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9

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

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,
18 inclusive,

19 Defendants.
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Case No. BC712913

Hon. Samantha P. Jessner, Dept. 31

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

**SPECIALLY APPEARING DEFENDANT
ELLIOT BROIDY'S REPLY
MEMORANDUM IN SUPPORT OF HIS
MOTION TO SEAL OR
ALTERNATIVELY STRIKE SENSITIVE
AND IMMATERIAL PORTIONS OF THE
COMPLAINT**

Hearing Date: TBD (Originally noticed for
August 10, 2018)

Time: 9:00 a.m.

Dept.: 31

HEARING ORDERED BY THE COURT

Action Filed: July 6, 2018

Trial Date: None Set

Dept: 31

1 The majority of the complaint in this case is now public. It has been reported on by the
2 media,¹ posted by the plaintiff on social media,² and is available in the court's files.

3 This motion addresses the small portions of the complaint that remain redacted—portions
4 that violate Mr. Broidy's Constitutional right of privacy *and* are wholly irrelevant to plaintiff's
5 breach of contract case. Mr. Broidy requests that these provisions be stricken, or, in the
6 alternative, sealed at least until his motion to compel arbitration (and have this matter brought in
7 the contractually-agreed forum) can be heard.³

8 ***Neither the news media nor the plaintiff oppose Mr. Broidy's request.***⁴ Instead, the sole
9 opposition comes from defendant Michael Avenatti. Mr. Avenatti is a lawyer whose intense
10 media vendetta against non-party Michael Cohen, the attorney who represented Mr. Broidy in
11 connection with the Settlement Agreement, has already raised concerns by two federal judges in
12 matters unrelated to this one. Mr. Avenatti—the person who initially published details of the
13 Settlement Agreement between Mr. Broidy and Ms. Bechard on social media, *see* Compl. ¶ 38—
14 seeks to make Mr. Broidy's personal information public for his own purposes, unrelated to the
15 merits of this litigation. Yet even Mr. Avenatti does not dispute Mr. Broidy's claim that the
16 allegations describe, in excruciating detail, his intimate personal, medical, and sexual affairs.
17 Instead, he makes unpersuasive technical objections, none of which is meritorious, and none of

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20 ¹ *E.g.*, Erik Larson, "Judge Unseals Ex-Playboy Model's Lawsuit Against Elliott Broidy,"
21 *Bloomberg.com*, July 31, 2018, *available at* <https://www.bloomberg.com/news/articles/2018-07-31/ex-playmate-s-lawsuit-against-elliott-broidy-unsealed-by-judge>.

22 ² <https://twitter.com/PeterStris/status/1024408287419092992>.

23 ³ As explained in Mr. Broidy's opening brief, his position is that the materials should be stricken,
24 and sealed only until they are stricken altogether. However, the procedural posture of this
25 case—commenced by an *ex parte* application filed by plaintiff to seal the complaint she should
26 never have filed in the public forum at all and an *ex parte* application by Mr. Avenatti to unseal
the same—did not permit him to file a motion to strike in the ordinary course and pursuant to the
notice procedure provided under the Code of Civil Procedure. To the extent the Court has any
concerns regarding the notice and timing of the motion to strike, Mr. Broidy is (as explained
therein) willing to re-file it as a separate motion with the appropriate meet-and-confer and
statutory notice. *See* Mot. at 1:13-20.

27 ⁴ Pursuant to the Court's (Judge Hiroshige's) July 18, 2018 order, all oppositions to the motion to
28 seal were to be filed and served by July 30, 2018 at 12 p.m. Mr. Avenatti's opposition was the
sole opposition so filed.

1 which is sufficient to overcome Mr. Broidy’s compelling interest in privacy. Mr. Broidy’s
2 motion should be granted.

