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*Counsel for Plaintiff Shera Bechard*

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE 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.

**FILED CONDITIONALLY UNDER SEAL  
PURSUANT TO COURT ORDER DATED  
JULY 6, 2018 AS MODIFIED BY COURT  
ORDERS DATED JULY 17 & 25, 2018**

[Assigned for all purposes to Hon. Elizabeth A. White]

Case No. BC712913

**PLAINTIFF'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN OPPOSITION TO  
DEFENDANT BROIDY'S MOTION TO  
STRIKE**

*[Concurrently filed with Declaration of Victor O'Connell]*

Date: September 7, 2018  
Time: 8:30 a.m.  
Dep't: 48

**HEARING ORDERED BY THE COURT**

Action Filed: July 6, 2018  
Trial Date: None Set

RECEIVED

AUG 24 2018

FILING WINDOW

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Plaintiff Shera Bechard hereby opposes Defendant Elliott Broidy's Motion to Strike, filed August 13, 2018. The Motion to Strike should be denied in its entirety not only because it is massively overbroad, but also because it seeks to strike relevant allegations in the Complaint.

### STATEMENT OF FACTS

Defendant Broidy tries mightily to characterize the Settlement Agreement as an effort to obtain money from him in return for keeping his affair confidential, and then claims that he did not receive the benefit of his alleged bargain once his affair became public. But that is simply untrue—confidentiality is not the reason Broidy settled with Ms. Bechard for \$1.6 million. (Cf. O'Connell Decl., Ex. A (actual hush agreements negotiated by Broidy's attorney, Michael Cohen, on behalf of a far richer individual, Donald Trump, were merely \$130,000 and \$150,000 to Stormy Daniels and Karen McDougal, respectively).)

Rather, as the Complaint properly and accurately alleges, Broidy promised to pay this amount as a settlement—a settlement he promptly breached—because he:

- Repeatedly sexually assaulted Ms. Bechard (Complaint, ¶ 20) (Cf. O'Connell Decl., Ex. B (\$45 million judgment for Los Angeles victim of sexual assault));
- Repeatedly had sex with Ms. Bechard when he knew he had communicable genital herpes and lied to Ms. Bechard about not having it (Complaint, ¶¶ 3, 20(f)) (Cf. O'Connell Decl., Ex. C (\$6.7 million judgment in herpes lawsuit));
- Got Ms. Bechard drunk, refused to use birth control, and impregnated her without her consent (Complaint, ¶¶ 20, 22, 25 (attorneys to agreement calculated present net value of Broidy's anticipated child support payments over 18 years));
- Told Ms. Bechard he loved her and would financially support her (Complaint, ¶¶ 2, 20(b)) (Cf. O'Connell Decl., Ex. D (Los Angeles palimony award of \$84 million));
- Repeatedly abused Ms. Bechard, a domestic partner (Complaint, ¶¶ 3, 20) (Cf. O'Connell Decl., Ex. E (\$21 million award)); and
- Coerced Ms. Bechard into having an abortion, and then told the world (and the *Wall Street Journal*) that he did no such thing and that the abortion was instead Ms. Bechard's unilateral decision (Complaint, ¶¶ 21-22, 27-28).

1 Because these facts depart from the false narrative that Broidy attempts to spin (both in court and in  
 2 his multiple press releases to the public), Broidy's lawyers now seek to strike these facts from the  
 3 Complaint.

4 These factual allegations nonetheless cannot and should not be stricken, because they are  
 5 relevant and properly pled. They directly refute Broidy's false characterization of the factual record  
 6 and the basis for the Settlement Agreement. They directly respond to Broidy's false assertions—  
 7 repeated again in his Motion to Strike (Mot. at pp. 6:6-9, 10:10-11)—that the Settlement Agreement  
 8 was nothing more than yet another "shakedown" of Broidy by Ms. Bechard, as opposed to what it  
 9 actually was: a monetary settlement of factually valid claims.

10 Finally, these facts are indisputably directly relevant to Ms. Bechard's claims that assert the  
 11 malpractice of her attorney, Defendant Davidson, in having her waive her claims against Broidy—  
 12 claims supported by these amply pled facts—in an absurdly one-sided and inadequate agreement that  
 13 Broidy and Davidson refused to let her read. (Complaint, ¶¶ 89-92 (asserting legal malpractice claim  
 14 against Davidson for inducing her to sign agreement with inadequate consideration alongside "terms  
 15 to which no properly informed client in Ms. Bechard's position would agree and which no reasonable  
 16 counsel for her would recommend").)

