Arbitration

CASES, PROBLEMS, AND PRACTICE

2018 UPDATE LETTER

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Dear Colleagues:

I write with respect to particular developments in arbitration law in the year since my book was published, which I plan to incorporate into my 2018 UVA course and which you may also wish to consider.

The first, which continues a substantive movement in US Supreme Court jurisprudence regarding the expanding scope of the Federal Arbitration Act, is the May 2018 decision in Epic Systems. The second is the Stormy Daniels case, which has not (at least not yet) changed the law but is a topical manner of approaching many of the concepts discussed in Unit I as to the making of the arbitration contract and who – court or arbitrator – decides disputes about arbitrability.

In *Epic Systems* (attached), the Court considered the conflict between the collective bargaining guarantees of the National Labor Relations Act (NLRA) and an individual employment contract which barred class arbitration as a means of dispute resolution. Writing for a 5-4 majority over a vigorous Ginsburg dissent, Justice Gorsuch found that the clause withstood NLRA challenge. The majority opinion cited with approval to two cases that receive substantial treatment in Chapter 4 of the book, entitled Arbitration and Class Actions. In *AT&T Mobility v. Concepcion*, p. 163, Justice Scalia's opinion invalidated a California ban on contracts that barred class actions, finding that such a result was hostile to the pro-arbitration mission of the Federal Arbitration (FAA). In *Italian Colors*, p. 182, Justice Scalia similarly held that merchants who had agreed to arbitration could not later avoid that commitment on the grounds that they could not otherwise "effectively vindicate" their rights under the Sherman Act. Thus, in both Scalia decisions, the FAA was held to prevail over, inter alia, expressions of social policy disfavoring consumer arbitration and competing statutory objectives.

Epic Systems continued that trend. Citing repeatedly to the two decisions authored by the prior occupant of his seat, Justice Gorsuch held that there is a distinction between collective bargaining and collective litigation, and so the NLRA's enshrinement of the former did not mandate the latter. Employers could agree with employees that there would be no class resolution of any employment dispute, and to fail to respect that agreement was to violate Concepcion's pro-arbitration mandate. To the dissent's objections that this eviscerated the NLRA, Justice Gorsuch cited Justice Scalia's rejection of a similar argument in *Italian Colors*.

I recommend including *Epic Systems* immediately after the text's treatment of *Italian Colors,* which ends at page 191. Future editions of the book will place the case there. For those who believe that arbitration has become a Frankenstein monster with consequences much greater than Congress intended in passing the FAA, Epic is the latest evidence of an out-of-control doctrine. For those who believe that it falls to the Court to enforce statutes and leave the policymaking to Congress in amending (or not) the Act, Epic is squarely within that doctrine. In either instance it is an up-to-the-minute expression of the themes in the book.

The Stormy Daniels decisions attached to this letter are less groundbreaking but quite practical. If the case was not about a porn star and a President, I likely would not give it attention,

but because of its topicality and publicity buzz around the participants, it can to be a good way to teach many of the casebook's introductory concepts.

Brief refresher: Daniels signed a contract (attached to the Complaint here) entitling her to $130,000 for her silence as to any allegations regarding her alleged affair with President Trump. That contract had an arbitration clause. There were three parties to the contract – Daniels, President Trump, and an LLC named Essential Consultants LLC. Daniels and Trump both signed under fictitious names. Daniels later sued to invalidate the agreement. That case is presently being litigated in the United States District Court for the Central District of California.

At its heart, the case illustrates many of the concepts in Chapters 1 and 2 of the book, starting with arbitration being contractual in nature. Did Daniels and the President form a valid contract if only one of them signed it? Does the fictitious name aspect invalidate validity? How confidential should arbitrations be? In the attached pleadings, President Trump has moved to compel arbitration, just like many of the parties studied in Chapters 2 and 3 – who, the arbitrator or the judge, should decide those issues?

For each and every one of these reasons, the case can be taught at any point in Unit I. My own plan, some weeks away from the start of my course, is to preview it on day 1 and then return to it in the "Who Decides" section beginning at page 101.

I hope you are all having an enjoyable summer and hope you will find this a useful update. I would greatly welcome any thoughts or experiences you may have as to this material and with the casebook.

Sincerely,

Matthew H. Adler

Epic Systems Corp. v. Lewis

Syllabus > Majority Opinion > Concurring Opinion > Dissenting Opinion >

Pagination
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SUPREME COURT OF THE UNITED STATES

EPIC SYSTEMS CORPORATION, PETITIONER v. JACOB LEWIS; ERNST & YOUNG LLP, ET AL., PETITIONERS v. STEPHEN MORRIS, ET AL.; AND NATIONAL LABOR RELATIONS BOARD, PETITIONER v. MURPHY OIL USA, INC., ET AL.

Nos. 16-285 16-300 16-307.

October 2, 2017, Argued* May 21, 2018, Decided
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[*1616] [894]** In each of these cases, an employer and employee entered into a contract providing for individualized arbitration proceedings to resolve employment disputes between the parties. Each employee nonetheless sought to litigate Fair Labor Standards Act and related state law claims through class or collective actions in federal court. Although the Federal Arbitration Act generally requires courts to enforce arbitration agreements as written, the employees argued that its "saving clause" removes this obligation if an arbitration agreement violates some other federal law and that, by requiring individualized proceedings, the agreements here violated the National Labor Relations Act. The employers countered that the Arbitration Act protects agreements requiring arbitration from judicial interference and that neither the saving clause nor the NLRA demands a different conclusion. Until recently, courts as well as the National Labor Relations Board's general counsel agreed that such arbitration agreements are enforceable. In 2012, however, the Board ruled that the NLRA effectively nullifies the Arbitration Act in cases like these, and since then other courts have either agreed with or deferred to the Board's position.

Held: Congress has instructed in the Arbitration Act that arbitration agreements providing for individualized proceedings must be enforced, and neither the Arbitration Act's saving clause nor the NLRA suggests otherwise. Pp. 5-25.

(a) The Arbitration Act requires courts to enforce agreements to arbitrate, including the terms of arbitration the parties select. See 9 U. S. C. §§2 , 3, 4. These emphatic directions would seem to resolve any argument here. The Act's saving clause—which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," §2—recognizes only "'generally applicable contract defenses, such as fraud, duress, or unconscionability,'" *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 , 339 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 , not defenses targeting arbitration either by name or by more subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration," id., at 344 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . By challenging the agreements precisely because they require individualized arbitration instead of class or collective proceedings, the employees seek to interfere with one of these fundamental attributes. Pp. 5-9.

(b) The employees also mistakenly claim that, even if the Arbitration Act normally requires enforcement of arbitration agreements like theirs, the NLRA overrides that guidance and renders their agreements unlawful yet. When confronted with two Acts allegedly touching on the same topic, this Court must strive "to give effect **[***2]** to both." *Morton* v. *Mancari*, 417 U. S. 535 , 551 , **[*1617]** 94 S. Ct. 2474 , 41 L. Ed. 2d 290 . To prevail, the employees must show a "'clear and manifest'" congressional intention to displace one Act with another. *Ibid*. There is a "stron[g] presum[ption]" that disfavors repeals by implication and that "Congress will specifically address" **[**895]** preexisting law before suspending the law's normal operations in a later statute. *United States* v. *Fausto*, 484 U. S. 439 , 452 , 453, 108 S. Ct. 668 , 98 L. Ed. 2d 830 .

The employees ask the Court to infer that class and collective actions are "concerted activities" protected by

§7 of the NLRA, which guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . ., and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," 29 U. S. C. §157 . But §7 focuses on the right to organize unions and bargain collectively. It does not mention class or collective action procedures or even hint at a clear and manifest wish to displace the Arbitration Act. It is unlikely that Congress wished to confer a right to class or collective actions in §7 , since those procedures were hardly known when the NLRA was adopted in 1935. Because the catchall term "other concerted activities for the purpose of . . . other mutual aid or protection" appears at the end of a detailed list of activities, it should be understood to protect the same kind of things, *i.e.,* things employees do for themselves in the course of exercising their right to free association in the workplace.

The NLRA's structure points to the same conclusion. After speaking of various "concerted activities" in §7 , the statute establishes a detailed regulatory regime applicable to each item on the list, but gives no hint about what rules should govern the adjudication of class or collective actions in court or arbitration. Nor is it at all obvious what rules should govern on such essential issues as opt-out and opt-in procedures, notice to class members, and class certification standards. Telling too is the fact that Congress has shown that it knows exactly how to specify certain dispute resolution procedures, cf., *e.g.,* 29 U. S. C. §§216(b) , 626, or to override the Arbitration Act, see, *e.g.,* 15 U. S. C. §1226(a)(2) , but Congress has done nothing like that in the NLRA.

The employees suggest that the NLRA does not discuss class and collective action procedures because it means to confer a right to use *existing* procedures provided by statute or rule, but the NLRA does not say even that much. And if employees do take existing rules as they find them, they must take them subject to those rules' inherent limitations, including the principle that parties may depart from them in favor of individualized arbitration.

In another contextual clue, the employees' underlying causes of action arise not under the NLRA but under the Fair Labor Standards Act, which permits the sort of collective action the employees wish to pursue here. Yet they do not suggest that the FLSA displaces the Arbitration Act, presumably because the Court has held that an identical collective action scheme does not prohibit individualized arbitration proceedings, see *Gilmer* ***[***3]*** v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 , 32 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 . The employees' theory also runs afoul of the rule that Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions," *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457 , 468 , 121 S. Ct. 903 , 149 L. Ed. 2d 1 , as it would allow a catchall term in the NLRA to dictate **[**896]** the particulars of dispute resolution procedures in Article III courts or arbitration proceedings—matters that are usually left to, *e.g.,* the Federal Rules of Civil Procedure, the **[*1618]** Arbitration Act, and the FLSA. Nor does the employees' invocation of the Norris-LaGuardia Act, a predecessor of the NLRA, help their argument. That statute declares unenforceable contracts in conflict with its policy of protecting workers' "concerted activities for the purpose of collective bargaining or other mutual aid or protection," 29 U. S. C. §102 , and just as under the NLRA, that policy does not conflict with Congress's directions favoring arbitration.

Precedent confirms the Court's reading. The Court has rejected many efforts to manufacture conflicts between the Arbitration Act and other federal statutes, see, *e.g. American Express Co.* v. *Italian Colors Restaurant*, 570 U. S. 228 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 ; and its §7 cases have generally involved efforts related to organizing and collective bargaining in the workplace, not the treatment of class or collective action procedures in court or arbitration, see, *e.g., NLRB* v. *Washington Aluminum Co.*, 370 U. S. 9 , 82 S. Ct. 1099 , 8 L. Ed. 2d 298 .

Finally, the employees cannot expect deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 , 104 S. Ct. 2778 , 81 L. Ed. 2d 694 , because *Chevron*'s essential premises are missing. The Board sought not to interpret just the NLRA, "which it administers," id., at 842, 104 S. Ct. 2778 , 81 L. Ed. 2d 694 , but to interpret that statute in a way that limits the work of the Arbitration Act, which the agency does not administer. The Board and the Solicitor General also dispute the NLRA's meaning, articulating no single position on which the Executive Branch might be held "accountable to the people." Id., at 865, 104 S. Ct. 2778 , 81 L. Ed. 2d 694 . And after "employing traditional tools of statutory construction,"

id., at 843, n. 9, 104 S. Ct. 2778 , 81 L. Ed. 2d 694 , including the canon against reading conflicts into statutes, there is no unresolved ambiguity for the Board to address. Pp. 9-21.

No. 16-285, 823 F. 3d 1147 , and No. 16-300, 834 F. 3d 975 , reversed and remanded; No. 16-307, 808 F. 3d 1013 , affirmed.

No. 16-285, 823 F. 3d 1147 , and No. 16-300, 834 F. 3d 975 , reversed and remanded; No. 16-307, 808 F. 3d 1013 , affirmed.

Paul D. Clement argued the cause for petitioners in Nos. 16-285 & 16-300.

Jeffrey B. Wall argued the cause for the United States, as amicus curiae, by special leave of court, supporting the petitioners in Nos. 16-285 and 16-300 and respondents in No. 16-307.

Richard F. Griffin, Jr. argued the cause for petitioner, acting as respondent, in No. 16-307.

Daniel R. Ortiz argued the cause for respondents in Nos. 16-285 & 16-300.

Gorsuch, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, and Alito, JJ., joined. Thomas, J., filed a concurring opinion. Ginsburg, J., filed a dissenting opinion, in which Breyer, Sotomayor, and Kagan, JJ., joined.

GORSUCH

Justice Gorsuch delivered the opinion of the Court.

[*1619] Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?

As a matter of policy these questions are surely debatable. But as a matter of law the answer is clear. **[**897]** In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements **[***4]** according to their terms—including terms providing for individualized proceedings. Nor can we agree with the employees' suggestion that the National Labor Relations Act (NLRA) offers a conflicting command. It is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another. And abiding that duty here leads to an unmistakable conclusion. The NLRA secures to employees rights to organize unions and bargain collectively, but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum. This Court has never read a right to class actions into the NLRA—and for three quarters of a century neither did the National Labor Relations Board. Far from conflicting, the Arbitration Act and the NLRA have long enjoyed separate spheres of influence and neither permits this Court to declare the parties' agreements unlawful.

I

The three cases before us differ in detail but not in substance. Take *Ernst & Young LLP* v. *Morris*. There Ernst & Young and one of its junior accountants, Stephen Morris, entered into an agreement providing that they would arbitrate any disputes that might arise between them. The agreement stated that the employee could choose the arbitration provider and that the arbitrator could "grant any relief that could be granted by . . . a court" in the relevant jurisdiction. App. in **[*1620]** No. 16-300, p. 43. The agreement also specified individualized arbitration, with claims "pertaining to different [e]mployees [to] be heard in separate proceedings." Id., at 44.

After his employment ended, and despite having agreed to arbitrate claims against the firm, Mr. Morris sued Ernst & Young in federal court. He alleged that the firm had misclassified its junior accountants as professional employees and violated the federal Fair Labor Standards Act (FLSA) and California law by paying them salaries without overtime pay. Although the arbitration agreement provided for individualized proceedings, Mr. Morris sought to litigate the federal claim on behalf of a nationwide class under the FLSA's collective action provision, 29 U. S. C. §216(b) . He sought to pursue the state law claim as a class action under Federal Rule of Civil Procedure 23 .

Ernst & Young replied with a motion to compel arbitration. The district court granted the request, but the Ninth Circuit reversed this judgment. 834 F. 3d 975 (2016). The Ninth Circuit recognized that the Arbitration Act generally requires courts to enforce arbitration agreements as written. But the court reasoned that the statute's "saving clause," see 9 U. S. C. §2 , removes this obligation if an arbitration agreement violates some other federal law. And the court concluded that an agreement requiring individualized arbitration proceedings violates the NLRA by barring employees from engaging in the "concerted activit[y]," 29 U. S. C. §157 , of pursuing claims as a class or collective action.

Judge Ikuta dissented. In her view, the Arbitration Act protected the arbitration **[**898]** agreement from judicial interference and nothing in the Act's saving clause suggested otherwise. Neither, **[***5]** she concluded, did the NLRA demand a different result. Rather, that statute focuses on protecting unionization and collective bargaining in the workplace, not on guaranteeing class or collective action procedures in disputes before judges or arbitrators.