3 **I. MR. AVENATTI SEEKS TO FURTHER HIS OWN AGENDA.**

4 The driving force behind the opposition is not any genuine public interest, but Mr.
5 Avenatti’s continued attempts to establish his own political celebrity and pursue the interests of
6 himself and his clients in other, unrelated matters. Mr. Avenatti—who has shown no hesitation
7 in advancing Constitutional privacy interests over First Amendment concerns when seeking to
8 seal the courtroom on the grounds it would “embarrass” him⁵—has made it his personal mission
9 to destroy Michael Cohen, the attorney who negotiated the Settlement Agreement, in the media.
10 He has given hundreds of interviews, launched a daily and sometimes hourly Twitter war, and
11 engaged in every possible means—on television, on the internet, and in print—to destroy Mr.
12 Cohen’s reputation.⁶ This questionable conduct has already led two federal judges to articulate
13 serious misgivings regarding Mr. Avenatti’s efforts to transform their courtrooms into platforms
14 for his own self-aggrandizement. For example, in the criminal proceeding against Mr. Cohen in
15 the Southern District of New York, the court refused to grant Mr. Avenatti’s request to appear
16 *pro hac vice* because his “publicity tour on TV and elsewhere” and clear intent to “use this court
17 as a platform” threatened to “deprive [the defendant] of a fair trial by tainting a jury pool.” *See*
18 Bina Decl., Ex. A.⁷ Echoing those sentiments, Judge Otero (in the Central District of California)
19 found there to be a “valid concern” that Mr. Avenatti’s continuing sensationalism and pursuit of
20 the media spotlight will prejudice Mr. Cohen’s rights in that New York proceeding. *Id.* Ex. C.

21 _____
22 ⁵ *See* Declaration of Jessica Stebbins Bina, filed concurrently herewith (“Bina Decl.”), Ex. D
23 (Michael Finnegan, “Michael Avenatti gets judge to bar media from his testimony on Newport
24 Beach law firm’s bankruptcy,” *The Los Angeles Times*, July 25, 2018, *online at*
25 <http://www.latimes.com/politics/la-na-pol-avenatti-bankruptcy-20180725-story.html>).

24 ⁶ *See, e.g.*, Matthew Shaer, “The Fast and Furious Michael Avenatti,” *The New York Times*
25 *Magazine*, July 10, 2018, *online at* [https://www.nytimes.com/2018/07/10/magazine/michael-](https://www.nytimes.com/2018/07/10/magazine/michael-avenatti-stormy-daniels-donald-trump-media.html)
26 [avenatti-stormy-daniels-donald-trump-media.html](https://www.nytimes.com/2018/07/10/magazine/michael-avenatti-stormy-daniels-donald-trump-media.html); Matthew Yglesias, Michael Avenatti,
27 “Stormy Daniels’s lawyer and potential presidential candidate, explained,” *Vox.com*, July 6,
28 2018, [https://www.vox.com/policy-and-politics/2018/7/6/17536528/michael-avenatti-stormy-](https://www.vox.com/policy-and-politics/2018/7/6/17536528/michael-avenatti-stormy-daniels-lawyer-president)
[daniels-lawyer-president](https://www.vox.com/policy-and-politics/2018/7/6/17536528/michael-avenatti-stormy-daniels-lawyer-president).

27 ⁷ *See also id.* at Ex. A (“I have practiced law for 37 years, and I have never risen to oppose the
28 *pro hac vice* motion of an attorney to practice law . . . [but he committed] a premeditated drive-
by shooting of my client’s right.”).

Those courts’ misgivings bear close consideration here—where, again, Mr. Avenatti seeks to wage (an irrelevant) media war against Mr. Cohen. *See, e.g.,* Opp. at 3:10-18. The disclosure of highly sensitive allegations regarding Mr. Broidy’s private life do not further any conceivable public interest, but only Mr. Avenatti’s “craving to create a ‘carnival atmosphere’” in any case tangentially related to Mr. Cohen. *Id.* at Ex. B. Mr. Avenatti’s efforts to transform this courtroom into yet another platform for his media tour must be closely policed. This is especially the case here, where—as detailed further below—Mr. Avenatti does not actually dispute, nor could he, that Mr. Broidy’s Constitutional right to privacy is at stake.