17 To prove Davidson's malpractice, Ms. Bechard is required to plead and prove (1) what her  
 18 claims against Broidy were actually worth (the "case-within-a-case"), and (2) what Davidson knew  
 19 factually about those claims. (*Marshak v. Ballesteros* (1999) 72 Cal.App.4th 1514, 1518-19  
 20 (*Marshak*)). The portions of the Complaint that Broidy seeks to strike as purportedly "irrelevant" do  
 21 precisely that: they plead and prove the value of Ms. Bechard's claims against Broidy as well as the  
 22 facts that her attorney, Davidson, knew about those causes of action. These facts are relevant and true.  
 23 The Motion to Strike should accordingly be denied.

#### LEGAL STANDARD

25 Code of Civil Procedure section 425.10 requires a complaint to include a "statement of the  
 26 facts constituting the cause of action." (Code Civ. Proc., § 425.10.) The complaint must further "set  
 27 forth the essential facts of his case with reasonable precision and with particularity sufficient to  
 28

acquaint a defendant with the nature, source and extent of his cause of action.” (*Youngman v. Nevada Irr. Dist.* (1969) 70 Cal.2d 240, 245.)

Code of Civil Procedure section 436(a) authorizes the striking of “irrelevant, false or improper” matters pled in violation of section 425.10’s particularity requirement. (Code Civ. Proc., § 436(a).) By contrast, when a factual allegation is relevant or essential to a cause of action, it is an abuse of discretion to strike it from the complaint. (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 242; *Quiroz v. Seventh Ave. Ctr.* (2006) 140 Cal.App.4th 1256, 1281 (*Quiroz*).)

Furthermore, any motion to strike must specifically identify each portion of the pleading to be stricken and support the striking of each such portion with particularity. (*Triodyne v. Superior Court* (1966) 240 Cal.App.2d 536, 542 (*Triodyne*).) And where a motion correctly identifies some irrelevant matters, but is “so broad as to include relevant matters, the motion should be denied in its entirety.” (*Ibid.*; see also *Hill v. Wroather* (1958) 158 Cal.App.2d 818, 823 (*Hill*) (“The words appear in connection with other matter clearly irrelevant, but as the motion to strike was so broad as to include relevant matter, the motion should have been denied in its entirety.”).)

## ARGUMENT

### I. The Motion To Strike Should Be Denied Because The Allegations At Issue Are Relevant To Ms. Bechard’s Claims.

The Court should not strike Ms. Bechard’s allegations if they are relevant to one or more of her legal claims. (*Quiroz, supra*, 140 Cal.App.4th at p. 1281; *Hill, supra*, 158 Cal.App.2d at p. 823.) Broidy does not cite a single case that holds otherwise. In *Overstock.com v. Goldman Sachs Group* (2014) 231 Cal.App.4th 471, the Court of Appeal recognized only that the trial court could have stricken “thousands of pages . . . which [plaintiffs] *never cited and which were irrelevant* to the issues raised.” (*Id.* at p. 500, emphasis added.) In *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, the Court of Appeal held only that the trial court could have stricken exhibits and quotations in a complaint that were “*entirely unnecessary*.” (*Id.* at p. 104 n.35, emphasis added.) Finally, *Oiye v. Fox* (2012) 211 Cal.App.4th 1036 merely affirmed a *sealing order* that covered medical information only “tangentially related to the litigation.” (*Id.* at p. 1070.) By contrast, because the allegations in the Complaint that Broidy seeks to strike are relevant, they should not be stricken.

**A. The Allegations Of Ms. Bechard's Complaint Are Relevant To Her Claims.**

Tellingly, nowhere in his Motion to Strike does Broidy discuss with particularity the individual portions of the complaint he requests be stricken. Instead, there is only a single paragraph in Broidy's entire eleven-page memorandum (at pp. 7:23-8:6) that describes these allegations at all—a description that is not only at an extremely high level of generality (“sexual history, health, and romantic relationship with plaintiff”), but that also *does not even mention, cite, or discuss the vast majority of the factual allegations in the Complaint that Broidy's motion demands be stricken.* (See Mot. at pp. 7:22-8:6 (mentioning paragraphs 3, 20 and 22 of the Complaint but entirely omitting any reference to or discussion of Paragraphs 2, 18, 19, 20(a), 20(e), 20(g), 21, 26, 27, 28, 31, and 53 of the Complaint, each of which the Notice of Motion demands be stricken).)