Although the Arbitration Act and the NLRA have long coexisted—they date from 1925 and 1935, respectively—the suggestion they might conflict is something quite new. Until a couple of years ago, courts more or less agreed that arbitration agreements like those before us must be enforced according to their terms. See, *e.g., Owen* v. *Bristol Care, Inc.*, 702 F. 3d 1050 (CA8 2013); *Sutherland* v. *Ernst & Young LLP*, 726 F. 3d 290 (CA2 2013);*D. R. Horton, Inc.* v. *NLRB*, 737 F. 3d 344 (CA5 2013); *Iskanian* v. *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 , 173 Cal. Rptr. 3d 289 , 327 P. 3d 129 (2014); *Tallman* v. *Eighth Jud. Dist. Court*, 359 P. 3d 113 (2015); 808 F. 3d 1013 (CA5 2015) (case below in No. 16-307).

The National Labor Relations Board's general counsel expressed much the same view in 2010. Remarking that employees and employers "can benefit from the relative simplicity and informality of resolving claims before arbitrators," the general counsel opined that the validity of such agreements "does not involve consideration of the policies of the National Labor Relations Act." Memorandum GC 10-06, pp. 2, 5 (June 16, 2010).

But recently things have shifted. In 2012, the Board—for the first time in the 77 years since the NLRA's adoption—asserted that the NLRA effectively nullifies the Arbitration Act in cases like ours. *D. R. Horton, Inc.*, 357 N. L. R. B. 2277 . Initially, this agency decision received a cool reception in court. See *D. R. Horton*, 737 F. 3d , at 355-362 . In the last two years, though, some circuits have either agreed with the Board's conclusion or **[*1621]** thought themselves obliged to defer to it under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 , 104 S. Ct. 2778 , 81 L. Ed. 2d 694 (1984). See 823 F. 3d 1147 (CA7 2016) (case below in No. 16-285); 834 F. 3d 975 (case below in No. 16-300); *NLRB* v. *Alt. Entm't, Inc.*, 858 F.3d 393 (CA6 2017). More recently still, the disagreement has grown as the Executive has disavowed the Board's (most recent) position, and the Solicitor General and the Board have offered us battling briefs about the law's meaning. We granted certiorari to clear the confusion. , 580 U. S. ___, 137 S. Ct. 809 , 196 L. Ed. 2d 595 (2017).

II

We begin with the Arbitration Act and the question of its saving clause.

Congress adopted the Arbitration Act in 1925 in response to a perception that courts were unduly hostile to arbitration. No doubt there was much to that perception. Before 1925, English and American common law courts routinely refused to enforce agreements to arbitrate disputes. *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506 , 510 , n. 4, 94 S. Ct. 2449 , 41 L. Ed. 2d 270 (1974). But in Congress's judgment arbitration had more to offer than courts recognized—not least the promise of quicker, more informal, **[**899]** and often cheaper resolutions for everyone involved. Id., at 511 , 94 S. Ct. 2449 , 41 L. Ed. 2d 270 . So Congress directed courts to abandon their hostility and instead treat arbitration agreements as "valid, irrevocable, and enforceable." 9 U. S. C. §2 . The Act, this Court has said, establishes "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1 , 24 , 103 S. Ct. 927 , 74 L. Ed. 2d 765 (1983) (citing *Prima Paint Corp.* v. *Flood & Conklin* ***[***6]*** *Mfg. Co.*, 388 U. S. 395 , 87 S. Ct. 1801 , 18 L. Ed. 2d 1270 (1967)); see id., at 404 , 87 S. Ct. 1801 , 18 L. Ed. 2d 1270 (discussing "the plain meaning of the statute" and "the unmistakably clear congressional

purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts").

Not only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures. See §3 (providing for a stay of litigation pending arbitration "in accordance with the terms of the agreement"); §4 (providing for "an order directing that . . . arbitration proceed in the manner provided for in such agreement"). Indeed, we have often observed that the Arbitration Act requires courts "rigorously" to "enforce arbitration agreements according to their terms, including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted." *American Express Co.* v. *Italian Colors Restaurant*, 570 U. S. 228 , 233 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (2013) (some emphasis added; citations, internal quotation marks, and brackets omitted).

On first blush, these emphatic directions would seem to resolve any argument under the Arbitration Act. The parties before us contracted for arbitration. They proceeded to specify the rules that would govern their arbitrations, indicating their intention to use individualized rather than class or collective action procedures. And this much the Arbitration Act seems to protect pretty absolutely. See *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (2011); *Italian Colors*, *supra* ; *DIRECTV, Inc.* v. *Imburgia*, 577 U. S. ___ , 136 S. Ct. 463 , 193 L. Ed. 2d 365 (2015). You might wonder if the balance Congress struck in 1925 between arbitration **[*1622]** and litigation should be revisited in light of more contemporary developments. You might even ask if the Act was good policy when enacted. But all the same you might find it difficult to see how to avoid the statute's application.

Still, the employees suggest the Arbitration Act's saving clause creates an exception for cases like theirs. By its terms, the saving clause allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract." §2 . That provision applies here, the employees tell us, because the NLRA renders their particular class and collective action waivers illegal. In their view, illegality under the NLRA is a "ground" that "exists at law . . . for the revocation" of their arbitration agreements, at least to the extent those agreements prohibit class or collective action proceedings.

[900]** The problem with this line of argument is fundamental. Put to the side the question whether the saving clause was designed to save not only state law defenses but also defenses allegedly arising from federal statutes. See 834 F. 3d , at 991-992 , 997 (Ikuta, J., dissenting). Put to the side the question of what it takes to qualify as a ground for "revocation" of a contract. See *Concepcion*, supra, at 352-355 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (Thomas, J., concurring); *post,* at 1-2 (Thomas, J., concurring). Put to the side for the moment, too, even the question whether the **[***7]** NLRA actually renders class and collective action waivers illegal. Assuming (but not granting) the employees could satisfactorily answer all those questions, the saving clause still can't save their cause.

It can't because the saving clause recognizes only defenses that apply to "any" contract. In this way the clause establishes a sort of "equal-treatment" rule for arbitration contracts. *Kindred Nursing Centers L. P.* v. *Clark*, 581 U. S. ___ , ___, 137 S. Ct. 1421 , 197 L. Ed. 2d 806 , 812 (2017). The clause "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" *Concepcion*, 563 U. S., at 339 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . At the same time, the clause offers no refuge for "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Ibid* . Under our precedent, this means the saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration." Id., at 344 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 ; see *Kindred Nursing*, *supra* , at ___, 137 S. Ct. 1421 , 197 L. Ed. 2d 806 , 814 .

This is where the employees' argument stumbles. They don't suggest that their arbitration agreements were extracted, say, by an act of fraud or duress or in some other unconscionable way that would render *any* contract unenforceable. Instead, they object to their agreements precisely because they require individualized arbitration proceedings instead of class or collective ones. And by attacking (only) the individualized nature of the arbitration proceedings, the employees' argument seeks to interfere with one of arbitration's fundamental attributes.

We know this much because of *Concepcion* . There this Court faced a state law defense that prohibited as unconscionable class action waivers in consumer contracts. The Court readily acknowledged that the defense formally applied in both the litigation and the arbitration context. 563 U. S., at 338 , 341 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . But, the Court held, the defense failed to qualify for protection under the saving clause because it interfered with a fundamental attribute of arbitration all the same. It **[*1623]** did so by effectively permitting any party in arbitration to demand classwide proceedings despite the traditionally individualized and informal nature of arbitration. This "fundamental" change to the traditional arbitration process, the Court said, would "sacrific[e] the principal advantage of arbitration—its informality—and mak[e] the process slower, more costly, and more likely to generate procedural **[**901]** morass than final judgment." Id., at 347 , 348 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . Not least, *Concepcion* noted, arbitrators would have to decide whether the named class representatives are sufficiently representative and typical of the class; what kind of notice, opportunity to be heard, and right to opt out absent class members should enjoy; and how discovery should be altered in light of the classwide nature of the proceedings. *Ibid.* All of which would take much time and effort, and introduce new risks and costs for both sides. *Ibid.* In the Court's judgment, the virtues **[***8]** Congress originally saw in arbitration, its speed and simplicity and inexpensiveness, would be shorn away and arbitration would wind up looking like the litigation it was meant to displace.

Of course, *Concepcion* has its limits. The Court recognized that parties remain free to alter arbitration procedures to suit their tastes, and in recent years some parties have sometimes chosen to arbitrate on a classwide basis. Id., at 351 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . But *Concepcion*'s essential insight remains: courts may not allow a contract defense to reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties' consent. Id., at 344-351 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 ; see also *Stolt-Nielsen S. A.* v. *AnimalFeeds Int'l* , 559 U.S. 662 , 684-687 , 130 S. Ct. 1758 , 176 L. Ed. 2d 605 (2010). Just as judicial antagonism toward arbitration before the Arbitration Act's enactment "manifested itself in a great variety of devices and formulas declaring arbitration against public policy," *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today. 563 U. S., at 342 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (internal quotation marks omitted). And a rule seeking to declare individualized arbitration proceedings off limits is, the Court held, just such a device.

The employees' efforts to distinguish *Concepcion* fall short. They note that their putative NLRA defense would render an agreement "illegal" as a matter of federal statutory law rather than "unconscionable" as a matter of state common law. But we don't see how that distinction makes any difference in light of *Concepion*'s rationale and rule. Illegality, like unconscionability, may be a traditional, generally applicable contract defense in many cases, including arbitration cases. But an argument that a contract is unenforceable *just because it requires bilateral arbitration* is a different creature. A defense of that kind, *Concepcion* tells us, is one that impermissibly disfavors arbitration whether it sounds in illegality or unconscionability. The law of precedent teaches that like cases should generally be treated alike, and appropriate respect for that principle means the Arbitration Act's saving clause can no more save the defense at issue in these cases than it did the defense at issue in *Concepcion*. At the end of our encounter with the Arbitration Act, then, it appears just as it did at the beginning: a congressional command requiring us to enforce, not override, the terms of the arbitration agreements before us.

III

But that's not the end of it. Even if the Arbitration Act normally requires **[**902]** us to **[*1624]** enforce arbitration agreements like theirs, the employees reply that the NLRA overrides that guidance in these cases and commands us to hold their agreements unlawful yet.

This argument faces a stout uphill climb. When confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at "liberty to pick and choose among congressional enactments" and must instead strive "'to give effect to both.'" *Morton* v. *Mancari*, 417 U. S. 535 , 551 , 94 S. Ct. 2474 , 41 L. Ed. 2d 290 (1974). A party seeking to suggest that two statutes cannot be harmonized, and that one displaces **[***9]** the other, bears the heavy burden of showing "'a clearly expressed congressional intention'" that such a result should follow. *Vimar Seguros y Reaseguros, S.*

A. v. *M/V Sky Reefer*, 515 U. S. 528 , 533 , 115 S. Ct. 2322 , 132 L. Ed. 2d 462 (1995). The intention must be "'clear and manifest.'" *Morton*, supra, at 551 , 94 S. Ct. 2474 , 41 L. Ed. 2d 290 . And in approaching a claimed conflict, we come armed with the "stron[g] presum[ption]" that repeals by implication are "disfavored" and that "Congress will specifically address" preexisting law when it wishes to suspend its normal operations in a later statute. *United States* v. *Fausto*, 484 U. S. 439 , 452 , 453 , 108 S. Ct. 668 , 98 L. Ed. 2d 830 (1988).

These rules exist for good reasons. Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work. More than that, respect for the separation of powers counsels restraint. Allowing judges to pick and choose between statutes risks transforming them from expounders of what the law *is* into policymakers choosing what the law *should be*. Our rules aiming for harmony over conflict in statutory interpretation grow from an appreciation that it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them.

Seeking to demonstrate an irreconcilable statutory conflict even in light of these demanding standards, the employees point to Section 7 of the NLRA . That provision guarantees workers

> "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U. S. C. §157 .

From this language, the employees ask us to infer a clear and manifest congressional command to displace the Arbitration Act and outlaw agreements like theirs.

But that much inference is more than this Court may make. Section 7 focuses on the right to organize unions and bargain collectively. It may permit unions to bargain to prohibit arbitration. Cf. *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. 247 , 256-260 , 129 S. Ct. 1456 , 173 L. Ed. 2d 398 (2009). But it does not express approval or disapproval of arbitration. It does not mention class or collective action procedures. It does not even hint at a wish to displace the Arbitration Act—let alone accomplish that much clearly and manifestly, as our precedents demand.

Neither should any of this come as a surprise. The notion that Section 7 confers a right to class or collective **[**903]** actions seems pretty unlikely when you recall that procedures like that were hardly known when the NLRA was adopted in 1935. Federal Rule of Civil Procedure 23 didn't create the modern class action until 1966; class arbitration didn't emerge until later still; and even the Fair Labor Standards Act's collective action provision postdated Section 7 by years. See Rule 23-Class **[*1625]** Actions, 28 U. S. C. App., p. 1258 (1964 ed., Supp. II); 52 Stat. 1069 ; *Concepcion*, 563 U. S., at 349 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 ; see also *Califano* v. *Yamasaki*, 442 U. S. 682 , 700-701 , 99 S. Ct. 2545 , 61 L. Ed. 2d 176 (1979) (noting that the "usual rule" then was litigation "conducted by and on behalf of individual named parties only"). And while some forms of group litigation existed even in 1935, see 823 F. 3d , at 1154 , Section 7 's failure to mention them only reinforces that the statute doesn't speak **[***10]** to such procedures.

A close look at the employees' best evidence of a potential conflict turns out to reveal no conflict at all. The employees direct our attention to the term "other concerted activities for the purpose of . . . other mutual aid or protection." This catchall term, they say, can be read to include class and collective legal actions. But the term appears at the end of a detailed list of activities speaking of "self-organization," "form[ing], join[ing], or assist[ing] labor organizations," and "bargain[ing] collectively." 29 U. S. C. §157 . And where, as here, a more general term follows more specific terms in a list, the general term is usually understood to "'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 , 115 , 121 S. Ct. 1302 , 149 L. Ed. 2d 234 (2001) (discussing *ejusdem generis* canon); *National Assn. of Mfrs.* v. *Department of Defense*, 583 U. S . ___, ___, 138 S. Ct. 617 , 199 L. Ed. 2d 501 (2018) (slip op., at 10). All of which suggests that the term "other concerted activities" should, like the terms that precede it, serve to protect things employees "just do" for themselves in the course of exercising their right to free association in the workplace, rather than "the highly regulated, courtroom-bound 'activities' of class and joint litigation." *Alternative Entertainment*, 858 F. 3d , at 414-415 (Sutton, J., concurring in part and dissenting in part) (emphasis deleted). None of the preceding and more specific terms speaks to the procedures judges

or arbitrators must apply in disputes that leave the workplace and enter the courtroom or arbitral forum, and there is no textually sound reason to suppose the final catchall term should bear such a radically different object than all its predecessors.

The NLRA's broader structure underscores the point. After speaking of various "concerted activities" in Section 7 , Congress proceeded to establish a regulatory regime applicable to each of them. The NLRA provides rules for the recognition of exclusive bargaining representatives, 29 U. S. C. §159 , explains employees' and employers' obligation to bargain collectively, §158(d) , and conscribes certain labor organization practices, §§158(a)(3) , (b) . The NLRA also touches on other concerted activities closely related to organization and collective bargaining, such as picketing, §158(b)(7) , and strikes, §163 . It even sets rules for adjudicatory proceedings **[**904]** under the NLRA itself. §§160 ,161 . Many of these provisions were part of the original NLRA in 1935, see 49 Stat. 449 , while others were added later. But missing entirely from this careful regime is any hint about what rules should govern the adjudication of class or collective actions in court or arbitration. Without some comparably specific guidance, it's not at all obvious what procedures Section 7 might protect. Would opt-out class action procedures suffice? Or would opt-in procedures be necessary? What notice might be owed to absent class members? What standards would govern class certification? Should the same rules always apply or should they vary based on the nature of the suit? Nothing in the NLRA even whispers to us on any of these essential questions. And **[***11]** it is hard to fathom **[*1626]** why Congress would take such care to regulate all the other matters mentioned in Section 7 yet remain mute about this matter alone—unless, of course, Section 7 doesn't speak to class and collective action procedures in the first place.

