather than a positive role.” *Overstock.Com, Inc.*, 231 Cal. App.  
23 4th at 500. To the contrary, the “public’s general right of access to court records” must “give way”  
24 to the right of privacy, “particularly when the information appears so tangentially related to the  
25 litigation.” *Oiye*, 211 Cal. App. 4th at 1070. That has long been the law in California, and this  
26 case provides no legitimate basis to deviate from that settled law. Mr. Broidy’s right to privacy is  
27 an overriding interest sufficient to overcome any limited public interest in the material sought to  
28 be sealed, and sealing should be granted.

1                   **2. The Settlement Agreement Also Constitutes An Overriding Interest.**

2                   In addition to the right of privacy, the California courts have long recognized that a  
3 contractual obligation not to disclose the terms of a settlement agreement—when coupled with  
4 harm from disclosure—can itself constitute an overriding interest supporting the sealing of certain  
5 records. See *Universal City Studios, Inc. v. Super. Ct.*, 110 Cal. App. 4th 1273, 1284 (2003)  
6 (observing this rule and citing cases). In *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20  
7 Cal. 4th 1178, 1222 n. 46 (1999), for example, the Supreme Court cited *Publicker Industries, Inc.*  
8 *v. Cohen*, 733 F.2d 1059, 1073 (3d Cir. 1984) for the proposition that “enforcement of binding  
9 contractual obligations not to disclose” may constitute an overriding interest. In particular, the  
10 court in *Publicker* explained that where “unbridled disclosure of the nature of the controversy  
11 would deprive the litigant of his right to enforce a legal obligation,” sealing may be warranted.  
12 733 F.2d at 1073-74. Such is the case here, where the claims made by plaintiff describe “highly  
13 sensitive and potentially embarrassing personal information” about Mr. Broidy. *People v.*  
14 *Jackson*, 128 Cal. App. 4th 1009, 1024 (2005) (holding it is appropriate to seal certain records  
15 containing such information); accord *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112  
16 F.3d 869, 872 (7th Cir. 1997) (appropriate to seal “material that would be highly embarrassing to  
17 the average person”).

18                   Here, the *entire purpose* of the Settlement Agreement was to protect Mr. Broidy’s private  
19 information regarding a wholly personal matter from public view, and provide for disputes to be  
20 heard in a private setting. Allowing *any* of plaintiff’s allegations to be made public would harm  
21 Mr. Broidy and his family not only substantively, but procedurally. If the complaint is made  
22 public, Mr. Broidy will be forced to choose between publicly defending himself against plaintiff’s  
23 malicious and false allegations, or exercising his contractual right to privately arbitrate his  
24 dispute—potentially thereby foregoing any opportunity to defend himself from public attack.  
25 “[U]nbridled disclosure” here would thus deprive Mr. Broidy of his right to enforce the  
26 confidentiality provisions of the Settlement Agreement, and deprive him of the benefit of its  
27 arbitration provisions. *This is the very choice Mr. Broidy bargained to avoid*, and constitutes a  
28



1 compelling interest sufficient to overcome access here to plaintiff's irrelevant and legally  
2 meaningless attacks.

3 **3. The Proposed Sealing Is Narrowly Tailored To Achieve These**  
4 **Compelling Interests.**

5 The sealing proposed by Mr. Broidy is narrowly tailored, and—short of simply striking the  
6 allegations—it is the least restrictive means of achieving the compelling interests of protecting Mr.  
7 Broidy's rights of privacy and to enforce the Settlement Agreement. Mr. Broidy seeks to seal only  
8 a small portion of the complaint—those sections relating *directly* to his intimate relationship with  
9 plaintiff and his medical and sexual privacy. *See* Putnam Decl. Ex. A (proposing those redactions).  
10 Mr. Broidy does not seek to seal any of plaintiff's actual causes of action, or otherwise impair her  
11 from prosecuting her case (except, of course, he separately seeks to have her claims against him  
12 heard in the bargained-for private forum). The requested sealing is thus narrowly tailored, and is  
13 the least restrictive means to protect Mr. Broidy's compelling privacy interests. The Court should  
14 seal the requested portions of the complaint here.

15 **4. The Court Should Alternatively Maintain The Requested Portions**  
16 **Under Provisional Seal.**

17 The compelling interest that Mr. Broidy has in his personal, sexual, and medical privacy is  
18 overwhelming and supports permanently sealing the requested portions of the complaint. Mr.  
19 Broidy requests, however, that if the Court is not convinced that the requirements are met for  
20 *permanent* sealing, it provisionally seal just those portions of the complaint challenged by this  
21 motion until both Mr. Broidy's motion to strike and motion to compel arbitration can be heard. In  
22 this way, the majority of the complaint is unsealed immediately, but Mr. Broidy's constitutional  
23 right of privacy remains protected while the Court considers whether this case belongs in the public  
24 courthouse at all.

25 As detailed above, the public right of access attaches *only* to those materials that are  
26 necessary for the adjudication of a case. Thus, California courts have regularly held that there is  
27 no right of access to irrelevant and extraneous materials, *see Overstock.Com, Inc.*, 231 Cal. App.  
28 4th at 500, or to discovery materials not submitted as the basis for adjudication, *Mercury*  
*Interactive Corp.*, 158 Cal. App. 4th at 67-8. Similarly, there is no public right of access to private,

1 confidential arbitration. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344-45 (2011)  
2 (explaining that one “point of affording parties discretion in designing arbitration processes is to  
3 allow for . . . proceedings [to] be kept confidential”); *Sanchez v. Carmax Auto Superstores Cal.,*  
4 *LLC*, 224 Cal. App. 4th 398, 408 (2014) (confidentiality provisions in arbitration agreements are  
5 enforceable under California law).

6 Because the Court has barred any motions other than sealing at this time, Mr. Broidy  
7 anticipates that neither his alternative request to strike the pertinent allegations of the complaint,  
8 nor his motion to compel arbitration, will be fully filed by the time of the hearing on this motion  
9 to seal. In the event either the motion to strike or the motion to compel arbitration is granted, the  
10 case for sealing becomes even stronger, because the Court will have then expressly determined  
11 that the allegations will have no effect on the legal disposition of this case whatsoever.  
12 Accordingly, in the event the Court is inclined to do anything other than order the requested  
13 materials permanently sealed, Mr. Broidy requests that the Court, at minimum, provide for  
14 provisional sealing of the requested portions only pending the resolution of these related motions.  
15 To do otherwise—particularly when the Court has forbidden Mr. Broidy from filing these other  
16 motions—would seriously jeopardize Mr. Broidy’s right to due process.

17 **V. CONCLUSION.**

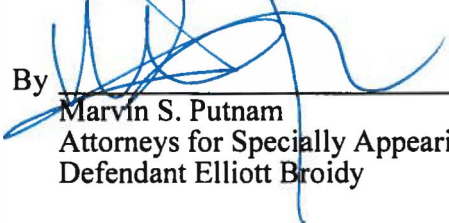
18 For the foregoing reasons, Mr. Broidy respectfully requests that the Court grant its motion  
19 to seal, or in the alternative to strike, the portions of the complaint identified above.

20  
21 Dated: July 23, 2018

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