The failure to discuss with particularity each of the allegations that Broidy requests be stricken is sufficient by itself to compel the denial of his motion. (*Triodyne, supra*, 240 Cal.App.2d at p. 542.)

Moreover, on the merits, each of these allegations is relevant to one or more of the causes of action alleged in the Complaint. Ms. Bechard hereby performs the task that Broidy was required (but deliberately failed) to do in his motion: discuss these particular allegations with particularity.

**Paragraph 2:** Broidy seeks to strike the portion of Paragraph 3 of the Complaint that alleges that “Broidy repeatedly said that he loved her [Ms. Bechard] and would support her financially.” This factual allegation is not only true, but also supports Ms. Bechard's assertion that her preexisting causes of action against Broidy (e.g., for palimony) were valuable and that Davidson committed malpractice by convincing Ms. Bechard to give up these valuable claims in a one-sided agreement that no reasonable attorney would have endorsed given the value of those claims. (See *Marshak, supra*, 72 Cal.App.4th at pp. 1518-19 (noting that a party asserting legal malpractice must plead and prove facts supporting the valuation of the underlying case that was settled).) Tellingly, Broidy's Memorandum of Points and Authorities nowhere mentions Paragraph 2 even though his Notice of Motion demands that these relevant facts be stricken.

**Paragraph 3:** Broidy next seeks to strike the portions of Paragraph 3 of the Complaint that allege both his repeated physical violence towards Ms. Bechard as well as the fact that he “had sex with Ms. Bechard without telling her that he had genital herpes.” These facts are again directly

relevant to the malpractice cause of action and valuation of the underlying case-within-a-case. (See *supra* (noting \$21 million and \$6.7 million verdicts for domestic violence and herpes exposure, respectively).) They also provide relevant background to the negotiation and execution of the settlement agreement at issue.

**Paragraph 18:** Broidy next seeks to strike the portion of Paragraph 18 that says that “Broidy’s behavior had become destructive,” but nowhere does his Motion to Strike even mention this allegation or describe its alleged infirmity. Regardless, this true statement is again relevant to the valuation of Ms. Bechard’s case-within-a-case against Broidy, as well as the violent backdrop of Broidy and Davidson’s attempt to compel Ms. Bechard to agree to the one-sided terms of the Settlement Agreement.

**Paragraph 19:** Broidy next seeks to strike the portion of Paragraph 19 that says that Davidson reviewed “voluminous text messages, including photographs” when he handled Ms. Bechard’s case and advised her to settle. The Motion to Strike again nowhere mentions this particular factual allegation or why it is in any way purportedly improper, much less how this allegation about what *Davidson* did could possibly harm Broidy. In any event, what Davidson knew about Ms. Bechard’s case is indisputably relevant to her claims against him for malpractice and his fiduciary breaches when he disclosed to Avenatti the confidential information he obtained from his client.

**Paragraph 20(a):** Broidy next inexplicably seeks to strike Paragraph 20(a), which states (in its entirety) that “Ms. Bechard first met Broidy as a restaurant in 2013. Broidy was obsessed with Playboy Playmates, and became very interested in Ms. Bechard, who was a two-time Playboy Playmate of the Month. Before long, the two were in an intimate sexual relationship.” Yet the Motion to Strike (again) nowhere mentions this allegation or explains why it is purportedly irrelevant or harms Broidy.

Surely the first sentence—about first meeting Broidy in a restaurant—will not result in Broidy’s public ridicule, and it is also true (as well as an entirely proper background fact). The second sentence is similarly proper; indeed, most of it merely concerns *Ms. Bechard*, and states (again, truthfully) that she was a two-time Playboy Playmate of the Month. Why the public should purportedly be shielded from that portion of the Complaint remains a mystery. Finally, Broidy seeks



1 to strike the last sentence of Paragraph 20(a), which alleges that Broidy and Ms. Bechard "were in an  
2 intimate sexual relationship." But this is not only relevant backdrop and relevant to the case-within-  
3 a-case, but it is also something that Broidy himself has *already himself repeatedly admitted to the*  
4 *press.* (See, e.g., O'Connell Decl., Ex. F.)