Telling, too, is the fact that when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so. Congress has spoken often and clearly to the procedures for resolving "actions," "claims," "charges," and "cases" in statute after statute. *E.g.,* 29 U. S. C. §§216(b) , 626 ; 42 U. S. C. §§2000e-5(b) , (f)(3) -(5) . Congress has likewise shown that it knows how to override the Arbitration Act when it wishes—by explaining, for example, that, "[n]otwithstanding any other provision of law, . . . arbitration may be used . . . only if" certain conditions are met, 15 U. S. C. §1226(a)(2) ; or that "[n]o predispute arbitration agreement shall be valid or enforceable" in other circumstances, 7 U. S. C. §26(n)(2) ; 12 U. S. C. §5567(d)(2) ; or that requiring a party to arbitrate is "unlawful" in other circumstances yet, 10 U. S. C. §987(e)(3) . The fact that we have nothing like that here is further evidence that Section 7 does nothing to address the question of class and collective actions.

In response, the employees offer this slight reply. They suggest that the NLRA doesn't discuss any particular class and collective action procedures because it merely confers a right to use *existing* procedures provided by statute or rule, "on the same terms as [they are] made available to everyone else." Brief for Respondent in No. 16-285, p. 53, n. 10. But of course the NLRA doesn't say even that much. And, besides, if the parties really take existing class and collective action rules as they find them, they surely take them subject to the limitations inherent in those rules—including the principle that parties may (as here) contract to depart from them in favor of individualized arbitration procedures of their own design.

Still another contextual clue yields the same message. The employees' underlying causes of action involve their wages and arise not under the NLRA but under an entirely different statute, the Fair Labor Standards Act. The FLSA allows employees to sue on behalf of "themselves and other employees similarly situated," 29 U. S. C. §216(b) , and it's precisely this sort of collective action the employees before us wish to pursue. Yet they do not offer the seemingly more natural suggestion that the FLSA **[**905]** overcomes the Arbitration Act to permit their class and collective actions. Why not? Presumably because this Court held decades ago that an identical collective action scheme (in fact, one borrowed from the FLSA) does *not* displace the Arbitration Act or prohibit individualized arbitration proceedings. *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 , 32 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 (1991) (discussing Age Discrimination in Employment Act). In fact, it turns out that "[e]very circuit to consider the question" has held that the FLSA allows agreements for individualized arbitration. *Alternative Entertainment*, 858 F. 3d , at 413 (opinion of Sutton, J.) (collecting cases). Faced with that obstacle, the employees are left to cast about elsewhere for help. And so they have cast in this direction, suggesting that one statute (**[***12]** the

NLRA) steps in to dictate the procedures for claims under a different statute (the FLSA), and thereby overrides the commands of yet a third statute (the Arbitration Act). It's a sort of interpretive triple bank shot, and just stating the theory is enough to raise a judicial eyebrow.

Perhaps worse still, the employees' theory runs afoul of the usual rule that Congress "does not alter the fundamental **[*1627]** details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457 , 468 , 121 S. Ct. 903 , 149 L. Ed. 2d 1 (2001). Union organization and collective bargaining in the workplace are the bread and butter of the NLRA, while the particulars of dispute resolution procedures in Article III courts or arbitration proceedings are usually left to other statutes and rules—not least the Federal Rules of Civil Procedure, the Arbitration Act, and the FLSA. It's more than a little doubtful that Congress would have tucked into the mousehole of Section 7 's catchall term an elephant that tramples the work done by these other laws; flattens the parties' contracted-for dispute resolution procedures; and seats the Board as supreme superintendent of claims arising under a statute it doesn't even administer.

Nor does it help to fold yet another statute into the mix. At points, the employees suggest that the Norris-LaGuardia Act, a precursor of the NLRA, also renders their arbitration agreements unenforceable. But the Norris-LaGuardia Act adds nothing here. It declares "[un]enforceable" contracts that conflict with its policy of protecting workers' "concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U. S. C. §§102 , 103 . That is the same policy the NLRA advances and, as we've seen, it does not conflict with Congress's statutory directions favoring arbitration. See also *Boys Markets, Inc.* v. *Retail Clerks*, 398 U. S. 235 , 90 S. Ct. 1583 , 26 L. Ed. 2d 199 (1970) (holding that the Norris-LaGuardia Act's anti-injunction provisions do not bar enforcement of arbitration agreements).

What all these textual and contextual clues indicate, our precedents confirm. In many cases over many years, this Court has heard and rejected efforts to conjure conflicts between the Arbitration Act and other federal statutes. In fact, this Court has rejected *every* such effort to date (save one temporary exception since **[**906]** overruled), with statutes ranging from the Sherman and Clayton Acts to the Age Discrimination in Employment Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeer Influenced and Corrupt Organizations Act. *Italian Colors*, 570 U. S. 228 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 ; *Gilmer*, 500 U. S. 20 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 ; *CompuCredit Corp.* v. *Greenwood*, 565 U. S. 95 , 132 S. Ct. 665 , 181 L. Ed. 2d 586 (2012); *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477 , 109 S. Ct. 1917 , 104 L. Ed. 2d 526 (1989) (overruling *Wilko* v. *Swan*, 346 U. S. 427 , 74 S. Ct. 182 , 98 L. Ed. 168 (1953)); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 , 107 S. Ct. 2332 , 96 L. Ed. 2d 185 (1987). Throughout, we have made clear that even a statute's express provision for collective legal actions does not necessarily mean that it precludes "'individual attempts at conciliation'" through arbitration. *Gilmer*, supra, at 32 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 . And we've stressed that **[***13]** the absence of any specific statutory discussion of arbitration or class actions is an important and telling clue that Congress has not displaced the Arbitration Act. *CompuCredit*, supra, at 103-104 , 132 S. Ct. 665 , 181 L. Ed. 2d 586 ; *McMahon*, supra, at 227 , 107 S. Ct. 2332 , 96 L. Ed. 2d 185 ; *Italian Colors*, supra, at 234 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 . Given so much precedent pointing so strongly in one direction, we do not see how we might faithfully turn the other way here.

Consider a few examples. In *Italian Colors*, this Court refused to find a conflict between the Arbitration Act and the Sherman Act because the Sherman Act **[*1628]** (just like the NLRA) made "no mention of class actions" and was adopted before Rule 23 introduced its exception to the "usual rule" of "individual" dispute resolution. 570 U. S., at 234 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (internal quotation marks omitted). In *Gilmer*, this Court "had no qualms in enforcing a class waiver in an arbitration agreement even though" the Age Discrimination in Employment Act "expressly permitted collective legal actions." *Italian Colors* supra, at 237 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (citing *Gilmer*, supra, at 32 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26). And in *CompuCredit*, this Court refused to find a conflict even though the Credit Repair Organizations Act expressly provided a "right to sue," "repeated[ly]" used the words "action " and "court" and "class action," and even declared "[a]ny waiver" of the rights it provided to be "void." 565 U. S., at 99-100 , 132 S. Ct.

665 , 181 L. Ed. 2d 586 (internal quotation marks omitted). If all the statutes in all those cases did not provide a congressional command sufficient to displace the Arbitration Act, we cannot imagine how we might hold that the NLRA alone and for the first time does so today.

The employees rejoin that our precedential story is complicated by some of this Court's cases interpreting Section 7 itself. But, as it turns out, this Court's Section 7 cases have usually involved just what you would expect from the statute's plain language: efforts by employees related to organizing and collective bargaining in the workplace, not the treatment of class or collective actions in court or arbitration proceedings. See, *e.g., NLRB* **[**907]** v. *Washington Aluminum Co.*, 370 U. S. 9 , 82 S. Ct. 1099 , 8 L. Ed. 2d 298 (1962) (walkout to protest workplace conditions); *NLRB* v. *Granite State Joint Board*, 409 U.S. 213 , 93 S. Ct. 385 , 34 L. Ed. 2d 422 (1972) (resignation from union and refusal to strike); *NLRB* v. *J. Weingarten, Inc.*, 420 U. S. 251 , 95 S. Ct. 959 , 43 L. Ed. 2d 171 (1975) (request for union representation at disciplinary interview). Neither do the two cases the employees cite prove otherwise. In *Eastex, Inc.* v. *NLRB*, 437 U. S. 556 , 558 , 98 S. Ct. 2505 , 57 L. Ed. 2d 428 (1978), we simply addressed the question whether a union's distribution of a newsletter in the workplace qualified as a protected concerted activity. We held it did, noting that it was "undisputed that the union undertook the distribution in order to boost its support and improve its bargaining position in upcoming contract negotiations," all part of the union's "'continuing organizational efforts.'" Id., at 575 , and n. 24, 98 S. Ct. 2505 , 57 L. Ed. 2d 428 . In *NLRB* v. *City Disposal Sy stems, Inc.*, 465 U. S. 822 , 831-832 , 104 S. Ct. 1505 , 79 L. Ed. 2d 839 (1984), we held only that an employee's assertion of a right under a collective bargaining agreement was protected, reasoning that the collective bargaining "process—beginning with the organization of the union, continuing into the negotiation of a collective-bargaining agreement, and extending through the enforcement **[***14]** of the agreement—is a single, collective activity." Nothing in our cases indicates that the NLRA guarantees class and collective action procedures, let alone for claims arising under different statutes and despite the express (and entirely unmentioned) teachings of the Arbitration Act.

That leaves the employees to try to make something of our dicta. The employees point to a line in *Eastex* observing that "it has been held" by other courts and the Board "that the 'mutual aid or protection' clause protects employees from retaliation by their employers when they seek to improve working conditions through resort to administrative and judicial forums." 437 U. S., at 565-566 , 98 S. Ct. 2505 , 57 L. Ed. 2d 428 ; see also Brief for National Labor Relations Board in No. 16-307, p. 15 (citing similar Board decisions). But even on its own **[*1629]** terms, this dicta about the holdings of other bodies does not purport to discuss what *procedures* an employee might be entitled to in litigation or arbitration. Instead this passage at most suggests only that "resort to administrative and judicial forums" isn't "entirely unprotected." Id., at 566 , 98 S. Ct. 2505 , 57 L. Ed. 2d 428 . Indeed, the Court proceeded to explain that it did not intend to "address . . . the question of what may constitute 'concerted' activities in this [litigation] context." *Ibid.* , n. 15, 98 S. Ct. 2505 , 57 L. Ed. 2d 428 . So even the employees' dicta, when viewed fairly and fully, doesn't suggest that individualized dispute resolution procedures might be insufficient and collective procedures might be mandatory. Neither should this come as a surprise given that not a single one of the lower court or Board decisions *Eastex* discussed went so far as to hold that Section 7 guarantees a right to class or collective action procedures. As we've seen, the Board did not purport to discover that right until 2012, and no federal appellate court accepted it until 2016. See *D. R. Horton*, 357 N. L. R. B. 2277 ; 823 F. 3d 1147 (case below in No. 16-285).

[908]** With so much against them in the statute and our precedent, the employees end by seeking shelter in *Chevron*. Even if this Court doesn't see what they see in Section 7 , the employees say we must rule for them anyway because of the deference this Court owes to an administrative agency's interpretation of the law. To be sure, the employees do not wish us to defer to the general counsel's judgment in 2010 that the NLRA and the Arbitration Act coexist peaceably; they wish us to defer instead to the Board's 2012 opinion suggesting the NLRA displaces the Arbitration Act. No party to these cases has asked us to reconsider *Chevron* deference. Cf. *SAS Institute Inc.* v. *Iancu*, 138 S. Ct. 1348 , 200 L. Ed. 2d 695 . But even under *Chevron*'s terms, no deference is due. To show why, it suffices to outline just a few of the most obvious reasons.

The *Chevron* Court justified deference on the premise that a statutory ambiguity represents an "implicit" delegation to an agency to interpret a "statute which it administers." 467 U. S., at 841 , 844 , 104 S. Ct. 2778 , 81 L. Ed. 2d 694 . Here, though, the Board hasn't just sought to interpret its statute, the NLRA, in isolation; it has sought to interpret this statute in a way that limits the work of a second statute, the Arbitration Act. And on no account might we **[***15]** agree that Congress implicitly delegated to an agency authority to address the meaning of a second statute it does not administer. One of *Chevron*'s essential premises is simply missing here.

It's easy, too, to see why the "reconciliation" of distinct statutory regimes "is a matter for the courts," not agencies. *Gordon* v. *New York Stock Exchange, Inc.*, 422 U. S. 659 , 685-686 , 95 S. Ct. 2598 , 45 L. Ed. 2d 463 (1975). An agency eager to advance its statutory mission, but without any particular interest in or expertise with a second statute, might (as here) seek to diminish the second statute's scope in favor of a more expansive interpretation of its own—effectively "'bootstrap[ping] itself into an area in which it has no jurisdiction.'" *Adams Fruit Co.* v. *Barrett*, 494 U. S. 638 , 650 , 110 S. Ct. 1384 , 108 L. Ed. 2d 585 (1990). All of which threatens to undo rather than honor legislative intentions. To preserve the balance Congress struck in its statutes, courts must exercise independent interpretive judgment. See *Hoffman Plastic Compounds, Inc.* v. *NLRB*, 535 U. S. 137 , 144 , 122 S. Ct. 1275 , 152 L. Ed. 2d 271 (2002) (noting that this Court has "never deferred to the Board's remedial preferences where such preferences potentially trench upon federal statutes and policies unrelated to the NLRA").

[*1630] Another justification the *Chevron* Court offered for deference is that "policy choices" should be left to Executive Branch officials "directly accountable to the people." 467 U. S., at 865 , 104 S. Ct. 2778 , 81 L. Ed. 2d 694 . But here the Executive seems of two minds, for we have received competing briefs from the Board and from the United States (through the Solicitor General) disputing the meaning of the NLRA. And whatever argument might be mustered for deferring to the Executive on grounds of political accountability, surely it becomes a garble when the Executive speaks from both sides of its mouth, articulating no single position on which it **[**909]** might be held accountable. See Hemel & Nielson, *Chevron* Step One-and-a-Half, 84 U. Chi. L. Rev. 757, 808 (2017) ("If the theory undergirding *Chevron* is that voters should be the judges of the executive branch's policy choices, then presumably the executive branch should have to take ownership of those policy choices so that voters know whom to blame (and to credit)"). In these circumstances, we will not defer.

Finally, the *Chevron* Court explained that deference is not due unless a "court, employing traditional tools of statutory construction," is left with an unresolved ambiguity. 467 U. S., at 843 , n. 9, 104 S. Ct. 2778 , 81 L. Ed. 2d 694 . And that too is missing: the canon against reading conflicts into statutes is a traditional tool of statutory construction and it, along with the other traditional canons we have discussed, is more than up to the job of solving today's interpretive puzzle. Where, as here, the canons supply an answer, "*Chevron* leaves the stage." *Alternative Entertainment*, 858 F. 3d , at 417 (opinion of Sutton, J.).

IV

The dissent sees things a little bit differently. In its view, today's decision ushers us back to the *Lochner* era when this Court regularly overrode legislative policy judgments. The dissent even suggests we have resurrected the long-dead "yellow dog" contract. *Post,* at 3-17, 30 (opinion of Ginsburg, J.). But like most apocalyptic warnings, this one proves a false alarm. **[***16]** Cf. L. Tribe, American Constitutional Law 435 (1978) ("'*Lochnerizing*' has become so much an epithet that the very use of the label may obscure attempts at understanding").

