

No. _____

TEMPORARY STAY REQUESTED

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

ELLIOT BROIDY

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,

Respondent,

SHERA BECHARD,

Real Party in Interest.

**SEPARATELY FILED EMERGENCY PETITION FOR TEMPORARY
STAY OF TRIAL COURT PROCEEDINGS PENDING PETITION FOR
WRIT OF SUPERSEDEAS AND MANDATE; MEMORANDUM IN
SUPPORT THEREOF**

From an Order of the Superior Court of California, County of Los Angeles

The Hon. Elizabeth A. White, Dept. No. 48, Judge Presiding

Telephone: (213) 633-0648

Case No. BC712913

Date of Order: September 7, 2018

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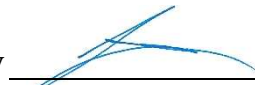
Attorneys for Petitioner Elliot Broidy

CERTIFICATE OF INTERESTED PERSONS OR ENTITIES

In accordance with Rule 8.208 of the California Rules of Court, the undersigned certifies that the below-referenced persons or entities have a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves.

NAME OF INTERESTED ENTITY	NATURE OF INTEREST
Elliott Broidy	Petitioner
Shera Bechard	Real party in interest
ABC, Inc.	Interveners
The Associated Press	Interveners
Cable News Network, Inc.	Interveners
The Daily Beast Company, LLC	Interveners
Dow Jones & Company, Inc.	Interveners
Los Angeles Times Comms. LLC	Interveners
The New York Post	Interveners

Dated: September 7, 2018

By 

Jessica Stebbins Bina
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Attorneys for Specially Appearing
Defendant Elliott Broidy

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I. REQUEST FOR EMERGENCY STAY

A Los Angeles Superior Court today issued an order that threatens the basic constitutional privacy rights of a private citizen. Specifically, it ruled to unseal filings containing several salacious and inflammatory allegations *that it struck from a complaint* that reveal personal matters of Defendant-Petitioner Mr. Elliott Broidy's sexual and medical privacy. The Court did so despite simultaneously finding that the material in question was sufficiently irrelevant to be struck from the complaint altogether. It is well-established that there is no right of access to irrelevant information that impinges on a litigant's privacy interests. The Court's *own findings* thus required it to keep sealed the material it struck.

While the court has issued a 10 day stay of its order as to the complaint itself (to allow for the filing of a petition for writ relief), publication and dissemination of the impinging and stricken allegations as they appear in related filings is imminent, and if not stayed, will inflict irreversible constitutional and reputational injuries upon Mr. Broidy.

Pursuant to California Rule of Court § 8.112(c)(2), Mr. Broidy therefore brings this emergency request for a temporary stay of the Superior Court's order to keep these materials sealed pending review of his forthcoming Petition for a Writ of Supersedeas and Mandate. Failing to stay the immediate publication of the allegations at issue would irreparably harm Mr. Broidy. These are precisely the

circumstances that warrant the emergency relief contemplated by Rule 8.112(c), and Mr. Broidy respectfully entreats the Court to grant his request.

II. MEMORANDUM OF POINTS AND AUTHORITIES

The legal standard for granting a writ of supersedeas (which is also appropriate on a Rule 8.115(c)(2) petition for a temporary emergency stay pending review) requires a petitioner to establish that (a) he would suffer irreparable harm absent the stay, and (b) that the underlying appeal “raises substantial questions” on the merits. *See Smith v. Selma Comm. Hosp.*, 188 Cal. App. 4th 1, 18 (2010). Mr. Broidy’s request meets these criteria.

A. Mr. Broidy Would Be Irreparably Harmed Absent A Stay

Disclosure of the underlying complaint’s many salacious allegations would be devastating to Mr. Broidy’s privacy, and by nature, irreversible. A stay is necessary to prevent that injury, and preserve this court’s jurisdiction.

1. The Complaint In The Underlying Action Contains Irrelevant, Protected Personal Information

Plaintiff-Real Party in Interest Shera Bechard asserts just one cause of action against Mr. Broidy—for failure to pay monies owed under a written contract. Yet, numerous paragraphs of her complaint go into graphic, sordid detail about Mr. Broidy’s purported sexual history, health, and romantic relationship with plaintiff. The complaint also contains numerous other false statements designed to malign and

embarrass Mr. Broidy, and further includes statements intended solely to hurt Mr. Broidy's family.

Because none of these vicious accusations has *anything* to do with Ms. Bechard's legal claims in this case, against Mr. Broidy or anyone else, the Superior Court correctly *struck them from the complaint* and ordered plaintiff to refile an amended complaint that excludes them. But the Court inexplicably ordered the complaint to be unsealed (after a 10-day stay), and numerous motion papers and other documents that reference the unredacted complaint (and were provisionally sealed) to be unsealed and made public *immediately*, with no stay at all.

2. A Stay Is Warranted Because Unsealing The Subject Allegations Would Inflict The Very Irreparable Injuries Mr. Broidy Seeks This Court's Intervention To Prevent

“Where, as here, an order will effectively undermine a privilege or infringe on privacy rights” by mandating “the disclosure of protected information,” a stay is warranted “because reversal on appeal will not cure the disclosure.” *Los Angeles Gay & Lesbian Center v. Superior Court*, 194 Cal. App. 4th 288, 299–300 (2011); accord *Karen P. v. Superior Court*, 200 Cal. App. 4th 908, 912 (2011) (same).