5 Moreover, this same fact is also repeatedly mentioned in other portions of the Complaint that  
6 Broidy does not seek to strike. To take but one example, Paragraph 18 alleges that Broidy impregnated  
7 Ms. Bechard, a fact that Broidy admits is properly pled and will remain in the Complaint. Broidy's  
8 impregnation of Ms. Bechard would be fairly difficult to accomplish absent a sexual relationship  
9 between the two. Paragraph 20(a) should not be stricken.

10 **Paragraph 20(b):** Broidy also seeks to strike Paragraph 20(b), which describes (1) the "both  
11 sexual and deeply personal" relationship between Ms. Bechard and Broidy, (2) that Broidy "told Ms.  
12 Bechard that he loved her, and said that he would financially support her," and (3) that Broidy and  
13 Ms. Bechard called each other "daddy" and "mommy." These facts are directly relevant to, and  
14 provide strong support for, the valuation of Bechard's case-within-a-case claim for palimony. Ms.  
15 Bechard has pled, and her Complaint properly sets forth facts to prove, that no reasonable attorney  
16 would have advised her to settle *the particular claims that she had against Broidy* for the  
17 consideration she received, particularly alongside the onerous and unconscionable terms inserted by  
18 Broidy and Davidson in the Settlement Agreement. Because these facts are true, and are relevant to  
19 at least one cause of action, they should not be removed from the properly pled Complaint.

20 **Paragraph 20(c):** Broidy seeks to strike Paragraph 20(c), which again states facts that plead  
21 and prove the close relationship between Broidy and Ms. Bechard, including that Ms. Bechard saved  
22 Broidy's life by convincing him to be screened for prostate cancer. That is not only relevant  
23 background, but also relevant to and supportive of her case-within-a-case palimony claim.

24 **Paragraph 20(d):** Broidy next seeks to strike Paragraph 20(d), which states facts that typify  
25 the type of domestic violence that Broidy inflicted upon Ms. Bechard (e.g., his physical violence and  
26 intense jealousy) and his "insist[ence] that [Ms. Bechard] be financially dependent on him." Those  
27 properly pled facts are not only relevant backdrop, but are also directly relevant to the pleading and  
28 proof of Ms. Bechard's case-within-a-case claims against Broidy for domestic violence and palimony.

(Compare *supra* (noting \$21 and \$84 million verdicts, respectively, for such underlying claims), with Settlement Agreement (paying \$1.6 million alongside unconscionable terms to which no reasonable attorney would recommend assent).)

**Paragraph 20(c):** Broidy also seeks to strike Paragraph 20(c), but his memorandum again nowhere mentions, cites, or discusses this portion of the Complaint. Paragraph 20(c) describes the physical and emotional domestic violence that Broidy deliberately inflicted on Ms. Bechard, including the fact that Broidy (1) repeatedly sexually assaulted Ms. Bechard, and (2) began to deliberately hurt her during sex. These facts plead and prove Ms. Bechard's underlying case-within-a-case against Broidy and are directly relevant thereto. Broidy is no differently situated than any other perpetrator of sexual assault; the reality of what he did is properly pled.

**Paragraph 20(f):** Broidy next seeks to strike Paragraph 20(f), which alleges comments that show the close personal relationship between the parties as well as alleges that Broidy deliberately had sex with Ms. Bechard (and refused to use protection) despite his knowledge that he had communicable genital herpes, "a fact Ms. Bechard learned only when Broidy told her years after their sexual relationship began." These facts are again directly relevant to the pleading and proof of Ms. Bechard's case-within-a-case palimony and intentional infliction causes of action. (See *supra* (noting \$84 million and \$6.7 million verdicts for these palimony and herpes claims, respectively).)

**Paragraph 20(g):** Paragraph 20(g) is yet another portion of the Complaint that Broidy seeks to strike but that his memorandum never cites, discusses, or mentions. This paragraph alleges (as do other paragraphs that Broidy does not seek to strike) that Broidy got Ms. Bechard pregnant and that he did so by getting Ms. Bechard drunk. These already-public facts are relevant to the valuation of Ms. Bechard's case-within-a-case, as well as relevant backdrop to the consideration set forth in the Settlement Agreement (which was discussed as reflecting 18 years of child support for the resulting pregnancy). These allegations should not be struck, much less as the result of a motion and memorandum that nowhere mentions or discusses this portion of the Complaint.