Our decision does nothing to override Congress's policy judgments. As the dissent recognizes, the legislative policy embodied in the NLRA is aimed at "safeguard[ing], first and foremost, workers' rights to join unions and to engage in collective bargaining." *Post,* at 8. Those rights stand every bit as strong today as they did yesterday. And rather than revive "yellow dog" contracts against union organizing that the NLRA outlawed back in 1935, today's decision merely declines to read into the NLRA a novel right to class action procedures that the Board's own general counsel disclaimed as recently as 2010.

Instead of overriding Congress's policy judgments, today's decision seeks to honor them. This much the dissent surely knows. Shortly after invoking the specter

of *Lochner*, it turns around and criticizes the Court for trying *too hard* to abide the Arbitration Act's "'liberal federal policy favoring arbitration agreements,'" *Howsam* v. *Dean Witter Reynolds, Inc.*, 537 U. S. 79 , 83 , 123 S. Ct. 588 , 154 L. Ed. 2d 491 (2002), saying we "'ski'" too far down the "'slippery slope'" of this Court's arbitration precedent, *post,* at 23. But the dissent's real complaint lies with the mountain of precedent itself. The dissent spends page after page relitigating our Arbitration Act precedents, rehashing arguments this Court has heard and rejected many times in many cases that no party **[*1631]** has asked us to revisit. Compare *post,* at 18-23, 26 (criticizing *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614 , 105 S. Ct. 3346 , 87 L. Ed. 2d 444 (1985), *Gilmer*, 500 U. S. 20 , 111 S. Ct. 1647 **[**910]** , 114 L. Ed. 2d 26 , *Circuit City*, 532 U. S. 105 , 121 S. Ct. 1302 , 149 L. Ed. 2d 234 , *Concepcion*, 563 U. S. 333 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 , *Italian Colors*, 570 U. S. 228 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 , and *CompuCredit*, 565 U. S. 95 , 132 S. Ct. 665 , 181 L. Ed. 2d 586), with *Mitsubishi*, supra, at 645-650 , 105 S. Ct. 3346 , 87 L. Ed. 2d 444 (Stevens, J., dissenting), *Gilmer*, supra, at 36 , 39-43 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 (Stevens, J., dissenting), *Circuit City*, supra, at 124-129 , 121 S. Ct. 1302 , 149 L. Ed. 2d 234 (Stevens, J., dissenting), *Concepcion*, supra, at 357-367 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (Breyer, J., dissenting), *Italian Colors*, supra, at 240-253 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (Kagan, J., dissenting), and *CompuCredit*, supra, at 116-117 , 132 S. Ct. 665 , 181 L. Ed. 2d 586 (Ginsburg, J., dissenting).

When at last it reaches the question of applying our precedent, the dissent offers little, and understandably so. Our precedent clearly teaches that a contract defense "conditioning the enforceability of certain arbitration agreements on the availability of classwide arbitration procedures" is inconsistent with the Arbitration Act and its saving clause. *Concepcion*, supra, at 336 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (opinion of the Court). And that, of course, is exactly what the employees' proffered defense seeks to do.

Nor is the dissent's reading of the NLRA any more available to us than its reading of the Arbitration Act. The dissent imposes a vast construction on Section 7's language. *Post,* at 9. But a statute's meaning does not always "turn solely" on the broadest imaginable "definitions of its component words." *Yates* v. *United States*, 574 U. S. ___ , ___, 135 S. Ct. 1074 ; 191 L. Ed. 2d 64 , 76 (2015) (plurality opinion). Linguistic and statutory context also matter. We have offered an extensive explanation why those clues support our reading today. By contrast, the dissent rests its interpretation on legislative history. *Post,* at 3-5; see also *post,* ***[***17]*** at 19-21. But legislative history is not the law. "It is the business of Congress to sum up its own debates in its legislation," and once it enacts a statute "'[w]e do not inquire what the legislature meant; we ask only what the statute means.'" *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U. S. 384 , 396 , 397 , 71 S. Ct. 745 , 95 L. Ed. 1035 , 60 Ohio Law Abs. 81 (1951) (Jackson, J., concurring) (quoting Justice Holmes). Besides, when it comes to the legislative history here, it seems Congress "did not discuss the right to file class or consolidated claims against employers." *D. R. Horton*, 737 F. 3d , at 361 . So the dissent seeks instead to divine messages from congressional commentary directed to different questions altogether—a project that threatens to "substitute [the Court] for the Congress." *Schwegmann*, supra, at 396 , 71 S. Ct. 745 , 95 L. Ed. 1035 , 60 Ohio Law Abs. 81 .

Nor do the problems end there. The dissent proceeds to argue that its expansive reading of the NLRA conflicts with and should prevail over the Arbitration Act. The NLRA leaves the Arbitration Act without force, the dissent says, because it provides the more "pinpointed" direction. *Post,* at 25. Even taken on its own terms, though, this argument quickly faces trouble. The dissent says the NLRA is the more specific provision because it supposedly **[**911]** "speaks directly to group action by employees," while the Arbitration Act doesn't speak to such actions. *Ibid.* But the question before us is whether courts must enforce particular arbitration agreements according to their terms. And it's the Arbitration Act that speaks directly to the enforceability of arbitration agreements, **[*1632]** while the NLRA doesn't mention arbitration at all. So if forced to choose between the two, we might well say the Arbitration Act offers the more on-point instruction. Of course, there is no need to make that call because, as our precedents demand, we have sought and found a persuasive interpretation that gives effect to all of Congress's work, not just the parts we might prefer.

Ultimately, the dissent retreats to policy arguments. It argues that we should read a class and collective action right into the NLRA to promote the enforcement

of wage and hour laws. *Post,* at 26-30. But it's altogether unclear why the dissent expects to find such a right in the NLRA rather than in statutes like the FLSA that actually regulate wages and hours. Or why we should read the NLRA as mandating the availability of class or collective actions when the FLSA expressly authorizes them yet allows parties to contract for bilateral arbitration instead. 29 U. S. C. §216(b) ; *Gilmer*, supra, at 32 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 . While the dissent is no doubt right that class actions can enhance enforcement by "spread[ing] the costs of litigation," *post,* at 9, it's also well known that they can unfairly "plac[e] pressure on the defendant to settle even unmeritorious claims," *Shady Grove Orthopedic Associates, P. A.* v. *Allstate Ins. Co.*, 559 U. S. 393 , 445 , n. 3, 130 S. Ct. 1431 , 176 L. Ed. 2d 311 (2010) (Ginsburg, J., dissenting). The respective merits of class actions and private arbitration as means of enforcing the law are questions constitutionally entrusted not to the courts to decide but to the policymakers in the political branches where those questions remain hotly contested. Just recently, **[***18]** for example, one federal agency banned individualized arbitration agreements it blamed for underenforcement of certain laws, only to see Congress respond by immediately repealing that rule. See 82 Fed. Reg. 33210 (2017) (cited *post,* at 28, n. 15); Pub. L. 115-74 , 131 Stat. 1243 . This Court is not free to substitute its preferred economic policies for those chosen by the people's representatives. *That*, we had always understood, was *Lochner*'s sin.

*

The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written. While Congress is of course always free to amend this judgment, we see nothing suggesting it did so in the NLRA—much less that it manifested a clear intention to displace the Arbitration Act. Because we can easily read Congress's statutes to work in harmony, that is where our duty lies. The judgments in *Epic*, No. 16-285, and *Ernst & Young*, No. 16-300, are reversed, and the cases are remanded for further proceedings consistent with this opinion. The judgment in *Murphy Oil*, No. 16-307, is affirmed.

So ordered.

THOMAS

[912]** Justice Thomas, concurring.

I join the Court's opinion in full. I write separately to add that the employees also cannot prevail under the plain meaning of the Federal Arbitration Act. The Act declares arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2 . As I have previously explained, grounds for revocation of a contract are those that concern "'the formation of the arbitration agreement.'" *American Express Co.* v. *Italian Colors Restaurant*, 570 U. S. 228 , 239 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (2013) (concurring opinion) (quoting *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 , 353 **[*1633]** 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (2011) (Thomas, J., concurring)). The employees argue, among other things, that the class waivers in their arbitration agreements are unenforceable because the National Labor Relations Act makes those waivers illegal. But illegality is a public-policy defense. See Restatement (Second) of Contracts §§178-179 (1979); *McMullen* v. *Hoffman*, 174 U. S. 639 , 669-670 , 19 S. Ct. 839 , 43 L. Ed. 1117 (1899). Because "[r]efusal to enforce a contract for public-policy reasons does not concern whether the contract was properly made," the saving clause does not apply here. *Concepcion*, supra, at 357 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . For this reason, and the reasons in the Court's opinion, the employees' arbitration agreements must be enforced according to their terms.

GINSBURG

Justice Ginsburg, with whom Justice Breyer, Justice Sotomayor, and Justice Kagan join, dissenting.

The employees in these cases complain that their employers have underpaid them in violation of the wage and hours prescriptions of the Fair Labor Standards Act of 1938 (FLSA), 29 U. S. C. §201 *et seq.*, and analogous state laws. Individually, their claims are small, scarcely of a size warranting the expense of seeking redress alone. See Ruan, What's Left To Remedy Wage Theft? How Arbitration Mandates That Bar Class Actions Impact Low-Wage Workers, 2012 Mich. St. L. Rev. 1103, 1118-1119 (Ruan). But by joining together with others similarly circumstanced, employees can gain effective redress for wage underpayment commonly experienced. See id., at 1108-1111. To block such **[***19]** concerted

action, their employers required them to sign, as a condition of employment, arbitration agreements banning collective judicial and arbitral proceedings of any kind. The question presented: Does the Federal Arbitration Act (Arbitration Act or FAA), 9 U. S. C. §1 *et seq.* , permit employers to insist that their employees, whenever seeking redress for commonly experienced wage loss, go it alone, never mind the right secured to employees by the National Labor Relations Act (NLRA), 29 U. S. C. §151 *et seq.* , "to engage in . . . concerted activities" for their "mutual aid or protection"? §157 . The answer should be a resounding "No."

In the NLRA and its forerunner, the Norris-LaGuardia Act (NLGA), 29 U. S. C. §101 *et seq.*, Congress acted on an acute awareness: For workers striving to gain from their employers decent terms and conditions of employment, there is strength in numbers. **[**913]** A single employee, Congress understood, is disarmed in dealing with an employer. See *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 , 33-34 , 57 S. Ct. 615 , 81 L. Ed. 893 (1937). The Court today subordinates employee-protective labor legislation to the Arbitration Act. In so doing, the Court forgets the labor market imbalance that gave rise to the NLGA and the NLRA, and ignores the destructive consequences of diminishing the right of employees "to band together in confronting an employer." *NLRB* v. *City Disposal Systems, Inc.*, 465 U. S. 822 , 835 , 104 S. Ct. 1505 , 79 L. Ed. 2d 839 (1984). Congressional correction of the Court's elevation of the FAA over workers' rights to act in concert is urgently in order.

To explain why the Court's decision is egregiously wrong, I first refer to the extreme imbalance once prevalent in our Nation's workplaces, and Congress' aim in the NLGA and the NLRA to place employers and employees on a more equal footing. I then explain why the Arbitration Act, sensibly read, does not shrink the NLRA's protective sphere.

I

It was once the dominant view of this Court that "[t]he right of a person to sell **[*1634]** his labor upon such terms as he deems proper is . . . the same as the right of the purchaser of labor to prescribe [working] conditions." *Adair* v. *United States*, 208 U. S. 161 , 174 , 28 S. Ct. 277 , 52 L. Ed. 436 , 5 Ohio L. Rep. 605 (1908) (invalidating federal law prohibiting interstate railroad employers from discharging or discriminating against employees based on their membership in labor organizations); accord *Coppage* v. *Kansas*, 236 U. S. 1 , 26 , 35 S. Ct. 240 , 59 L. Ed. 441 (1915) (invalidating state law prohibiting employers from requiring employees, as a condition of employment, to refrain or withdraw from union membership).

The NLGA and the NLRA operate on a different premise, that employees must have the capacity to act collectively in order to match their employers' clout in setting terms and conditions of employment. For decades, the Court's decisions have reflected that understanding. See *Jones & Laughlin Steel*, 301 U. S. 1 , 57 S. Ct. 615 , 81 L. Ed. 893 (upholding the NLRA against employer assault); cf. *United States* v. *Darby*, 312 U. S. 100 , 61 S. Ct. 451 , 85 L. Ed. 609 (1941) (upholding the FLSA).

A

The end of the 19th century and beginning of the 20th was a tumultuous era in the history of our Nation's labor relations. Under economic conditions then prevailing, workers often had to accept employment on whatever terms employers dictated. See *75 Cong. Rec. 4502* (1932). Aiming to secure better pay, shorter workdays, **[***20]** and safer workplaces, workers increasingly sought to band together to make their demands effective. See *ibid.*; H. Millis & E. Brown, From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations 7-8 (1950).

Employers, in turn, engaged in a variety of tactics to hinder workers' efforts to act in concert for their mutual benefit. See J. Seidman, The Yellow Dog Contract 11 (1932). Notable among such devices was the "yellow-dog contract." Such agreements, **[**914]** which employers required employees to sign as a condition of employment, typically commanded employees to abstain from joining labor unions. See id., at 11, 56. Many of the employer-designed agreements cast an even wider net, "proscrib[ing] all manner of concerted activities." Finkin, The Meaning and Contemporary Vitality of the Norris-LaGuardia Act, 93 Neb. L. Rev. 6, 16 (2014); see Seidman, supra, at 59-60, 65-66. As a prominent United States Senator observed, contracts of the yellow-dog genre rendered the "laboring man . . . absolutely helpless" by "waiv[ing] his right . . . to free association" and by requiring that he "singly present any grievance he has." *75 Cong. Rec. 4504* (remarks of Sen. Norris).

Early legislative efforts to protect workers' rights to

band together were unavailing. See, *e.g., Coppage*, 236 U. S., at 26 , 35 S. Ct. 240 , 59 L. Ed. 441 ; Frankfurter & Greene, Legislation Affecting Labor Injunctions, *38 Yale L. J. 879* , 889-890 (1929). Courts, including this one, invalidated the legislation based on then-ascendant notions about employers' and employees' constitutional right to "liberty of contract." See *Coppage*, 236 U. S., at 26 , 35 S. Ct. 240 , 59 L. Ed. 441 ; Frankfurter & Greene, supra, at 890-891. While stating that legislatures could curtail contractual "liberty" in the interest of public health, safety, and the general welfare, courts placed outside those bounds legislative action to redress the bargaining power imbalance workers faced. See *Coppage*, 236 U. S., at 16-19 , 35 S. Ct. 240 , 59 L. Ed. 441 .

In the 1930's, legislative efforts to safeguard vulnerable workers found more receptive audiences. As the Great Depression shifted political winds further in favor of worker-protective laws, Congress passed two statutes aimed at protecting **[*1635]** employees' associational rights. First, in 1932, Congress passed the NLGA, which regulates the employer-employee relationship indirectly. Section 2 of the Act declares:

> "Whereas . . . the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, . . . it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, . . . and that he shall be free from the interference, restraint, or coercion of employers . . . in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U. S. C. §102 .

Section 3 provides that federal courts shall not enforce "any . . . undertaking or promise in conflict with the public policy declared in [§2]." §103 . 1 In adopting these provisions, Congress sought to render ineffective employer-imposed contracts proscribing employees' **[**915]** concerted **[***21]** activity of any and every kind. See *75 Cong. Rec. 4504* -4505 (remarks of Sen. Norris) ("[o]ne of the objects" of the NLGA was to "outlaw" yellow-dog contracts); Finkin, supra, at 16 (contracts prohibiting "all manner of concerted activities apart from union membership or support . . . were understood to be 'yellow dog' contracts"). While banning court enforcement of contracts proscribing concerted action by employees, the NLGA did not directly prohibit coercive employer practices.

