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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHERA BECHARD,

Plaintiff,

v.

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

Defendants.

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 THERETO

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

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

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

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

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[1] *E.g.*, Erik Larson, "Judge Unseals Ex-Playboy Model's Lawsuit Against Elliott Broidy," *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.

[2] https://twitter.com/PeterStris/status/1024408287419092992.

[3] As explained in Mr. Broidy's opening brief, his position is that the materials should be stricken, and sealed only until they are stricken altogether. However, the procedural posture of this case—commenced by an *ex parte* application filed by plaintiff to seal the complaint she should 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.

[4] Pursuant to the Court's (Judge Hiroshige's) July 18, 2018 order, all oppositions to the motion to 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.

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

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

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

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

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

[7] *See also id.* at Ex. A ("I have practiced law for 37 years, and I have never risen to oppose the 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

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

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

III. THE OPPOSITION DOES NOT RAISE ANY COUNTERVAILING INTERESTS SUFFICIENT TO OVERCOME MR. BROIDY'S INTEREST IN PRIVACY.

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

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

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

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

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

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

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

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

IV. MR. AVENATTI'S TECHNICAL ARGUMENTS ARE MERITLESS.

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

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[10] Indeed, Mr. Avenatti mischaracterizes this case in almost every respect in an attempt to find some "public interest" in disclosure. This is not a #MeToo case, as Mr. Avenatti bizarrely implies. *See* Opp. at 5:5-11. The relationship alleged to have culminated in the Settlement 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.

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

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

More fundamentally, Mr. Broidy is "not required to state the obvious in a declaration" and explain "that [h]e would be personally embarrassed to have" allegations that he has communicable genital herpes, masturbates, and enjoys skull fucking "copied into court records." *Oiye*, 211 Cal. App. 4th at 1070.[11] The evidence, of course, *is the allegations themselves*. The California Civil Code and common law have long considered certain allegations—including those levied in this case—so pernicious that their utterance alone is injurious *per se*. *E.g.*, Cal. Civ. Code § 46 (enumerating utterances—including those alleging "infectious, contagious, or loathsome disease[s]," as well as those that "impute . . . a want of chastity"—as among the kinds of accusations "which, by natural consequence, caus[e] actual damage"); *see also* Restatement (Second) of Torts § 572 ("One who publishes a slander that imputes to another an existing venereal disease or other loathsome and communicable disease is subject to liability without proof of special harm."). That is the case here, where Ms. Bechard has unfortunately elected to hijack the judicial process in an attempt to embarrass and hurt Mr. Broidy with the apparent hope of extracting a monetary award. Regardless of what Mr. Avenatti

[11] Mr. Avenatti does not dispute that the vast majority of the materials Mr. Broidy seeks to seal relate *directly* to his sexual and medical privacy, instead cherry-picking portions of sentences to 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.

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

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

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

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

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

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

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

V. STRIKING THE IDENTIFIED ALLEGATIONS REMAINS THE MOST APPROPRIATE REMEDY.

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

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

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[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.

[13] To the extent some allegations that Mr. Broidy targets for removal might possibly suggest 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

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

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

Dated: August 3, 2018

LATHAM & WATKINS LLP
Marvin S. Putnam
Jessica Stebbins Bina

By _____
Jessica Stebbins Bina
Attorneys for Specially Appearing
Defendant Elliott Broidy

seek the supporting admissions and facts in discovery. *See* Cal. Code Civ. Proc. § 431.30(g) (to 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 THERETO

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

BY ELECTRONIC MAIL

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

Michael J. Avenatti AVENATTI & ASSOCIATES, APC 520 Newport Center Drive, Suite 1400 Newport Beach, CA 92660 mavenatti@eaganavenatti.com	Peter K. Stris Elizabeth R. Brannen Dana Berkowitz Kenneth J. Halpern John Stokes STRIS & MAHER LLP 725 S. Figueroa Street, Suite 1830 Los Angeles, CA 90017 peter.stris@strismaher.com elizabeth.brannen@strismaher.com dana.berkowitz@strismaher.com ken.halpern@strismaher.com john.stokes@strismaher.com
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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