II. MR. BROIDY’S PRIVACY RIGHTS ARE UNDISPUTED AND COMPELLING.

California law is clear: the kinds of allegations at issue in this motion are precisely the kinds of allegations to which “the public’s general right of access to court records recognized in rule 2.550 *must give way.*” *Oiye v. Fox*, 211 Cal. App. 4th 1036, 1070 (2012) (emphasis added). These compelling privacy interests—to sexual privacy, to medical privacy, and to privacy in one’s intimate affairs—are longstanding exceptions to the public’s right to know; indeed, it is difficult to imagine information that would *less* worthy of public disclosure than the allegations that Mr. Broidy seeks to strike or seal. *See, e.g., Boler v. Superior Court*, 201 Cal. App. 3d 467, 473 (1987) (“The constitutional right of sexual privacy, both within and without the marital relationship, is a fundamental liberty.”); *see also People v. Valdivia*, 16 Cal. App. 5th 1130, 1170 (2017) (rejecting disclosure of “intimate communications” between sexual partners); *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 41 (1994) (“confidential information about bodily condition” implicates right to privacy); *Board of Med. Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 678 (1979) (rejecting disclosure of “a person’s medical profile”).

Mr. Avenatti does not dispute that the material Mr. Broidy seeks to strike or seal falls squarely within the protections provided by these and other authorities. Plaintiff seeks to invade Mr. Broidy’s medical privacy—asserting, for example, that he “had prostate cancer,” and “communicable genital herpes.” Compl. ¶ 3, 20. She seeks to invade his sexual privacy—*e.g.*, she claims he enjoyed “masturbating,” “wanted to skull fuck,” “refused to wear a condom,” “used the rhythm and withdrawal methods to avoid pregnancy,” and was willing to die rather

1 than give up sex. *See id.* And she seeks to invade the privacy of his intimate affairs—*e.g.*, she
2 claims he sent “voluminous text messages [and] photographs” to Ms. Bechard, called her
3 “mommy,” referred to his wife “as a bitch,” and engaged in a number of other intimate and
4 “deeply personal” communications and disclosures never intended to be discussed with others,
5 let alone published to global news networks. *See* Compl. ¶¶ 2, 19-22, 28.

6 None of these salacious, intrusive allegations has *anything* to do with plaintiff’s case,
7 against Mr. Broidy or any other defendant. Instead, as Mr. Avenatti concedes, the case involves
8 whether various provisions of the Settlement Agreement were breached by the plaintiff or the
9 defendants. *See* Compl. ¶¶ 56-62, 63-68, 69-72, 75-84, 93-98. The intimate details of Mr.
10 Broidy’s medical conditions and purported sex acts are unnecessary in every respect to the
11 resolution of this case. *See, e.g., Oiyee*, 211 Cal. App. 4th at 1070 (protection from disclosure is
12 “particularly” appropriate where the information is only “tangentially related to the litigation”).

13 **III. THE OPPOSITION DOES NOT RAISE ANY COUNTERVAILING INTERESTS**
14 **SUFFICIENT TO OVERCOME MR. BROIDY’S INTEREST IN PRIVACY.**

15 Because Mr. Avenatti does not and cannot dispute the grave damage to Mr. Broidy’s
16 privacy interests that would result from public disclosure, his opposition relies on superficial
17 generalizations about what the First Amendment and “the public interest” supposedly require.⁸
18 But absent from those generalizations is any effort to *balance* the public’s right to know against
19 Mr. Broidy’s right to privacy—and thus Mr. Avenatti cannot (and does not even attempt to) carry
20 his “‘heavy burden’ of showing that the evidence serves ‘a *compelling interest* in ‘facilitating the
21 ascertainment of truth in connection with legal proceedings.’” *Winfred D. v. Michelin N. Am.,*
22 *Inc.*, 165 Cal. App. 4th 1011, 1040 (2008) (emphasis in original);⁹ *see also id.* (the “federal and
23 state Constitutions protect the right of sexual privacy, including evidence of extramarital affairs,
24 in civil litigation”); *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.*, 20 Cal. 4th 1178, 1201 (1999)
25 (the “right of access must be balanced ‘by considering the information sought and the opposing
26

27 ⁸ Except, of course, in his own cases, *see supra* n. 5.