But Congress did so three years later, in 1935, when it enacted the NLRA. Relevant here, §7 of the NLRA guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection*." 29 U. S. C. §157 (emphasis added). Section 8(a)(1) safeguards those rights by making it an "unfair labor practice" for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [§7]." §158(a)(1) . To oversee the Act's guarantees, the Act established the National Labor Relations Board (Board or NLRB), an independent regulatory agency empowered to administer "labor policy for the Nation." *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 , 242 , 79 S. Ct. 773 , 3 L. Ed. 2d 775 (1959); see 29 U. S. C. §160 .

Unlike earlier legislative efforts, the NLGA and the NLRA had staying power. When a case challenging the NLRA's constitutionality made its way here, the Court, in retreat from its *Lochner*-era contractual-"liberty" decisions, upheld the Act as a permissible exercise of legislative authority. See *Jones & Laughlin Steel*, 301 U. S., at 33-34 , 57 S. Ct. 615 , 81 L. Ed. 893 . The Court recognized that employees have a "fundamental right" to join together to advance their common interests and that Congress, in lieu of "ignor[ing]" that right, had elected to "safeguard" it. *Ibid.*

B

Despite the NLRA's prohibitions, the employers in the cases now before the Court required their employees to sign **[*1636]** contracts stipulating to submission of wage and hours claims to binding arbitration, and to do so only one-by-one. 2 When employees subsequently filed wage and hours claims in federal court and sought to invoke the collective-litigation procedures provided for in the FLSA and Federal **[**916]** Rules of Civil Procedure, 3 the employers moved to compel individual arbitration. The Arbitration Act, in their view, requires courts to enforce their take-it-or-leave-it arbitration agreements as written, including the collective-litigation abstinence demanded therein.

In resisting enforcement of the group-action

foreclosures, the employees involved in this litigation do not urge that they must have access to a judicial forum. 4 They argue only that the NLRA prohibits their employers from denying them the right to pursue work-related claims in concert in any forum. If they may be stopped by employer-dictated terms from pursuing collective procedures in court, they maintain, they must at least have access to similar procedures in an arbitral forum.

C

Although the NLRA safeguards, first and foremost, **[***22]** workers' rights to join unions and to engage in collective bargaining, the statute speaks more embracively. In addition to protecting employees' rights "to form, join, or assist labor organizations" and "to bargain collectively through representatives of their own choosing," the Act protects employees' rights "to engage in *other* concerted activities for the purpose of . . . mutual aid or protection." 29 U. S. C. §157 (emphasis added); see, *e.g., NLRB* v. *Washington Aluminum Co.*, 370 U. S. 9 , 14-15 , 82 S. Ct. 1099 , 8 L. Ed. 2d 298 (1962) (§7 protected unorganized employees when they walked off the job to protest cold working conditions). See also 1 J. Higgins, The Developing Labor Law 209 (6th ed. 2012) ("Section 7 protects not only union-related activity but also 'other concerted **[*1637]** activities . . . for mutual aid or protection.'"); 1 N. Lareau, Labor and Employment Law §1.01[1], p. 1-2 (2017) ("Section 7 extended to employees three federally protected rights: (1) the right to form and join unions; (2) the right to bargain collectively (negotiate) with employers about terms and conditions of employment; *and* (3) the right to work in concert with another employee or employees to achieve employment-related goals." (emphasis added)).

Suits to enforce workplace rights collectively fit comfortably under the umbrella "concerted activities for the purpose of . . . mutual aid or protection." 29 U. S. C. §157 . "Concerted" means "[p]lanned or accomplished together; combined." American Heritage Dictionary 381 (5th ed. 2011). **[**917]** "Mutual" means "reciprocal." Id., at 1163. When employees meet the requirements for litigation of shared legal claims in joint, collective, and class proceedings, the litigation of their claims is undoubtedly "accomplished together." By joining hands in litigation, workers can spread the costs of litigation and reduce the risk of employer retaliation. See *infra,* at 27-28.

Recognizing employees' right to engage in collective employment litigation and shielding that right from employer blockage are firmly rooted in the NLRA's design. Congress expressed its intent, when it enacted the NLRA, to "protec[t] the exercise by workers of full freedom of association," thereby remedying "[t]he inequality of bargaining power" workers faced. 29 U. S. C. §151 ; see, *e.g., Eastex, Inc.* v. *NLRB*, 437 U. S. 556 , 567 , 98 S. Ct. 2505 , 57 L. Ed. 2d 428 (1978) (the Act's policy is "to protect the right of workers to act together to better their working conditions" (internal quotation marks omitted)); *City Disposal*, 465 U. S., at 835 , 104 S. Ct. 1505 , 79 L. Ed. 2d 839 ("[I]n enacting §7 of the NLRA, Congress sought generally to equalize the bargaining power of the employee with that of his employer by allowing employees to band together in confronting an employer regarding the terms and conditions of their employment."). See also supra, at 5-6. There can be no serious doubt that collective litigation is one way workers may associate with one another to improve their lot.

Since the Act's earliest days, the Board and federal courts have understood §7's "concerted activities" clause to protect myriad ways in which employees may join together to advance their shared interests. For example, the Board and federal courts have affirmed that the Act shields employees from employer interference when they participate in concerted **[***23]** appeals to the media, *e.g., NLRB* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503 , 505-506 (CA2 1942), legislative bodies, *e.g., Bethlehem Shipbuilding Corp.* v. *NLRB*, 114 F. 2d 930 , 937 (CA1 1940), and government agencies, *e.g., Moss Planing Mill Co.*, 103 N. L. R. B. 414 , 418-419 , enf'd, 206 F. 2d 557 (CA4 1953). "The 74th Congress," this Court has noted, "knew well enough that labor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context." *Eastex*, 437 U. S., at 565 , 98 S. Ct. 2505 , 57 L. Ed. 2d 428 .

Crucially important here, for over 75 years, the Board has held that the NLRA safeguards employees from employer interference when they pursue joint, collective, and class suits related to the terms and conditions of their employment. See, *e.g., Spandsco Oil and Royalty Co.*, 42 N. L. R. B. 942 , 948-949 (1942) (three employees' joint filing of FLSA suit

ranked as concerted activity protected by the NLRA); *Poultrymen's Service Corp.*, 41 N. L. R. B. 444 , 460-463 , and n. 28 (1942) (same with respect to employee's filing of **[*1638]** FLSA suit on behalf of himself and others similarly situated), enf'd, 138 F. 2d 204 (CA3 1943); *Sarkes Tarzian, Inc.*, 149 N. L. R. B. 147 , 149 , 153 (1964) (same with respect to employees' filing class libel suit); *United Parcel Service, Inc.*, 252 N. L. R. B. 1015 , 1018 (1980) (same with respect to employee's filing class action regarding break times), enf'd, **[**918]** 677 F. 2d 421 (CA6 1982); *Harco Trucking, LLC*, 344 N. L. R. B. 478 , 478-479 (2005) (same with respect to employee's maintaining class action regarding wages). For decades, federal courts have endorsed the Board's view, comprehending that "the filing of a labor related civil action by a group of employees is ordinarily a concerted activity protected by §7 ." *Leviton Mfg. Co.* v. *NLRB*, 486 F. 2d 686 , 689 (CA1 1973); see, *e.g., Brady* v. *NFL*, 644 F.3d 661 , 673 (CA8 2011) (similar). 5 The Court pays scant heed to this longstanding line of decisions. 6

D

In face of the NLRA's text, history, purposes, and longstanding construction, the Court nevertheless concludes that collective proceedings do not fall within the scope of §7 . None of the Court's reasons for diminishing §7 should carry the day.

1

The Court relies principally on the *ejusdem generis* canon. See *ante,* at 12. Observing that §7 's "other concerted activities" clause "appears at the end of a detailed list of activities," the Court says the clause should be read to "embrace" only activities "similar in nature" to those set forth first in the list, *ibid.* (internal quotation marks omitted), *i.e.,* "'self-organization,' 'form[ing], join[ing], or assist[ing] labor organizations,' and 'bargain[ing] collectively,'" *ibid.* The Court concludes that §7 should, therefore, be read to protect "things employees 'just do' for themselves." *Ibid.* (quoting *NLRB* v. *Alternative Entertainment, Inc.*, 858 F. 3d 393 , 415 (CA6 2017) (Sutton, J., concurring in part and dissenting in part); emphasis deleted). It is far from apparent why joining hands in litigation would not qualify as "things employees just do for themselves." In any event, there is no sound reason to employ the *ejusdem generis* canon to narrow §7 's protections in the manner the Court suggests.

[*1639] The *ejusdem generis* canon may serve as a useful guide where it is doubtful Congress intended statutory words **[***24]** or phrases to have the broad scope their ordinary meaning conveys. **[**919]** See *Russell Motor Car Co.* v. *United States*, 261 U. S. 514 , 519 , 43 S. Ct. 428 , 67 L. Ed. 778 , 58 Ct. Cl. 708 (1923). Courts must take care, however, not to deploy the canon to undermine Congress' efforts to draft encompassing legislation. See *United States* v. *Powell*, 423 U. S. 87 , 90 , 96 S. Ct. 316 , 46 L. Ed. 2d 228 (1975) ("[W]e would be justified in narrowing the statute only if such a narrow reading was supported by evidence of congressional intent over and above the language of the statute."). Nothing suggests that Congress envisioned a cramped construction of the NLRA. Quite the opposite, Congress expressed an embracive purpose in enacting the legislation, *i.e.,* to "protec[t] the exercise by workers of full freedom of association." 29 U. S. C. §151 ; see supra, at 9.

2

In search of a statutory hook to support its application of the *ejusdem generis* canon, the Court turns to the NLRA's "structure." *Ante,* at 12. Citing a handful of provisions that touch upon unionization, collective bargaining, picketing, and strikes, the Court asserts that the NLRA "establish[es] a regulatory regime" governing each of the activities protected by §7 . *Ante,* at 12-13. That regime, the Court says, offers "specific guidance" and "rules" regulating each protected activity. *Ante,* at 13. Observing that none of the NLRA's provisions explicitly regulates employees' resort to collective litigation, the Court insists that "it is hard to fathom why Congress would take such care to regulate all the other matters mentioned in [§7] yet remain mute about this matter alone—unless, of course, [§7] doesn't speak to class and collective action procedures in the first place." *Ibid.*

This argument is conspicuously flawed. When Congress enacted the NLRA in 1935, the only §7 activity Congress addressed with any specificity was employees' selection of collective-bargaining representatives. See 49 Stat. 453 . The Act did not offer "specific guidance" about employees' rights to "form, join, or assist labor organizations." Nor did it set forth "specific guidance" for any activity falling within §7 's "other concerted activities" clause. The only provision that touched upon an activity falling within that clause stated: "Nothing in this Act shall be

construed so as to interfere with or impede or diminish in any way the right to strike." Id., at 457. That provision hardly offered "specific guidance" regarding employees' right to strike.

Without much in the original Act to support its "structure" argument, the Court cites several provisions that Congress added later, in response to particular concerns. Compare *49 Stat. 449-457* with *61 Stat. 142-143* (1947) (adding §8(d) to provide guidance regarding employees' and employers' collective-bargaining obligations); *61 Stat. 141-142* (amending §8(a) and adding §8(b) to proscribe specified labor organization practices); 73 Stat. 544 (1959) (adding §8(b)(7) to place restrictions on labor organizations' right to picket employers). It is difficult to comprehend why Congress' later inclusion of specific guidance regarding some of the activities protected by §7 sheds any light on Congress' initial conception of §7 's scope.

But even if each of the provisions the Court cites had been included in the original Act, they still would provide **[***25] [**920]** little support for the Court's conclusion. For going on 80 years now, the Board and federal courts—including this one—have understood §7 to protect numerous activities **[*1640]** for which the Act provides no "specific" regulatory guidance. See supra, at 9-10.

3

In a related argument, the Court maintains that the NLRA does not "even whispe[r]" about the "rules [that] should govern the adjudication of class or collective actions in court or arbitration." *Ante,* at 13. The employees here involved, of course, do not look to the NLRA for the procedures enabling them to vindicate their employment rights in arbitral or judicial forums. They assert that the Act establishes their right to act in concert using existing, generally available procedures, see supra, at 7, n. 3, and to do so free from employer interference. The FLSA and the Federal Rules on joinder and class actions provide the procedures pursuant to which the employees may ally to pursue shared legal claims. Their employers cannot lawfully cut off their access to those procedures, they urge, without according them access to similar procedures in arbitral forums. See, *e.g.,* American Arbitration Assn., Supplementary Rules for Class Arbitrations (2011).

To the employees' argument, the Court replies: If the employees "really take existing class and collective action rules as they find them, they surely take them subject to the limitations inherent in those rules—including the principle that parties may (as here) contract to depart from them in favor of individualized arbitration procedures." *Ante,* at 14. The freedom to depart asserted by the Court, as already underscored, is entirely one sided. See supra, at 2-5. Once again, the Court ignores the reality that sparked the NLRA's passage: Forced to face their employers without company, employees ordinarily are no match for the enterprise that hires them. Employees gain strength, however, if they can deal with their employers in numbers. That is the very reason why the NLRA secures against employer interference employees' right to act in concert for their "mutual aid or protection." 29 U. S. C. §§151 , 157 , 158 .

4

Further attempting to sow doubt about §7 's scope, the Court asserts that class and collective procedures were "hardly known when the NLRA was adopted in 1935." *Ante,* at 11. In particular, the Court notes, the FLSA's collective-litigation procedure postdated §7 "by years" and Rule 23 "didn't create the modern class action until 1966." *Ibid.*

First, one may ask, is there any reason to suppose that Congress intended to protect employees' right to act in concert using only those procedures and forums available in 1935? Congress framed §7 in broad terms, "entrust[ing]" the Board with "responsibility to adapt the Act to changing patterns of industrial life." *NLRB* v. *J. Weingarten, Inc.*, 420 U. S. 251 , 266 , 95 S. Ct. 959 , 43 L. Ed. 2d 171 (1975); see *Pennsylvania Dep't of Corrections* v. *Yeskey*, 524 U.S. 206 , 212 , 118 S. Ct. 1952 , 141 L. Ed. 2d 215 (1998) ("[T]he fact that a statute can be applied in situations not expressly anticipated **[**921]** by Congress does not demonstrate ambiguity. It demonstrates breadth." (internal quotation marks omitted)). With fidelity to Congress' aim, the Board and federal courts have recognized **[***26]** that the NLRA shields employees from employer interference when they, *e.g.,* join together to file complaints with administrative agencies, even if those agencies did not exist in 1935. See, *e.g., Wray Electric Contracting, Inc.,* 210 N. L. R. B. 757 , 762 (1974) (the NLRA protects concerted filing of complaint with the Occupational Safety and Health Administration).