**Paragraph 21:** Paragraph 21 is another portion of the Complaint that Broidy seeks to strike but never discusses, mentions, or cites. This allegation asserts that Ms. Bechard became pregnant, told Broidy, and that while Broidy was initially supportive, "he quickly changed his tune and began

1 demanding that she get an abortion, insisting that 'nobody can know.'" As discussed above, these  
2 pregnancy-related allegations are again directly relevant to valuation.

3 Moreover, Broidy's attempt to silence Ms. Bechard in this regard is particularly hypocritical,  
4 as it is **Broidy** (not Ms. Bechard) who has elected to publicly disclose this issue, repeatedly telling  
5 the press and public (falsely) that he had nothing whatsoever to do with any decision about whether  
6 to keep the baby. (See, e.g., O'Connell Decl., Ex. E.) To add further injury to his public falsehoods  
7 regarding Ms. Bechard, Broidy has also repeatedly threatened to sue Ms. Bechard for \$4.8 million in  
8 liquidated damages if she ever tries to refute his false public claims that he had nothing to do with the  
9 decision to have an abortion. Ms. Bechard has *never* revealed this issue to the press or made the truth  
10 public; by contrast, Broidy continues to misrepresent the truth every chance he gets. Broidy's effort  
11 to (once again) silence Ms. Bechard—this time, about a matter that he himself disclosed to the press—  
12 is particularly galling. Regardless, these factual allegations are directly relevant, true, and properly  
13 made in the Complaint.

14 **Paragraph 22:** Broidy also seeks to strike Paragraph 22, which alleges true facts about  
15 Broidy's domestic violence, his statements to Ms. Bechard that "he had connections who could make  
16 people disappear," and Ms. Bechard's pregnancy and mental state. These facts are relevant  
17 background to the execution of the Settlement Agreement, the valuation of Ms. Bechard's case-  
18 within-a-case against Broidy, and the factual basis for Davidson's ability was able to persuade Ms.  
19 Bechard to accept a settlement that, as pled in the Complaint, no reasonable lawyer would recommend  
20 and no reasonable client would accept.

21 **Paragraph 26(a):** Broidy also inexplicably seeks to strike the final clause of Paragraph 26(a),  
22 which states in its entirety that "Davidson told [Ms. Bechard that] Broidy had said he was broke and  
23 would have to borrow the funds." Broidy's memorandum again nowhere cites, mentions, or discusses  
24 this portion of the Complaint. Moreover, what Davidson said about Broidy hardly places Broidy in  
25 disrepute. In any event, it is directly relevant to what Davidson knew, how he wrongfully persuaded  
26 Ms. Bechard to sign a settlement agreement without adequate financial security, and how he  
27 committed legal malpractice. These facts are properly pled.

Paragraph 27: Broidy seeks to strike Paragraph 27-- which says *nothing at all* about Broidy—again without anywhere mentioning or discussing this portion of the Complaint. Paragraph 27 is, yet again, all about Ms. Bechard and Davidson, and reveals *nothing* about Broidy. Paragraph 27 states, in its entirety: “Not being paid to have an abortion was important to Ms. Bechard. She told Davidson that while she considered having an abortion, she wanted to keep her baby. Indeed, she had already begun to purchase baby supplies and had seen a neonatal specialist to ensure medication she was taking would not adversely affect the child.” There is absolutely no basis for Broidy to seek to have stricken these facts *about Ms. Bechard and her attorney*, and what these individuals knew and intended at the time. These facts are relevant and, in any event, do not even mention Broidy.

Paragraph 28: Paragraph 28 is similar to Paragraph 27, and discusses conversations *between Ms. Bechard and Davidson* about having an abortion. Again, nowhere in his Motion to Strike does Broidy even attempt to explain why these factual allegations are improper. These facts are indeed relevant to Ms. Bechard’s claims against Davidson and also provide backdrop to her signature on the Settlement Agreement. Moreover, they do not harm Broidy; e.g., the fact that Davidson told Ms. Bechard that she shouldn’t have Broidy’s kid because Davidson thought “the man [Broidy] looks like a toad” speaks volumes about Davidson, but hardly gives Broidy a basis for a motion to strike.