28 ⁹ Unless otherwise noted, all internal citations and quotations have been omitted and all emphasis
has been added throughout.

1 interests invaded”). The right to privacy is a “compelling interest” protected by the Constitution,
2 too—on equal if not even more established footing than the public’s right to know. *See, e.g.,*
3 *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965) (identifying “a right of privacy older than
4 the Bill of Rights” established by “several fundamental constitutional guarantees”); *Lawrence v.*
5 *Texas*, 539 U.S. 558, 578 (2003)(“[I]ntimacies of [a] physical relationship . . . are a form of
6 ‘liberty’ protected by the Due Process Clause” which “extends to intimate choices by unmarried
7 as well as married persons.”)

8 Even taken at face value, the “public interests” to which Mr. Avenatti now adverts are not
9 material interests in any sense, but platitudes that ignore the very *purposes to be served* by the
10 public’s right to access. As the Supreme Court explained in *NBC Subsidiary*—a case on which
11 Mr. Avenatti himself relies—the purposes of “open trials” are (i) “promoting public confidence”
12 in the judicial system, (ii) providing a means “by which citizens scrutinize and ‘check’ the use
13 and possible abuse of judicial power,” and (iii) enhancing “the truth-finding function of the
14 proceeding.” 20 Cal. 4th at 1201-02. Instead of addressing any of these interests, Mr. Avenatti
15 merely invokes a “general right of access in ordinary civil cases.” Opp. at 2:20. But Mr.
16 Avenatti’s “argument that the public has a *generalized* right to be informed [] *cannot serve as a*
17 *substitute* for a showing of *specific utility of public access to the information.*” *Mercury*
18 *Interactive Corp. v. Klein*, 158 Cal. App. 4th 60, 105 (2007). That is the *actual* law.

19 Mr. Avenatti makes no attempt to meet this standard, nor could he. There is simply no
20 “public utility” in disseminating the “sexual and deeply personal,” Compl. ¶ 20, details about
21 Mr. Broidy’s relationship with Ms. Bechard that Mr. Broidy seeks to strike or seal. *See*
22 *Overstock.Com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 500 (2014) (holding
23 that public right of access “does not extend to irrelevant material,” and that “impertinent,
24 redundant or scandalous material that is without legal effect . . . serves a negative rather than a
25 positive role”); *see also United States v. Mitchell*, No. 2:08CR125, 2010 WL 890078, at *6 (D.
26 Utah Mar. 8, 2010) (rejecting media’s requests for sealed records because disclosure was less
27 likely “to add appreciably to the public understanding of the issues than it is to merely appeal to
28 more prurient interest in the case”).

1 In the absence of any public benefit to unsealing the identified allegations, Mr. Avenatti
2 contends that the media attention these allegations have received (most of which were initiated
3 and/or fomented by Mr. Avenatti himself) indicates an “immense public interest” that by itself
4 warrants total disclosure of alleged intimate details in Mr. Broidy’s personal life. *See Opp.* at 3-
5 5. But the rumor and speculation Mr. Avenatti refers to, *see Avenatti Decl. Exs. 1-9*, is wholly
6 insufficient, in itself, to justify publishing the intimate details of Mr. Broidy’s bedroom.¹⁰
7 “[W]ithout proper public purpose or corresponding assurance of public benefit,” the “public
8 dissemination” of information that “impinge[s] upon . . . precious privacy rights” does not “serve
9 the public interest” and only enables “commercial exploitation” that “cater[s] to prurient
10 interests.” *Application of KSTP Television*, 504 F. Supp. 360, 362 (D. Minn. 1980) (denying
11 news station’s requests to unseal records); *see also United States v. Dimora*, 862 F. Supp. 2d
12 697, 709 (N.D. Ohio 2012) (refusing to unseal court records that would “appea[l] only to the
13 curiosity and prurient interest of some members of the public”). Unsealing lurid allegations
14 about Mr. Broidy’s prostate cancer, sexual tastes, and Ms. Bechard’s unintended pregnancy,
15 among other things, would only “contribute to the already sensational and prurient atmosphere
16 surrounding the case,” and “serve neither the First Amendment nor the interests of justice.”
17 *Flagg ex rel. Bond v. City of Detroit*, 268 F.R.D. 279, 312 (E.D. Mich. 2010).