Moreover, the Court paints an ahistorical picture. As Judge Wood, writing for the Seventh Circuit, cogently

explained, **[*1641]** the FLSA's collective-litigation procedure and the modern class action were "not written on a clean slate." 823 F. 3d 1147 , 1154 (2016). By 1935, permissive joinder was scarcely uncommon in courts of equity. See 7 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1651 (3d ed. 2001). Nor were representative and class suits novelties. Indeed, their origins trace back to medieval times. See S. Yeazell, From Medieval Group Litigation to the Modern Class Action 38 (1987). And beyond question, "[c]lass suits long have been a part of American jurisprudence." 7A Wright, *supra*, §1751, at 12 (3d ed. 2005); see *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U. S. 356 , 363 , 41 S. Ct. 338 , 65 L. Ed. 673 (1921). See also Brief for Constitutional Accountability Center as *Amicus Curiae* 5-16 (describing group litigation's "rich history"). Early instances of joint proceedings include cases in which employees allied to sue an employer. *E.g., Gorley* v. *Louisville*, 65 S.W. 844 , 23 Ky. L. Rptr. 1782 (1901) (suit to recover wages brought by ten members of city police force on behalf of themselves and other officers); *Guiliano* v. *Daniel O'Connell's Sons*, 105 Conn. 695 , 136 A. 677 (1927) (suit by two employees to recover for injuries sustained while residing in housing provided by their employer). It takes no imagination, then, to comprehend that Congress, when it enacted the NLRA, likely meant to protect employees' joining together to engage in collective litigation. 7

E

Because I would hold that employees' §7 rights include the right to pursue collective litigation regarding their wages and hours, I would further hold that the employer-dictated collective-litigation stoppers, *i.e.,* "waivers," are unlawful. As earlier recounted, see supra, at 6, §8(a)(1) makes it an "unfair labor practice" for an employer to "interfere with, restrain, or coerce" employees in the exercise of their §7 rights. 29 U. S. C. §158(a)(1) . Beyond genuine dispute, an employer "interfere[s] with" and "restrain[s]" employees in the exercise of their §7 rights by mandating that they prospectively renounce those rights in **[**922]** individual employment agreements. 8 The law could hardly be otherwise: Employees' rights to band together to meet their employers' superior strength would be worth precious little if employers could condition employment on workers signing away those rights. See *National Licorice Co.* v. *NLRB*, 309 U. S. 350 , 364 , 60 S. Ct. 569 , 84 L. Ed. 799 (1940). Properly assessed, then, the "waivers" rank as unfair labor practices outlawed by the NLRA, and therefore unenforceable in court. See *Kaiser Steel Corp.* v. *Mullins*, 455 U. S. 72 , 77 , 102 S. Ct. 851 , 70 L. Ed. 2d 833 (1982) ("[O]ur cases leave no doubt that illegal promises will not be enforced in cases controlled by **[*1642]** the federal law."). 9

II

Today's decision rests largely on the Court's finding in the Arbitration Act "emphatic directions" to enforce arbitration agreements **[***27]** according to their terms, including collective-litigation prohibitions. *Ante,* at 6. Nothing in the FAA or this Court's case law, however, requires subordination of the NLRA's protections. Before addressing the interaction between the two laws, I briefly recall the FAA's history and the domain for which that Act was designed.

[923] A**

1

Prior to 1925, American courts routinely declined to order specific performance of arbitration agreements. See Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L. Rev. 265, 270 (1926). Growing backlogs in the courts, which delayed the resolution of commercial disputes, prompted the business community to seek legislation enabling merchants to enter into binding arbitration agreements. See id., at 265. The business community's aim was to secure to merchants an expeditious, economical means of resolving their disputes. See *ibid.* The American Bar Association's Committee on Commerce, Trade and Commercial Law took up the reins in 1921, drafting the legislation Congress enacted, with relatively few changes, four years later. See Committee on Commerce, Trade & Commercial Law, The United States Arbitration Law and Its Application, 11 A. B. A. J. 153 (1925).

The legislative hearings and debate leading up to the FAA's passage evidence **[*1643]** Congress' aim to enable merchants of roughly equal bargaining power to enter into binding agreements to arbitrate *commercial* disputes. See, *e.g., 65 Cong. Rec. 11080* (1924) (remarks of Rep. Mills) ("This bill provides that where there are commercial contracts and there is disagreement under the contract, the court can [en]force an arbitration agreement in the same way as other portions of the contract."); Joint Hearings on S.

1005 and H. R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess. (1924) (Joint Hearings) (consistently focusing on the need for binding arbitration of commercial disputes). 10

The FAA's legislative history also shows that Congress did not intend the statute to apply to arbitration provisions in employment contracts. In brief, when the legislation was introduced, organized labor voiced concern. See Hearing on S. 4213 and S. 4214 before the Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 9 (1923) (Hearing). Herbert Hoover, then Secretary of Commerce, suggested that if there were "objection[s]" to including "workers' contracts in the law's scheme," Congress could amend the legislation to say: "but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in interstate or foreign commerce." Id., at 14. Congress adopted Secretary Hoover's suggestion virtually verbatim in §1 of the Act , see Joint Hearings 2; 9 U. S. C. §1 , and labor expressed **[**924]** no further opposition, see H. R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924). 11

Congress, it bears repetition, envisioned application of the Arbitration Act to voluntary, negotiated agreements. See, *e.g., 65 Cong. Rec. 1931* (remarks of Rep. Graham) (the FAA provides an "opportunity to enforce . . . an agreement to arbitrate, when voluntarily placed in the document **[***28]** by the parties to it"). Congress never endorsed a policy favoring arbitration where one party sets the terms of an agreement while the other is left to "take it or leave it." Hearing 9 (remarks of Sen. Walsh) (internal quotation marks omitted); see *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 , 403 , n. 9, 87 S. Ct. 1801 , 18 L. Ed. 2d 1270 (1967) ("We note that categories of contracts otherwise within the Arbitration Act but in which one of the parties characteristically has little bargaining power are expressly excluded from the reach of the Act. See §1 .").

2

In recent decades, this Court has veered away from Congress' intent simply to afford merchants a speedy and economical means of resolving commercial disputes. See Sternlight, Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration, 74 Wash. U. L. Q. 637, 644-674 **[*1644]** (1996) (tracing the Court's evolving interpretation of the FAA's scope). In 1983, the Court declared, for the first time in the FAA's then 58-year history, that the FAA evinces a "liberal federal policy favoring arbitration." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1 , 24 , 103 S. Ct. 927 , 74 L. Ed. 2d 765 (1983) (involving an arbitration agreement between a hospital and a construction contractor). Soon thereafter, the Court ruled, in a series of cases, that the FAA requires enforcement of agreements to arbitrate not only contract claims, but statutory claims as well. *E.g., Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614 , 105 S. Ct. 3346 , 87 L. Ed. 2d 444 (1985); *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 , 107 S. Ct. 2332 , 96 L. Ed. 2d 185 (1987). Further, in 1991, the Court concluded in *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20 , 23 , 111 S. Ct. 1647 , 114 L. Ed. 2d 26 (1991), that the FAA requires enforcement of agreements to arbitrate claims arising under the Age Discrimination in Employment Act of 1967, a workplace antidiscrimination statute. Then, in 2001, the Court ruled in *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 , 109 , 121 S. Ct. 1302 , 149 L. Ed. 2d 234 (2001), that the Arbitration Act's exemption for employment contracts should be construed narrowly, to exclude from the Act's scope only transportation workers' contracts.

Employers have availed themselves of the opportunity opened by court decisions expansively interpreting the Arbitration Act. Few employers imposed arbitration agreements on their employees in the early 1990's. After *Gilmer* and *Circuit City*, however, employers' exaction of arbitration clauses in employment contracts grew steadily. See, *e.g.,* Economic Policy Institute (EPI), A. Colvin, The **[**925]** Growing Use of Mandatory Arbitration 1-2, 4 (Sept. 27, 2017), available at https://www.epi.org/files/pdf/135056.pdf (All Internet materials as visited May 18, 2018) (data indicate only 2.1% of nonunionized companies imposed mandatory arbitration agreements on their employees in 1992, but 53.9% do today). Moreover, in response to subsequent decisions addressing class arbitration, 12 employers have increasingly included in their arbitration agreements express group-action waivers. See Ruan 1129; Colvin, supra, at 6 (estimating that 23.1% of nonunionized employees are now subject to express class-action waivers in mandatory arbitration agreements). It is, therefore, this Court's exorbitant application of the FAA—stretching it far beyond **[***29]** contractual disputes between merchants—that led the

NLRB to confront, for the first time in 2012, the precise question **[*1645]** whether employers can use arbitration agreements to insulate themselves from collective employment litigation. See *D. R. Horton*, 357 N. L. R. B. 2277 (2012), enf. denied in relevant part, 737 F. 3d 344 (CA5 2013). Compare *ante,* at 3-4 (suggesting the Board broke new ground in 2012 when it concluded that the NLRA prohibits employer-imposed arbitration agreements that mandate individual arbitration) with supra, at 10-11 (NLRB decisions recognizing a §7 right to engage in collective employment litigation), and supra, at 17, n. 8 (NLRB decisions finding employer-dictated waivers of §7 rights unlawful).

As I see it, in relatively recent years, the Court's Arbitration Act decisions have taken many wrong turns. Yet, even accepting the Court's decisions as they are, nothing compels the destructive result the Court reaches today. Cf. R. Bork, The Tempting of America 169 (1990) ("Judges . . . live on the slippery slope of analogies; they are not supposed to ski it to the bottom.").

B

Through the Arbitration Act, Congress sought "to make arbitration agreements as enforceable as other contracts, but not more so." *Prima Paint*, 388 U. S., at 404 , n. 12, 87 S. Ct. 1801 , 18 L. Ed. 2d 1270 . Congress thus provided in §2 of the FAA that the terms of a written arbitration agreement "shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract*." **[**926]** 9 U. S. C. §2 (emphasis added). Pursuant to this "saving clause," arbitration agreements and terms may be invalidated based on "generally applicable contract defenses, such as fraud, duress, or unconscionability." *Doctor's Doctor's Assocs.* v. *Casarotto*, 517 U.S. 681 , 687 , 116 S. Ct. 1652 , 134 L. Ed. 2d 902 (1996); see *ante,* at 7.

Illegality is a traditional, generally applicable contract defense. See 5 R. Lord, Williston on Contracts §12.1 (4th ed. 2009). "[A]uthorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *Kaiser Steel* , 455 U. S., at 77 , 102 S. Ct. 851 , 70 L. Ed. 2d 833 (quoting *McMullen* v. *Hoffman*, 174 U. S. 639 , 654 , 19 S. Ct. 839 , 43 L. Ed. 1117 (1899)). For the reasons stated supra, at 8-17, I would hold that the arbitration agreements' employer-dictated collective-litigation waivers are unlawful. By declining to enforce those adhesive waivers, courts would place them on the same footing as any other contract provision incompatible with controlling federal law. The FAA's saving clause can thus achieve harmonization of the FAA and the NLRA without undermining federal labor policy.

The Court urges that our case law—most forcibly, *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (2011)—rules out reconciliation of the NLRA and the FAA through the latter's saving clause. See *ante,* at 6-9. I disagree. True, the Court's Arbitration Act decisions establish that the saving clause "offers no refuge" for defenses that discriminate against arbitration, "either by name or by more subtle methods." *Ante,* at 7. The Court, therefore, has rejected saving clause salvage where state courts have invoked generally applicable contract defenses to discriminate "covertly" against arbitration. **[***30]** *Kindred Nursing Centers L.P.* v. *Clark*, 581 U. S. ___, ___, 137 S. Ct. 1421 , 197 L. Ed. 2d 806 , 809 (2017). In *Concepcion*, the Court held that the saving clause did not spare the California Supreme Court's invocation of unconscionability doctrine to establish a rule blocking enforcement of class-action waivers in adhesive consumer **[*1646]** contracts. 563 U. S., at 341-344 , 346-352 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . Class proceedings, the Court said, would "sacrific[e] the principal advantage of arbitration—its informality—and mak[e] the process slower, more costly, and more likely to generate procedural morass than final judgment." Id., at 348 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 . Accordingly, the Court concluded, the California Supreme Court's rule, though derived from unconscionability doctrine, impermissibly disfavored arbitration, and therefore could not stand. Id., at 346-352 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 .

Here, however, the Court is not asked to apply a generally applicable contract defense to generate a rule discriminating against arbitration. At issue is application of the ordinarily superseding rule that "illegal promises will not be enforced," *Kaiser Steel*, 455 U. S., at 77 , 102 S. Ct. 851 , 70 L. Ed. 2d 833 , to invalidate arbitration provisions at odds with the NLRA, a pathmarking federal statute. That statute neither discriminates against arbitration on its face, **[**927]** nor by covert operation. It requires invalidation of *all* employer-imposed contractual provisions prospectively waiving employees' §7 rights. See supra, at 17, and n. 8; cf. *Kindred Nursing Centers*, 581 U. S ., at ___, n. 2,

137 S. Ct. 1421 , 197 L. Ed. 2d 806 , 813 , n. 2) (States may enforce generally applicable rules so long as they do not "single out arbitration" for disfavored treatment).

C

Even assuming that the FAA and the NLRA were inharmonious, the NLRA should control. Enacted later in time, the NLRA should qualify as "an implied repeal" of the FAA, to the extent of any genuine conflict. See *Posadas* v. *National City Bank*, 296 U. S. 497 , 503 , 56 S. Ct. 349 , 80 L. Ed. 351 (1936). Moreover, the NLRA should prevail as the more pinpointed, subject-matter specific legislation, given that it speaks directly to group action by employees to improve the terms and conditions of their employment. See *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148 , 153 , 96 S. Ct. 1989 , 48 L. Ed. 2d 540 (1976) ("a specific statute" generally "will not be controlled or nullified by a general one" (internal quotation marks omitted)). 13

Citing statutory examples, the Court asserts that when Congress wants to override the FAA, it does so expressly. See *ante,* at 13-14. The statutes the Court cites, however, are of recent vintage. 14 Each was enacted during the time this Court's decisions increasingly alerted Congress that it would be wise to leave not the slightest room for doubt if it wants to secure access to a judicial forum or to provide a green light for group litigation before an arbitrator or court. See *CompuCredit Corp.* v. *Greenwood*, 565 U. S. 95 , 116 , 132 S. Ct. 665 , 181 L. Ed. 2d 586 (2012) (Ginsburg, J., dissenting). The Congress that drafted the NLRA in 1935 was scarcely on similar alert.

III

The inevitable result of today's decision will be the underenforcement of federal and state statutes designed to advance the well-being of vulnerable workers. See generally Sternlight, Disarming Employees: **[*1647]** How American Employers Are Using Mandatory Arbitration To Deprive Workers of Legal **[***31]** Protections, 80 Brooklyn L. Rev. 1309 (2015).

The probable impact on wage and hours claims of the kind asserted in the cases now before the Court is all too evident. Violations of minimum-wage and overtime laws are widespread. See Ruan 1109-1111; A. Bernhardt et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities 11-16, 21-22 (2009). One study estimated that in Chicago, Los Angeles, and New York City alone, low-wage workers lose nearly $3 billion in legally owed wages each **[**928]** year. *Id.*, at 6. The U. S. Department of Labor, state labor departments, and state attorneys general can uncover and obtain recoveries for some violations. See EPI, B. Meixell & R. Eisenbrey, An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year 2 (2014), available at https://www.epi.org/files/2014/wage-theft.pdf. Because of their limited resources, however, government agencies must rely on private parties to take a lead role in enforcing wage and hours laws. See Brief for State of Maryland et al. as *Amici Curiae* 29-33; Glover, The Structural Role of Private Enforcement Mechanisms in Public Law, 53 Wm. & Mary L. Rev. 1137 , 1150-1151 (2012) (Department of Labor investigates fewer than 1% of FLSA-covered employers each year).

If employers can stave off collective employment litigation aimed at obtaining redress for wage and hours infractions, the enforcement gap is almost certain to widen. Expenses entailed in mounting individual claims will often far outweigh potential recoveries. See *id* ., at 1184-1185 (because "the FLSA systematically tends to generate low-value claims," "mechanisms that facilitate the economics of claiming are required"); *Sutherland* v. *Ernst & Young LLP*, 768 F. Supp. 2d 547 , 552 (SDNY 2011) (finding that an employee utilizing Ernst & Young's arbitration program would likely have to spend $200,000 to recover only $1,867.02 in overtime pay and an equivalent amount in liquidated damages); cf. Resnik, Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights, 124 Yale L. J. 2804 , 2904 (2015) (analyzing available data from the consumer context to conclude that "private enforcement of small-value claims depends on collective, rather than individual, action"); *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591 , 617 , 117 S. Ct. 2231 , 138 L. Ed. 2d 689 (1997) (class actions help "overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights" (internal quotation marks omitted)). 15

Fear of retaliation may also deter potential claimants from seeking redress alone. See, *e.g.,* Ruan 1119-1121; Bernhardt, supra, at 3, 24-25. Further inhibiting single-file claims is the slim relief obtainable,

even of the injunctive kind. See *Califano* v. *Yamasaki*, 442 U. S. 682 , 702 , 99 S. Ct. 2545 , 61 L. Ed. 2d 176 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established."). The upshot: Employers, aware that employees will be disinclined to pursue small-value claims when confined to proceeding one-by-one, will no doubt perceive that the cost-benefit **[*1648]** balance of underpaying workers tips heavily in favor of skirting legal obligations.