Paragraph 31: Broidy seeks to strike almost all of Paragraph 31 of the Complaint and yet, again, nowhere even mentions this purportedly “improper” allegation in his memorandum. This part of the Complaint properly alleges that Davidson conveyed threats to Ms. Bechard and that she gave Davidson medical records that confirmed her pregnancy. These facts are all about what Davidson knew and said, and are thus directly relevant to Ms. Bechard’s claims against him (and, again, are not about Broidy). There is no basis to strike these portions of the Complaint, much less to do so *sub silentio*. They are relevant and properly pled. (Parenthetically, the real reason Broidy wants this part of the Complaint eliminated is because he has repeatedly told the press and public that (1) Ms. Bechard may have been faking her pregnancy, and (2) that he asked her for medical records but never received them—both statements that are flatly untrue statements and that are disproved by the portions of the Complaint he seeks to strike.)

**Paragraph 53:** The final portion of the Complaint that Broidy seeks to strike—Paragraph 53—typifies his motion. This Court will search in vain for any mention of Paragraph 53 in Broidy’s memorandum; instead, it appears solely in his Notice of Motion’s list of paragraphs to be stricken. The part of Paragraph 53 that Broidy demands be stricken says something that is undeniably accurate, and reads, in its entirety: “The Settlement Agreement also contains deliberately false statements designed exclusively to benefit Broidy. One of the statements signed by Ms. Bechard, for example, claims that she never had an affair with or was impregnated by Broidy.”

It bears repetition that Broidy has *repeatedly admitted in public* that he had an affair with Ms. Bechard. Moreover, the Settlement Agreement indisputably does in fact contain the contractual provision at issue: one that required Ms. Bechard to sign a statement containing a deliberate lie—and one that Broidy knew full well was a lie—that falsely asserted that Ms. Bechard and Broidy never had an affair. Broidy undoubtedly does not want this Court to know that he drafted a Settlement Agreement that contained a knowing falsehood deliberately designed to deceive and that he insisted upon this wholly improper clause as a condition of any settlement.

But he indisputably did so. Those efforts by Broidy to deliberately deceive others, and to manufacture documents that confirm that deception, are indisputably relevant to this action. It speaks volumes about Broidy’s character and credibility. It is directly relevant to the Settlement Agreement; indeed, it is *an actual part* of the Settlement Agreement sought to be enforced in this action and that Broidy claims Ms. Bechard breached. And the presence of this portion of the Settlement Agreement is directly relevant to Ms. Bechard’s claims against Davidson, including her express allegation that no reasonable attorney would have recommended or advised his client to sign the Settlement Agreement at issue (e.g., to affirm the deliberate falsehood foisted upon her by Broidy).

That Broidy seeks to strike any reference to *an actual and undisputed part of the Settlement Agreement itself*, and that he does so without even once mentioning this portion of the Complaint or discussing its alleged impropriety, typifies the reasons why his Motion to Strike should be denied in its entirety. This Court should not be required to conduct its own independent examination of each portion of the Complaint to determine its propriety, without even the mention or discussion of these particular portions by the moving party. Nor should Ms. Bechard be forced—as she has been—to do

this task herself, bereft of any purported justification advanced by the moving papers and merely awaiting whatever unknown arguments Broidy might eventually advance in a reply brief.

The portions of the Complaint at issue are relevant; moreover, Broidy has failed to satisfy his duty of demonstrating with particularity the purported impropriety of each of these particular factual assertions. The Motion to Strike should accordingly be denied in its entirety.

**B. Broidy's Motion To Strike Is Demonstrably Overbroad.**

At a bare minimum, at least *some* of the factual allegations discussed at length above are relevant to one or more of Ms. Bechard's claims. This is especially true for the vast majority of the factual allegations that Broidy seeks to strike, which he does not discuss *at all* in his supporting memorandum. (See, e.g., Complaint, ¶ 20(a) (alleging that Broidy had sex with and got Ms. Bechard pregnant, a relevant fact and one pled elsewhere in the Complaint); *id.* at ¶ 27 (asserting facts about Ms. Bechard's initial desire and attempt to support a child); *id.* at ¶ 53 (alleging the actual provisions of the written Settlement Agreement at issue); cf. Motion to Strike (requesting that these allegations be stricken but nowhere discussing or citing them).)