18 Mr. Avenatti’s failure to present a single countervailing interest sufficient to overcome
19 Mr. Broidy’s undisputed interest in keeping his intimate personal matters private is dispositive.
20 The allegations should be struck—or at a minimum, permanently sealed—on this basis alone.

21 **IV. MR. AVENATTI’S TECHNICAL ARGUMENTS ARE MERITLESS.**

22 Lacking a response on the merits, Mr. Avenatti devotes the majority of his opposition to
23 ostensible technical objections to sealing. None holds water.

25 ¹⁰ Indeed, Mr. Avenatti mischaracterizes this case in almost every respect in an attempt to find
26 some “public interest” in disclosure. This is not a #MeToo case, as Mr. Avenatti bizarrely
27 implies. *See Opp.* at 5:5-11. The relationship alleged to have culminated in the Settlement
28 Agreement was consensual. Compl. ¶¶ 2, 20. Nor—contrary to Mr. Avenatti’s wild
speculations—does this case somehow involve President Donald Trump. *See Opp.* at 3-5.
Plaintiff’s *verified* complaint states, under oath, that her relationship was with Mr. Broidy, and
on that point Mr. Broidy does not dispute her allegation.

1 **A. Mr. Broidy Was Not Required To Declare He Would Be Harmed By**
2 **Disclosure Of His Intimate Affairs.**

3 First, Mr. Avenatti contends that the “Court *must* deny” the motion because Mr. Broidy
4 did not attach a declaration stating he would be injured by public disclosure of his most intimate
5 affairs and medical history. Opp. at 5, 7 (emphasis in original). This is nonsense, and contrary
6 to California law. As a threshold matter, Rule 2.551(b)(1), upon which Mr. Avenatti relies,
7 requires only a “a declaration containing facts sufficient to justify the sealing.” Mr. Broidy
8 supplied exactly that. See Declaration of Marvin Putnam in Support of Broidy’s Motion to Seal
9 or Strike, filed July 23, 2018.

10 More fundamentally, Mr. Broidy is “not required to state the obvious in a declaration”
11 and explain “that [h]e would be personally embarrassed to have” allegations that he has
12 communicable genital herpes, masturbates, and enjoys skull fucking “copied into court
13 records.” *Oiye*, 211 Cal. App. 4th at 1070.¹¹ The evidence, of course, *is the allegations*
14 *themselves*. The California Civil Code and common law have long considered certain
15 allegations—including those levied in this case—so pernicious that their utterance alone is
16 injurious *per se*. E.g., Cal. Civ. Code § 46 (enumerating utterances—including those alleging
17 “infectious, contagious, or loathsome disease[s],” as well as those that “impute . . . a want of
18 chastity”—as among the kinds of accusations “which, by natural consequence, caus[e] actual
19 damage”); see also Restatement (Second) of Torts § 572 (“One who publishes a slander that
20 imputes to another an existing venereal disease or other loathsome and communicable disease is
21 subject to liability without proof of special harm.”). That is the case here, where Ms. Bechard
22 has unfortunately elected to hijack the judicial process in an attempt to embarrass and hurt Mr.
23 Broidy with the apparent hope of extracting a monetary award. Regardless of what Mr. Avenatti

24
25 _____
26 ¹¹ Mr. Avenatti does not dispute that the vast majority of the materials Mr. Broidy seeks to seal
27 relate *directly* to his sexual and medical privacy, instead cherry-picking portions of sentences to
28 argue that those specific portions are not subject to sealing. Opp. at 8. Counsel for Mr. Broidy
attempted to be judicious and to restrict sealing to the minimum required; to the extent the Court
believes counsel painted with too broad a brush, the remedy is to reduce the amount sealed or
struck, not void Mr. Broidy’s privacy rights altogether.