In stark contrast to today's decision, 16 the Court has repeatedly recognized **[***32]** the centrality of group action **[**929]** to the effective enforcement of antidiscrimination statutes. With Court approbation, concerted legal actions have played a critical role in enforcing prohibitions against workplace discrimination based on race, sex, and other protected characteristics. See, *e.g., Griggs* v. *Duke Power Co.*, 401 U. S. 424 , 91 S. Ct. 849 , 28 L. Ed. 2d 158 (1971); *Automobile Workers* v. *Johnson Controls, Inc.*, 499 U. S. 187 , 111 S. Ct. 1196 , 113 L. Ed. 2d 158 (1991). In this context, the Court has comprehended that government entities charged with enforcing antidiscrimination statutes are unlikely to be funded at levels that could even begin to compensate for a significant dropoff in private enforcement efforts. See *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400 , 401 , 88 S. Ct. 964 , 19 L. Ed. 2d 1263 (1968) (*per curiam*) ("When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law."). That reality, as just noted, holds true for enforcement of wage and hours laws. See supra, at 27.

I do not read the Court's opinion to place in jeopardy discrimination complaints asserting disparate-impact and pattern-or-practice claims that call for proof on a groupwide basis, see Brief for NAACP Legal Defense & Educational Fund, Inc., et al. as *Amici Curiae* 19-25, which some courts have concluded cannot be maintained by solo complainants, see, *e.g., Chin* v. *Port Auth. of N. Y. & N. J.*, 685 F. 3d 135 , 147 (CA2 2012) (pattern-or-practice method of proving race discrimination is unavailable in non-class actions). It would be grossly exorbitant to read the FAA to devastate Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e *et seq.*, and other laws enacted to eliminate, root and branch, class-based employment discrimination, see *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405 , 417 , 421 , 95 S. Ct. 2362 , 45 L. Ed. 2d 280 (1975). With fidelity to the Legislature's will, the Court could hardly hold otherwise.

I note, finally, that individual arbitration of employee complaints can give rise to anomalous results. Arbitration agreements often include provisions requiring that outcomes be kept confidential or barring arbitrators from giving prior proceedings precedential effect. See, *e.g.,* App. to Pet. for Cert. in No. 16-285, p. 34a (Epic's agreement); App. in No. 16-300, p. 46 (Ernst & Young's agreement). As a result, arbitrators may render conflicting awards in cases involving similarly situated employees—even employees working for the same employer. Arbitrators may resolve differently such questions as whether certain jobs are exempt from overtime laws. Cf. *Encino Motor Cars, LLC* v. *Navarro*, *ante,* p. ___ (Court divides on whether "service advisors" are exempt from overtime-pay requirements). With confidentiality and no-precedential-value provisions operative, irreconcilable answers would remain unchecked.

***

If these untoward consequences stemmed from legislative choices, I would be obliged to accede to them. But the edict that employees with wage and hours claims may seek relief only one-by-one does not come **[**930]** from Congress. It is the **[*1649]** result of take-it-or-leave-it labor contracts harking back to the type called "yellow dog," and of the readiness of this Court **[***33]** to enforce those unbargained-for agreements. The FAA demands no such suppression of the right of workers to take concerted action for their "mutual aid or protection." Accordingly, I would reverse the judgment of the Fifth Circuit in No. 16-307 and affirm the judgments of the Seventh and Ninth Circuits in Nos. 16-285 and 16-300.

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fn *

Together with No. 16-300, *Ernst & Young LLP et al.* v. *Morris et al.*, on certiorari to the United States Court of Appeals for the Ninth Circuit, and No. 16-307, *National Labor Relations Board* v. *Murphy Oil USA, Inc., et al.*, on certiorari to the United States Court of Appeals for the Fifth Circuit.

fn 1

Other provisions of the NLGA further rein in federal-court authority to disturb employees' concerted activities. See, *e.g.,* 29 U. S. C. §104(d) (federal courts lack jurisdiction to enjoin a person from "aiding any person participating or interested in any labor dispute who is being proceeded against in, or [who] is prosecuting, any action or suit in any court of the United States or of any State").

fn 2

The Court's opinion opens with the question: "Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration?" *Ante,* at 1. Were the "agreements" genuinely bilateral? Petitioner Epic Systems Corporation e-mailed its employees an arbitration agreement requiring resolution of wage and hours claims by individual arbitration. The agreement provided that if the employees "continue[d] to work at Epic," they would "be deemed to have accepted th[e] Agreement." App. to Pet. for Cert. in No. 16-285, p. 30a. Ernst & Young similarly e-mailed its employees an arbitration agreement, which stated that the employees' continued employment would indicate their assent to the agreement's terms. See App. in No. 16-300, p. 37. Epic's and Ernst & Young's employees thus faced a Hobson's choice: accept arbitration on their employer's terms or give up their jobs.

fn 3

The FLSA establishes an opt-in collective-litigation procedure for employees seeking to recover unpaid wages and overtime pay. See 29 U. S. C. §216(b) . In particular, it authorizes "one or more employees" to maintain an action "in behalf of himself or themselves and other employees similarly situated." *Ibid.* "Similarly situated" employees may become parties to an FLSA collective action (and may share in the recovery) only if they file written notices of consent to be joined as parties. Ibid. The Federal Rules of Civil Procedure provide two collective-litigation procedures relevant here. First, Rule 20(a) permits individuals to join as plaintiffs in a single action if they assert claims arising out of the same transaction or occurrence and their claims involve common questions of law or fact. Second, Rule 23 establishes an opt-out class-action procedure, pursuant to which "[o]ne or more members of a class" may bring an action on behalf of the entire class if specified prerequisites are met.

fn 4

Notably, one employer specified that if the provisions confining employees to individual proceedings are "unenforceable," "any claim brought on a class, collective, or representative action basis must be filed in . . . court." App. to Pet. for Cert. in No. 16-285, at 35a.

fn 5

The Court cites, as purported evidence of contrary agency precedent, a 2010 "Guideline Memorandum" that the NLRB's then-General Counsel issued to his staff. See *ante,* at 4, 19, 22. The General Counsel appeared to conclude that employees have a §7 right to file collective suits, but that employers can nonetheless require employees to sign arbitration agreements waiving the right to maintain such suits. See Memorandum GC 10-06, p. 7 (June 16, 2010). The memorandum sought to address what the General Counsel viewed as tension between longstanding precedent recognizing a §7 right to pursue collective employment litigation and more recent court decisions broadly construing the FAA. The memorandum did not bind the Board, and the Board never adopted the memorandum's position as its own. See *D. R. Horton*, 357 N. L. R. B. 2277 , 2282 (2012), enf. denied in relevant part, 737 F. 3d 344 (CA5 2013); Tr. of Oral Arg. 41. Indeed, shortly after the General Counsel issued the memorandum, the Board rejected its analysis, finding that it conflicted with Board precedent, rested on erroneous factual premises, "defie[d] logic," and was internally incoherent. *D. R. Horton*, 357 N. L. R. B., at 2282 -2283 .

fn 6

In 2012, the Board held that employer-imposed contracts barring group litigation in any forum—arbitral or judicial—are unlawful. *D. R. Horton*, 357 N. L. R. B. 2277 . In so ruling, the Board simply applied its precedents recognizing that (1) employees have a §7 right to engage in collective employment litigation and (2) employers cannot lawfully require employees to sign away their §7

rights. See id., at 2278 , 2280 . It broke no new ground. But cf. *ante,* at 2, 19.

fn 7

The Court additionally suggests that something must be amiss because the employees turn to the NLRA, rather than the FLSA, to resist enforcement of the collective-litigation waivers. See *ante,* at 14-15. But the employees' reliance on the NLRA is hardly a reason to "raise a judicial eyebrow." *Ante,* at 15. The NLRA's guiding purpose is to protect employees' rights to work together when addressing shared workplace grievances of whatever kind.

fn 8

See, *e.g., Bethany Medical Center*, 328 N. L. R. B. 1094 , 1105-1106 (1999) (holding employer violated §8(a)(1) by conditioning employees' rehiring on the surrender of their right to engage in future walkouts); *Mandel Security Bureau Inc.*, 202 N. L. R. B. 117 , 119 , 122 (1973) (holding employer violated §8(a)(1) by conditioning employee's reinstatement to former position on agreement that employee would refrain from filing charges with the Board and from circulating work-related petitions, and, instead, would "mind his own business").

fn 9

I would similarly hold that the NLGA renders the collective-litigation waivers unenforceable. That Act declares it the public policy of the United States that workers "shall be free from the interference, restraint, or coercion of employers" when they engage in "concerted activities" for their "mutual aid or protection." 29 U. S. C. §102 ; see supra, at 5. Section 3 provides that federal courts shall not enforce any "promise in conflict with the [Act's] policy." §103 . Because employer-extracted collective-litigation waivers interfere with employees' ability to engage in "concerted activities" for their "mutual aid or protection," see supra, at 8-11, the arm-twisted waivers collide with the NLGA's stated policy; thus, no federal court should enforce them. See Finkin, The Meaning and Contemporary Vitality of the Norris-LaGuardia Act, 93 Neb. L. Rev. 6 (2014).

Boys Markets, Inc. v. *Retail Clerks*, 398 U. S. 235 , 90 S. Ct. 1583 , 26 L. Ed. 2d 199 (1970), provides no support for the Court's contrary conclusion. See *ante*, at 16. In *Boys Markets*, an employer and a union had entered into a collective-bargaining agreement, which provided that labor disputes would be resolved through arbitration and that the union would not engage in strikes, pickets, or boycotts during the life of the agreement. 398 U. S., at 238-239 , 90 S. Ct. 1583 , 26 L. Ed. 2d 199 . When a dispute later arose, the union bypassed arbitration and called a strike. Id., at 239 , 90 S. Ct. 1583 , 26 L. Ed. 2d 199 . The question presented: Whether a federal district court could enjoin the strike and order the parties to arbitrate their dispute. The case required the Court to reconcile the NLGA's limitations on federal courts' authority to enjoin employees' concerted activities, see 29 U. S. C. §104 , with §301 (a) of the Labor Management Relations Act, 1947, which grants federal courts the power to enforce collective-bargaining agreements, see 29 U. S. C. §185(a) . The Court concluded that permitting district courts to enforce no-strike and arbitration provisions in collective-bargaining agreements would encourage employers to enter into such agreements, thereby furthering federal labor policy. 398 U. S., at 252-253 , 90 S. Ct. 1583 , 26 L. Ed. 2d 199 . That case has little relevance here. It did not consider the enforceability of arbitration provisions that require employees to arbitrate disputes only one-by-one. Nor did it consider the enforceability of arbitration provisions that an employer has unilaterally imposed on employees, as opposed to provisions negotiated through collective-bargaining processes in which employees can leverage their collective strength.

fn 10

American Bar Association member Julius H. Cohen, credited with drafting the legislation, wrote shortly after the FAA's passage that the law was designed to provide a means of dispute resolution "particularly adapted to the settlement of commercial disputes." Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L. Rev. 265, 279 (1926). Arbitration, he and a colleague explained, is "peculiarly suited to the disposition of the ordinary disputes between merchants as to questions of fact—quantity, quality, time of delivery, compliance with terms of payment, excuses for non-performance, and the like." Id., at 281. "It has a place also," they noted, "in the determination of the simpler questions of law" that "arise out of th[e] daily relations between merchants, [for example,] the passage of title, [and] the existence of warranties." *Ibid.*

fn 11

For fuller discussion of Congress' intent to exclude employment contracts from the FAA's scope, see *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 , 124-129 , 121 S. Ct. 1302 , 149 L. Ed. 2d 234 (2001) (Stevens, J., dissenting).

fn 12

In *Green Tree Financial Corp.* v. *Bazzle*, 539 U. S. 444 , 123 S. Ct. 2402 , 156 L. Ed. 2d 414 (2003), a plurality suggested arbitration might proceed on a class basis where not expressly precluded by an agreement. After *Bazzle*, companies increasingly placed explicit collective-litigation waivers in consumer and employee arbitration agreements. See Gilles, Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action, 104 Mich. L. Rev. 373 , 409-410 (2005). In *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333 , 131 S. Ct. 1740 , 179 L. Ed. 2d 742 (2011), and *American Express Co.* v. *Italian Colors Restaurant*, 570 U. S. 228 , 133 S. Ct. 2304 , 186 L. Ed. 2d 417 (2013), the Court held enforceable class-action waivers in the arbitration agreements at issue in those cases. No surprise, the number of companies incorporating express class-action waivers in consumer and employee arbitration agreements spiked. See 2017 Carlton Fields Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation 29 (2017), available at https://www.classactionsurvey.com/pdf/2017-class-action-survey.pdf (reporting that 16.1% of surveyed companies' arbitration agreements expressly precluded class actions in 2012, but 30.2% did so in 2016).

fn 13

Enacted, as was the NLRA, after passage of the FAA, the NLGA also qualifies as a statute more specific than the FAA. Indeed, the NLGA expressly addresses the enforceability of contract provisions that interfere with employees' ability to engage in concerted activities. See supra, at 17, n. 9. Moreover, the NLGA contains an express repeal provision, which provides that "[a]ll acts and parts of acts in conflict with [the Act's] provisions . . . are repealed." 29 U. S. C. §115 .

fn 14

See 116 Stat. 1836 (2002); *120 Stat. 2267* (2006); 124 Stat. 1746 (2010); 124 Stat. 2035 (2010).

fn 15

Based on a 2015 study, the Bureau of Consumer Financial Protection found that "pre-dispute arbitration agreements are being widely used to prevent consumers from seeking relief from legal violations on a class basis, and that consumers rarely file individual lawsuits or arbitration cases to obtain such relief." 82 Fed. Reg. 33210 (2017).

fn 16

The Court observes that class actions can be abused, see *ante,* at 24, but under its interpretation, even two employees would be stopped from proceeding together.

General Information

Judge(s)	Anthony McLeod Kennedy; CLARENCE THOMAS; ELENA KAGAN; JOHN GLOVER ROBERTS, JR; NEIL M. GORSUCH; Ruth Bader Ginsburg; Samuel A. Alito Jr; Sonia M Sotomayor; Stephen Gerald Breyer
Related Docket(s)	16-00285 (U.S.); 16-00300 (U.S.); 16-00307 (U.S.);
Topic(s)	Employment Law; Labor Law; Contracts; Alternative Dispute Resolution; Civil Procedure
Industries	Unions
Court	Supreme Court of the United States
Parties	EPIC SYSTEMS CORPORATION, PETITIONER v. JACOB LEWIS; ERNST & YOUNG LLP, ET AL., PETITIONERS v. STEPHEN MORRIS, ET AL.; AND NATIONAL LABOR RELATIONS BOARD, PETITIONER v. MURPHY OIL USA, INC., ET AL.