Even if Broidy has correctly identified *some* portions of the Complaint that might properly be struck, when that motion is "so broad as to include relevant matters, the motion *should be denied in its entirety*." (*Triodyne, supra*, 240 Cal.App.2d 536, 542, emphasis added.) California courts have repeatedly, and properly, applied this principle to deny motions to strike. (See, e.g., *Hill, supra*, 158 Cal.App.2d 818, 823 (refusing to strike admittedly irrelevant material because the moving party also requested the striking of other relevant allegations).)

This salutary principle is particularly appropriate here. Broidy's expansive and overbroad motion to strike should be denied in its entirety.

**C. Defendants Have Conceded The Relevance Of The Allegations At Issue.**

As discussed above, the factual allegations at issue are all highly relevant to whether the settlement agreement that Davidson recommended to his client was advisable, and whether it was in her best interest or merely his own. The Settlement Agreement had widespread effects on Ms. Bechard's legal rights. It required Ms. Bechard to release the entirety of her claims against Broidy—for sexual assault, palimony, domestic violence, exposure to herpes, etc.—including all known and

unknown claims she had against him. (Complaint, ¶ 26.) The Agreement included a confidentiality clause that required her to remain silent. (*Ibid.*) And the Agreement imposed substantial penalties on Ms. Bechard—but not Broidy—for any breach of confidentiality, including \$4.8 million in liquidated damages. (Complaint, ¶ 51.)

Whether a lawyer of ordinary skill and care would have recommended that his client sign this agreement, and whether a \$560,000 fee would be warranted, is impossible to answer without an understanding of the underlying facts of Ms. Bechard's claims against Broidy. Indeed, while Broidy argues these facts are irrelevant in one breath, in another, he admits these facts were at the heart of the parties' contract. (See, e.g., Mot. at p. 15:18-19 (arguing that keeping the allegations at issue secret was the "*entire purpose* of the Settlement Agreement").)

Davidson has similarly confirmed that these allegations are material. As his counsel has made clear, Davidson intends to establish that "[h]elping his client [Ms. Bechard] achieve a \$1.6-million settlement is *a pretty impressive achievement given the facts of this case.*" (O'Connell Decl., Ex. G, emphasis added.) Indeed, Davidson's counsel has colorfully emphasized that point by stating "I mean, she wasn't kidnapped," thereby suggesting that Ms. Bechard's claims against Broidy were not particularly serious. (*Ibid.*) Davidson is entitled to require plaintiff to assert facts in the Complaint against him that plead and prove that the underlying claims against Broidy were valuable and worth more than the consideration (plus unconscionable terms) provided by the Settlement Agreement. The factual allegations of the Complaint at issue plead and prove precisely that, and are directly relevant to the dispute between Davidson and Ms. Bechard about whether Davidson committed malpractice in recommending this agreement to his client.

#### **D. At Worst, The Pled Facts Justify Partial Sealing, Not A Motion To Strike.**

To be sure, the facts of Ms. Bechard's underlying case against Broidy are disturbing, and it is unsurprising that Broidy would want to hide from the public what he did. But the actual facts of what Broidy did are relevant and properly pled. Simply put, if Broidy didn't want the world to know about his sexual assault of his domestic partner, Ms. Bechard, then he should not have committed a sexual assault. Ditto for exposing her to herpes and each of the other underlying facts alleged in the

Complaint, which are (1) entirely true, and (2) plead and prove the valuation of Ms. Bechard's case-within-a-case against Broidy.

In any event, even if Broidy's desire for secrecy could potentially warrant the sealing of some allegations, is no basis *to strike* material allegations from the Complaint. If he can prove that the public does not have a right to know what goes on in legal proceedings, then Broidy may perhaps be able to have a portion of this matter sealed. But Ms. Bechard is permitted--indeed, required--to plead and prove the facts of what Broidy did, the facts and valuation of her underlying claims against him, and why a reasonable attorney would not have settled her claims against Broidy for the consideration set forth in the Settlement Agreement. The Complaint does so. Those true and relevant factual allegations should thus not be excised.