1 seeks to gain by joining this gambit, his opposition merely confirms that Mr. Broidy has a
2 Constitutional right to restrict disclosure of the identified allegations.

3 **B. Mr. Broidy Was Not Required To Attach The Settlement Agreement.**

4 Mr. Avenatti also claims that the Court cannot rule on whether the Settlement Agreement
5 provides a basis to seal because, per Mr. Avenatti, without a copy of the agreement, there is no
6 way to know “whether a confidentiality clause actually exists.” Opp. at 5-6. This, too, is
7 nonsense. The existence and effect of the confidentiality clause is *undisputed* and *repeatedly*
8 *alleged* in the verified complaint. *See, e.g.*, Compl. ¶¶ 8, 9, 26, 42, 60, 64, 97. At bottom, this
9 contention is nothing more than a ploy to have Mr. Broidy hand Mr. Avenatti a copy of his
10 confidential agreement with Ms. Bechard. Whatever interest Mr. Avenatti has in obtaining that
11 information for his personal use or other representations, it is not a basis to deny that the
12 Settlement Agreement’s confidentiality requirements—which Ms. Bechard *concedes* prevent her
13 from discussing her affair with Mr. Broidy in any form, *see* Compl. ¶ 25—provide a further basis
14 for sealing in this case. *See Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1074 (3d Cir. 1984);
15 *see also NBC Subsidiary*, 20 Cal. 4th at 1222 n. 46 (quoting *id.*).

16 **C. Mr. Broidy Has Not Waived His Right To Privacy.**

17 Finally, Mr. Avenatti asserts that Mr. Broidy has somehow waived his Constitutional
18 right to privacy by publicly admitting his affair with Ms. Bechard after Mr. Avenatti, Mr.
19 Davidson, and Ms. Bechard made that affair public. *See* Opp. at 8-9. Essentially, Mr. Avenatti
20 asserts that Ms. Bechard and her agents can breach the Settlement Agreement with impunity, but
21 that any responsive statement by Mr. Broidy, even a minimal one designed to respond directly to
22 public disclosure of the Settlement Agreement’s terms by others, waives his Constitutional right
23 to privacy. This argument is ridiculous on its face.

24 As the complaint acknowledges, it was *plaintiff’s attorney* who made the Settlement
25 Agreement public, by disclosing it to Mr. Avenatti who then published its details on Twitter.
26 Compl. ¶¶ 35-40. But even were it otherwise, it is black-letter law that one party’s breach may
27 excuse another’s performance, in whole or in part, without rendering the entire agreement a
28 nullity. Moreover, *regardless* of the Settlement Agreement, Mr. Broidy has a Constitutional

1 right to privacy in his romantic, sexual, and medical affairs. *Boler*, 201 Cal. App. 3d at 473,
2 *Oiye*, 211 Cal. App. 4th at 1070; *Winfred*, 165 Cal. App. 4th at 1040.

3 **V. STRIKING THE IDENTIFIED ALLEGATIONS REMAINS THE MOST**
4 **APPROPRIATE REMEDY.**

5 As Mr. Broidy explained in his opening brief, the most sensible course of action is to
6 strike the immaterial and sensational allegations that Mr. Broidy identifies. *See* Mot. at 10-12.
7 The Court has broad authority to “prevent court files from becoming the conduits of disclosure
8 of sensitive private information” by striking “scandalous and abusive statements in pleadings,”
9 *Oiye*, 211 Cal. App. 4th at 1069, 1070, and case law evinces a clear preference for this approach
10 rather than sealing. *See, e.g., Mercury Interactive Corp.*, 158 Cal. App. 4th at 104 n. 35
11 (lamenting that a “sealing controversy could have been avoided by . . . an order amending the
12 Complaint to strike” the offending material).