Here, disclosure of the identified allegations would plainly infringe upon Mr. Broidy's privacy rights. 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.”); *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”). Because “reversal on appeal will not cure the disclosure,” *Los Angeles Gay & Lesbian Center*, 194 Cal. App. 4th at 300, the Court should stay the trial court’s order pending its own review. *See, e.g., Tylo v. Superior Court*, 55 Cal. App. 4th 1379, 1382 (1997) (where petitioner sought to reverse a trial court’s order compelling the disclosure “of information which potentially falls within a constitutionally protected interest, the right of privacy,” the Court of Appeal “stayed the order” pursuant to petitioner’s request pending its review).

B. Mr. Broidy’s Appeal Is Eminently Meritorious

Under California Rule of Court 2.550(d), a court may seal civil court records if it “expressly finds facts that establish: (1) there exists an overriding interest that overcomes the right of public access to the records; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding

interest.” Cal. R. Ct. 2.550(d); *Overstock.Com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 487 (2014).

Each of these is true here. The kinds of prurient allegations that Mr. Broidy seeks to keep sealed 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). Mr. Broidy possesses a fundamental right of privacy in these matters under both the United States and California Constitutions, *see supra* § II.A.2, and that right of privacy is sufficient to overcome the right of access here. *See Oiye*, 211 Cal. App. 4th at 1070 (right to privacy is an “overriding interest” that warrants the sealing of a record).

Where, as here, a proposed disclosure concerns protected information, “[t]he party seeking the disclosure of such information must shoulder the ‘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) (citation omitted). No showing is possible here, *as even the Superior Court has expressly concluded that the impinging material was so irrelevant and scandalous that it struck it from the complaint altogether.* There is no right of public access to *irrelevant* information, disclosure of which would undisputedly impinge upon a litigant’s privacy rights. *See Overstock.Com, Inc.*, 231 Cal. App. 4th 471 at 500 (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”).

To the extent the First Amendment creates an interest in “open trials,” the acceptable purposes of disclosure are limited to “(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.” *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.*, 20 Cal. 4th 1178, 1219 (1999). “[A] *generalized* right to be informed,” on the other hand, “*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).

Rumor and speculation is not enough to pry open the bedroom door of a private citizen. “[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 graphic allegations that the Superior Court already found to be irrelevant to the dispute at hand 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).

In addition, Mr. Broidy’s legal right to enforce the Settlement Agreement—a right that would be utterly vitiated by the public filing of the complaint here—likewise constitutes a compelling interest sufficient to overcome the right of access, where the information is irrelevant to plaintiff’s claims and where the matter is subject to arbitration and should never have been brought in court. *See NBC Subsidiary*, 20 Cal. 4th at 1222 n. 46 (citing *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1073 (3d Cir. 1984)).

Finally, the sealing proposed by Mr. Broidy is plainly narrowly tailored because the Superior Court already *struck the allegations* that Mr. Broidy seeks to keep sealed. This is by definition the least restrictive means of achieving the compelling interests of protecting Mr. Broidy’s rights of privacy and to enforce the Settlement Agreement since it would require no redaction of *any operative or relevant allegation*. Indeed, Mr. Broidy seeks to seal only a small portion of the complaint—those sections struck by the court relating *directly* to his intimate

relationship with plaintiff and his medical and sexual privacy. Mr. Broidy does not seek to seal any of plaintiff's actual causes of action, or otherwise impair her from prosecuting her case (except, of course, he separately seeks to have her claims against him heard in the bargained-for private forum). The requested sealing is thus narrowly tailored, and is the least restrictive means to protect Mr. Broidy's compelling privacy interests.

The sealing Mr. Broidy seeks is entirely warranted, and at an absolute minimum—for the purposes of this application—his arguments are clearly colorable enough to “raise substantial issues” justifying a stay. *Smith*, 188 Cal. App. 4th at 18.


CONCLUSION

For the foregoing reasons, the Court should temporarily stay the Superior Court's September 7, 2018 Order to the extent it unseals any documents that reference the complaint (or alternatively, to the extent it ended the provisionally sealed status of those documents), for 10 days, pending its review of Mr. Broidy's forthcoming petition.

Dated: September 7, 2018

Respectfully submitted,

LATHAM & WATKINS LLP

By  _____
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Attorneys for Specially Appearing
Defendant Elliott Broidy

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071-1560. My email address is jeeah.yang@lw.com.

On September 7, 2018, I served the following document described as:

SEPARATELY FILED EMERGENCY PETITION FOR TEMPORARY STAY OF TRIAL COURT PROCEEDINGS PENDING PETITION FOR WRIT OF SUPERSEDEAS AND MANDATE; MEMORANDUM IN SUPPORT THEREOF

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

BY ELECTRONIC MAIL

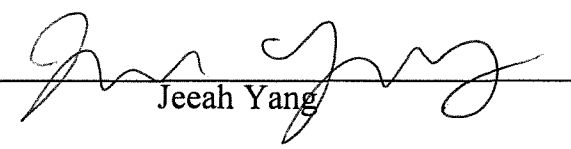
The above-described document was transmitted via electronic mail to the following individuals on September 7, 2018:

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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 **September 7, 2018**, at Los Angeles, California.



Jeeah Yang