## II. There Is No Other Basis On Which To Strike Ms. Bechard's Allegations.

### A. Ms. Bechard's Allegations Are Not "False."

Broidy claims that some factual allegations at issue are "false." But a matter in a pleading may be stricken as "false" only when its "falsity or untruthfulness is revealed by facts which are judicially noticed." (*Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 21.) Broidy's boilerplate assertion of falsity does not even supply evidentiary facts (which themselves would still be insufficient), let alone the judicially noticeable facts necessary to support striking on this basis.

### B. Ms. Bechard's Allegations Are Not "Scandalous And Abusive."

Courts may strike "scandalous and abusive matter" that has "no possible relevance." (*In re Randall's Estate* (1924) 194 Cal. 725, 731.) But the allegations here are highly relevant for the reasons discussed above. They are only "scandalous" because of the nature of the subject matter, and any resulting and legitimate privacy concerns can be addressed with seal procedures.

### C. Ms. Bechard's Allegations Are Not "Improper."

Finally, Broidy attempts to smear Ms. Bechard by arguing that her pleadings are merely an attempt to use the court system to expose his private information. This is flatly untrue.

First, implicit in Broidy's argument is the suggestion that this Court is less competent than an arbitrator to keep confidential information private. But California courts deal with sensitive and secret information every day and have multiple tools to assist them, including protective orders, *in camera*



1 review, and seal procedures. (See Civil Code, § 3426.5 (identifying various court procedures for  
 2 maintaining confidentiality).) The Court is fully equipped to handle any confidential matters that arise  
 3 during the litigation of this action. To the extent Broidy's arguments are based on his assertion that  
 4 arbitration proceedings were required, Broidy is wrong for the reasons discussed in Ms. Bechard's  
 5 opposition to his Motion to Compel Arbitration.

6       Second, there is simply no factual basis for Broidy's libel. As discussed above, the factual  
 7 allegations at issue are relevant and proper to include. Moreover, Ms. Bechard has expressly taken  
 8 multiple steps to initiate this lawsuit in a way that has kept all of the information under seal—steps  
 9 that Broidy confirms in his papers have worked, and have ensured that none of the allegations at issue  
 10 have "been reported in the media or otherwise made publicly available." (Mot. at p. 11:7-8.) And  
 11 *unlike Broidy*, Ms. Bechard has scrupulously maintained the confidentiality of this private  
 12 information, even after the existence of the Settlement Agreement was made public (through no fault  
 13 of her own) by Avenatti and then by Broidy himself.

14       In sharp contrast to Ms. Bechard's consistent public silence, Broidy has made repeated public  
 15 disclosures to the press about the precise information he boldly asserts that *Ms. Bechard* somehow  
 16 wants to make public. For example, when Avenatti tweeted and the initial *Wall Street Journal* came  
 17 out, Ms. Bechard expressly refused to say anything; by contrast, Broidy issued a press release that  
 18 admitted his affair, disclosed the Settlement Agreement, and falsely claimed that Ms. Bechard decided  
 19 to have the abortion totally on her own. Thereafter, Broidy had his lawyers make numerous additional  
 20 public statements about the affair and the Settlement Agreement as well. Finally, even before  
 21 breaching the Settlement Agreement yet again (by refusing to pay the amounts due), rather than  
 22 reaching out to Ms. Bechard's attorneys or initiating the arbitration proceedings that he claims were  
 23 required, Broidy instead *called* the *Wall Street Journal* and told its reporters that he was going to  
 24 refuse to pay. The resulting publicity about his "confidential" Settlement Agreement was fully  
 25 intended by Broidy; moreover, his lawyers unabashedly concede that they knew full well that by not  
 26 paying, proceedings would be filed in response. (Mot. at p. 7:15-16.)

27       So it is true that one or more of the parties has indeed litigated this matter in the press and  
 28 thereby disclosed confidential information. But that person is most definitely not Ms. Bechard, who

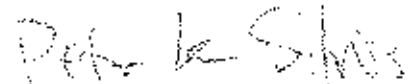
1 has steadfastly refused to make any public comments—even after repeated falsehoods from Broidy  
2 to the press that impugned her character and alleged that she faked her pregnancy. That person is  
3 instead Broidy (alongside Defendant Avenatti, who never met a camera he did not like). It is simply  
4 untrue that Ms. Bechard has been the one attempting to make all things public. That is an allegation  
5 as to which Broidy should look inward.

6 **CONCLUSION**

7 The overbroad Motion to Strike should be denied.

8 **STRIS & MAHER LLP**

9 Dated: August 24, 2018

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