13 Mr. Avenatti’s purported primary objection to this remedy stems from the unusual
14 procedural posture that gave rise to the motion. *See* Opp. at 11-15. Because of the limited
15 amount of time (4 days) that Mr. Broidy had to prepare his moving papers in response to the
16 Court’s order shortening time, as well as Judge Hiroshige’s order barring motion practice until
17 the sealing issue had been resolved, Mr. Broidy’s counsel did not have time to meet and confer
18 with plaintiff to discuss appropriate revisions to the complaint prior to filing this combined
19 motion. *Cf.* Cal. Code Civ. Proc. § 435.5(a)(2). Mr. Broidy would be happy to have counsel
20 engage in such discussions.¹² But the Court need not wait for the parties to strike what Mr.
21 Avenatti admits are “only . . . a few” identified allegations, *see* Opp. at 11, none of which can be
22 defensibly tied to any material issue in any of Ms. Bechard’s claims. In fact, Ms. Bechard *does*
23 *not even oppose* this motion. *Cf.* Opp. at 12-14 (purporting, without invitation, to explain Ms.
24 Bechard’s arguments to her).¹³

25 _____
26 ¹² As of August 2, 2018, Mr. Broidy still has been unable to reserve a hearing date or otherwise
file a motion, including his motion to compel arbitration. Bina Decl. ¶ 2.

27 ¹³ To the extent some allegations that Mr. Broidy targets for removal might possibly suggest
28 facts relevant to some defense Mr. Avenatti or Mr. Davidson might possibly make, *see* Opp. at
11, 14-15, Messrs. Avenatti and Davidson are free to assert those defenses in their answers and

1 Mr. Avenatti does not even attempt to argue that the vast majority of the challenged
2 portions are relevant to any claim in the case—nor could he. Instead, he attempts to take a small
3 number of the challenged portions, particularly those allegations contained in paragraphs 27-28
4 and 31, out of context and argue that they could conceivably relate to plaintiff’s claims that
5 Davidson failed to represent her competently in connection with the Settlement Agreement.
6 Opp. at 11-12. This is speculation on Mr. Avenatti’s part, and fails to justify the public
7 disclosure of the private information alleged in those paragraphs, namely, that Mr. Broidy
8 purportedly sought to force plaintiff to have an abortion and that she did so purportedly in
9 response to his demands. Similarly, Mr. Avenatti bizarrely asserts that plaintiff may have
10 intended to plead a “defense of duress” in Paragraphs 22 and 31. Opp. at 13. This claim makes
11 no sense: plaintiff, as a *plaintiff*, does not need to plead any defenses to the contract on which
12 she sues, nor does she actually allege that her consent to the Settlement Agreement was invalid
13 or procured by duress. To the contrary, she seeks to *enforce* the Settlement Agreement.

14 None of the challenged allegations relates to plaintiff’s actual claims; namely, that Mr.
15 Broidy owes her money and that the other defendants breached duties to her by negotiating a bad
16 liquidated damages clause and by publicly disclosing her affair with Mr. Broidy. They are
17 irrelevant, immaterial, and inappropriate—and they should be stricken.

18 Dated: August 3, 2018

LATHAM & WATKINS LLP

Marvin S. Putnam

Jessica Stebbins Bina

By 

Jessica Stebbins Bina

Attorneys for Specially Appearing
Defendant Elliott Broidy

27 seek the supporting admissions and facts in discovery. *See* Cal. Code Civ. Proc. § 431.30(g) (to
28 plead a defense, a party need only state them “separately” and “refer to the causes of action to
which they are intended to answer”).

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:

**SPECIALLY APPEARING DEFENDANT ELLIOT BROIDY'S REPLY
MEMORANDUM IN SUPPORT OF HIS MOTION TO SEAL OR ALTERNATIVELY
STRIKE SENSITIVE AND IMMATERIAL PORTIONS OF THE COMPLAINT- FILED
CONDITIONALLY UNDER SEAL PURSUANT TO COURT ORDER DATED JULY 6,
2018 PROVISIONALLY SEALING COMPLAINT AND ALL REFERENCES
THERE TO**

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

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The above-described document was transmitted via electronic 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