Stormy Daniels: Complaint

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual, Plaintiff, vs. DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive Defendants.	Case No. 2:18-CV-02217-SJO-FFM **FIRST AMENDED COMPLAINT FOR:** **(1) DECLARATORY RELIEF/JUDGMENT; AND** **(2) DEFAMATION** **DEMAND FOR JURY TRIAL**

Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson ("Ms. Clifford" or "Plaintiff") hereby alleges the following:

THE PARTIES

1. Plaintiff Ms. Clifford, an individual, is a resident of the State of Texas.

2. Defendant Donald J. Trump a.k.a. David Dennison ("Mr. Trump"), an individual, is a resident of the District of Columbia (among other places).

3. Defendant Essential Consultants, LLC ("EC") is a Delaware limited liability company formed on October 17, 2016.

4. Defendant Michael Cohen ("Mr. Cohen"), an individual, is a resident of the State of New York.

5. Mr. Trump, EC, and Mr. Cohen together shall be referred to hereafter as "Defendants."

6. The true names and capacities of the defendants DOES 1 through 10, inclusive, whether individual, plural, corporate, partnership, associate or otherwise, are not known to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of defendants DOES 1 through 10, inclusive, when the same have been ascertained.

7. Plaintiff is also informed and believe and thereon alleges that DOES 1 to 10 were the agents, principals, and/or alter egos of Defendants, at all times herein relevant, and that they are therefore liable for the acts and omissions of Defendants.

JURISDICTION AND VENUE

8. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction over Plaintiff's claims based on the parties' diversity of citizenship and because the amount in controversy exceeds $75,000.

9. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391, and this Court has personal jurisdiction over Defendants and each of them, by reason of the fact that, among other things, (a) the alleged agreement that is at issue in this Complaint was purportedly made and negotiated, at least in substantial part, in the County of Los Angeles, and (b) many of the events giving rise to this action arose in California, including within the County of Los Angeles.

FACTUAL BACKGROUND

10. Ms. Clifford began an intimate relationship with Mr. Trump in the summer of 2006 in Lake Tahoe and continued her relationship with Mr. Trump well into the year 2007. This relationship included, among other things, at least one "meeting" with Mr. Trump in a bungalow at the Beverly Hills Hotel located within Los Angeles County.

11. In 2015, Mr. Trump announced his candidacy for President of the United States.

12. On July 19, 2016, Mr. Trump secured the Republican Party nomination for President.

13. On October 7, 2016, the Washington Post published a video, now infamously known as the *Access Hollywood Tape*, depicting Mr. Trump making lewd remarks about women. In it, Mr. Trump described his attempt to seduce a married woman and how he may start kissing a woman that he and his companion were about to meet. He then added: "I don't even wait. And when you're a star, they let you do it, you can do anything . . ."

14. Within days of the publication of the *Access Hollywood Tape*, several women came forward publicly to tell their personal stories about their sexual encounters with Mr. Trump.

15. Around this time, Ms. Clifford likewise sought to share details concerning her relationship and encounters with Mr. Trump with various media outlets.

16. As a result of Ms. Clifford's efforts aimed at publicly disclosing her story and her communications with various media outlets, Ms. Clifford's plans came to the attention of Mr. Trump and his campaign, including Mr. Michael Cohen, an attorney licensed in the State of New York. Mr. Cohen worked as the "top attorney" at the Trump Organization from 2007 until after the election and presently serves as Mr. Trump's personal attorney. He is also generally referred to as Mr. Trump's "fixer."

17. After discovering Ms. Clifford's plans, Mr. Trump, with the assistance of his attorney Mr. Cohen, aggressively sought to silence Ms. Clifford as part of an effort to avoid her telling the truth, thus helping to ensure he won the Presidential Election. Mr. Cohen subsequently prepared a draft non-disclosure agreement and presented it to Ms. Clifford and her attorney (the "Hush Agreement"). Ms. Clifford at the time was represented by counsel in California whose office is located in Beverly Hills, California within the County of Los Angeles.

18. The parties named in the Hush Agreement were Ms. Clifford, Mr. Trump, and Essential Consultants LLC. As noted above, Essential Consultants LLC ("EC") was formed on October 17, 2016, just weeks before the 2016 presidential election. On information and belief, EC was created by Mr. Cohen with Mr. Trump's knowledge for one purpose – to hide the true source of funds to be used to pay Ms. Clifford, thus further insulating Mr. Trump from later discovery and scrutiny.

19. By design of Mr. Cohen, the Hush Agreement used aliases to refer to Ms. Clifford and Mr. Trump. Specifically, Ms. Clifford was referred to by the alias "Peggy Peterson" or "PP." Mr. Trump, on the other hand, was referred to by the alias "David Dennison" or "DD."

20. Attached hereto as Exhibit 1 is a true and correct copy of the Hush Agreement, titled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement. Exhibit 1 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

21. Attached hereto as Exhibit 2 is a true and correct copy of the draft Side Letter Agreement, which was Exhibit A to the Hush Agreement. Exhibit 2 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

22. Importantly, the Hush Agreement imposed various conditions and obligations not only on Ms. Clifford, but also on Mr. Trump. The agreement also required the signature of all parties to the agreement, including that of Mr. Trump. Moreover, as is customary, it was widely understood at all times that unless all of the parties signed the documents as required, the Hush Agreement, together with all of its terms and conditions, was null and void.

23. On or about October 28, 2016, only days before the election, two of the parties signed the Hush Agreement - Ms. Clifford and Mr. Cohen (on behalf of EC). Mr. Trump, however, did not sign the agreement, thus rendering it legally null and void and of no consequence. On information and belief, despite having detailed knowledge of the Hush Agreement and its terms, including the proposed payment of monies to Ms. Clifford and the routing of those monies through EC, Mr. Trump purposely did not sign the agreement so he could later, if need be, publicly disavow any knowledge of the Hush Agreement and Ms. Clifford.

24. Despite Mr. Trump's failure to sign the Hush Agreement, Mr. Cohen proceeded to cause $130,000.00 to be wired to the trust account of Ms. Clifford's attorney. He did so even though there was no legal agreement and thus no written nondisclosure agreement whereby Ms. Clifford was restricted from disclosing the truth about Mr. Trump.

25. Mr. Trump was elected President of the United States on November 8, 2016.

26. In January 2018, certain details of the draft Hush Agreement emerged in the news media, including, among other things, the existence of the draft agreement, the parties to the draft agreement, and the $130,000.00 payment provided for under the

draft agreement. Also in January 2018, and concerned the truth would be disclosed, Mr. Cohen, through intimidation and coercive tactics, forced Ms. Clifford into signing a false statement wherein she stated that reports of her relationship with Mr. Trump were false.

27. On or about February 13, 2018, Mr. Cohen issued a public statement regarding Ms. Clifford, the existence of the Hush Agreement, details concerning the Hush Agreement, and an attack on Ms. Clifford's truthfulness. He did so without any consent by Ms. Clifford, thus evidencing Mr. Cohen's apparent position (at least in that context) that no binding agreement was in place. Among other things, Mr. Cohen stated: "In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly." Mr. Cohen concluded his statement by stating: "Just because something isn't true doesn't mean that it can't cause you harm or damage. *I will always protect Mr. Trump.*" (emphasis added). This statement was made in writing by Mr. Cohen and released by Mr. Cohen to the media with the intent that it be widely disseminated and repeated throughout the United States. Attached hereto as Exhibit 3 is a true and correct copy of Mr. Cohen's statement. Exhibit 3 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

28. Importantly, at no time did Mr. Cohen make a direct assertion that Ms. Clifford did not have an intimate relationship with Mr. Trump. Indeed, were he to make such a statement, it would be patently false. Mr. Cohen's statement was not a mere statement of opinion, but rather has been reasonably understood to be a factual statement implying or insinuating that Ms. Clifford was not being truthful in claiming that she had an intimate relationship with Mr. Trump.

29. Because the agreement was never formed and/or is null and void, no contractual obligations were imposed on any of the parties to the agreement, including

any obligations to keep information confidential. Moreover, to the extent any such obligations did exist, they were breached and/or excused by Mr. Cohen and his public statements to the media.

30. To be clear, the attempts to intimidate Ms. Clifford into silence and "shut her up" in order to "protect Mr. Trump" continue unabated. For example, only days ago on or about February 27, 2018, Mr. Trump's attorney Mr. Cohen surreptitiously initiated a bogus arbitration proceeding against Ms. Clifford in Los Angeles. Remarkably, he did so without even providing Ms. Clifford with notice of the proceeding and basic due process.

31. Put simply, considerable steps have been taken by Mr. Cohen in the last week to silence Ms. Clifford through the use of an improper and procedurally defective arbitration proceeding hidden from public view. The extent of Mr. Trump's involvement in these efforts is presently unknown, but it strains credibility to conclude that Mr. Cohen is acting on his own accord without the express approval and knowledge of his client Mr. Trump.

32. Indeed, Rule 1.4 of the New York Rules of Professional Conduct governing attorneys has required Mr. Cohen *at all times* to promptly communicate all material information relating to the matter to Mr. Trump, including but not limited to "any decision or circumstance with respect to which [Mr. Trump's] informed consent [was] required" and "material developments in the matter including settlement or plea offers." Moreover, this same Rule required Mr. Cohen *at all times* to "reasonably consult with [Mr. Trump] about the means by which [his] objectives are to be accomplished" and to "keep [Mr. Trump] reasonably informed about the status of the matter."

33. Further, Rule 1.8(e) of the New York Rules of Professional Conduct provides that attorneys "shall not advance or guarantee financial assistance to the client[.]" Although the Rule provides for certain exceptions, such as permitting lawyers to pay court costs and expenses for indigent clients, plainly, none of these exceptions

apply to Mr. Cohen's purported financial assistance of $130,000 on behalf of his client, Mr. Trump.

34. Accordingly, unless Mr. Cohen flagrantly violated his ethical obligations and the most basic rules governing his license to practice law (which is highly unlikely), there can be no doubt that Mr. Trump *at all times* has been fully aware of the negotiations with Ms. Clifford, the existence and terms of the Hush Agreement, the payment of the $130,000.00, the use of EC as a conduit, and the recent attempts to intimidate and silence Ms. Clifford by way of the bogus arbitration proceeding.

35. Because there was never a valid agreement and thus, no agreement to arbitrate, any subsequent order obtained by Mr. Cohen and/or Mr. Trump in arbitration is of no consequence or effect.

FIRST CAUSE OF ACTION

Declaratory Relief/Judgment

(Against Defendants Mr. Trump and EC)

36. Plaintiff restates and re-alleges each and every allegation in Paragraphs 1 through 35 above as if fully set forth herein.

37. This action concerns the legal significance, if any, of the documents attached hereto as Exhibit 1, entitled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement, and Exhibit 2, entitled Side Letter Agreement.

38. California Code of Civil Procedure § 1060 authorizes declaratory relief for any person who desires a declaration of rights or duties with respect to one another. In cases of actual controversy relating to the legal rights and duties of the respective parties, such a person may seek a judicial declaration of his or her rights and duties relative to an instrument or contract, or alleged contract, including a determination of any question of construction or validity arising under the instrument or contract, or alleged contract. This includes a determination of whether a contract was ever formed.

39. 28 U.S.C. § 2201 creates a remedy for the entry of a declaratory judgment in cases of "actual controversy", whereby the court may declare the rights and other legal relations of any interested party seeking such declaration. Any such declaration shall have the force and effect of a final judgment or decree.

40. An actual controversy exists between Plaintiff and Defendants as to their rights and duties to each other. Accordingly, a declaration is necessary and proper at this time.

A. No Agreement Was Formed – Lack of Signature, Consideration, or Consent

41. Specifically, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 between Plaintiff and Defendants were never formed, and therefore do not exist, because, among other things, Mr. Trump never signed the agreements (which was an express condition of the Hush Agreement that had to occur for the formation of a valid and binding agreement). Nor did Mr. Trump provide any other valid consideration. He thus never assented to the duties, obligations, and conditions the agreements purportedly imposed upon him, which included express obligations imposed on Mr. Trump to provide Plaintiff with releases, a covenant not to sue, and representations and warranties (all of which were separate and apart from the $130,000 payment). Plaintiff contends that, as a result, no agreement was ever formed or ever existed and, consequently, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

B. The Agreement Is Unconscionable

42. In the alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable, and/or void under the doctrine of unconscionability. By way of example only (and not limitation), the Hush Agreement contains a "Liquidated Damages" provision in favor of

"DD" (Mr. Trump) purporting to require Plaintiff to pay $1 Million for "each breach" calculated on a "per item basis." However, $1 Million for "each breach" bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. Instead, the liquidated damages clause was intended to inflict a penalty designed to intimidate and financially cripple Plaintiff. It is therefore void as a matter of law.

43. By way of further example, while on the one hand, the Hush Agreement purports to impose astonishingly broad restrictions on speech and disclosure upon Plaintiff (including prohibiting disclosure of matters that are of public record), on the other hand, Defendants, with few exceptions, have no such restrictions imposed upon them and are thus permitted to disclose matters covered by the Agreement, and publicly disparage Plaintiff and impugn her credibility. As but one illustration of the one-sided nature of the Hush Agreement, EC, through Mr. Cohen, violated paragraph 7.1 of the Agreement by disclosing terms of the Agreement to the *Wall Street Journal* on or about January 12, 2018. Although the Agreement attempts to impose astonishingly Draconian consequences and penalties upon Plaintiff for a breach of the Agreement, no such remedies are available to Plaintiff for Defendants' breach of the Agreement. An agreement that sanctions such overly-harsh, one-sided results without any justification and which allocates risks of the bargain in such an objectively unreasonable and unexpected manner is unconscionable as a matter of law. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

C. The Agreement Is Void *Ab Initio* Because It Is Illegal and Violates Public Policy

44. In the further alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable,

and/or void because they are illegal, or that they violate public policy. Essential to the "*existence*" of a contract is that the contract have a "lawful object" or lawful purpose. See, e.g., Cal. Civ. Code § 1550. No such lawful purpose existed in the Hush Agreement for at least the following reasons.

45. *First*, the Hush Agreement was entered with the illegal aim, design, and purpose of circumventing federal campaign finance law under the Federal Election Campaign Act (FECA), 52 U.S.C. §§ 30101, *et seq.*, and Federal Election Commission (FEC) regulations. The purposes and aims of the FECA include the promotion of transparency, the complete and accurate disclosure of the contributors who finance federal elections, and the restriction on the influence of political war chests funneled through the corporate form.

46. In order to effectuate these purposes, FECA imposes various contribution limits, and reporting and public disclosure requirements, on candidates for Federal office, including the office of President of the United States. With regards to the 2016 Presidential Election, FECA required that the maximum any "person"—defined to include "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons" —was permitted to contribute to any candidate was $2,700. 52 U.S.C. §§ 30101(11); 30116(a)(1)(A), (c); see also FEC, Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017). Mr. Trump and his campaign for the presidency were subject to FECA and its contribution limit at all relevant times.

47. The term "contribution" is defined broadly to include "any gift, subscription, loan, advance, or deposit of money *or anything of value* made by any person *for the purpose of influencing any election for Federal office*[.]" 52 U.S.C. § 30101(8)(A) (emphasis added); see also 11 C.F.R. §§ 100.51-100.56. The phrase "anything of value" includes "all in-kind contributions." 11 C.F.R. § 100.52(d)(1). In other words, "the provision of any goods or services without charge or at a charge that

is less than the usual and normal charge for such goods or services is a contribution." Id.

48. In addition, under FECA, Mr. Trump and his campaign for the presidency were required to report the identification of each person who made a contribution to his campaign with an aggregate value in excess of $200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A). Mr. Trump and his campaign for the presidency were also required to report the name and address of each person *to whom* an expenditure in an aggregate amount in excess of $200 within the calendar year was made by his campaign committee.

49. FECA also imposes similar requirements on the reporting of "expenditures." 52 U.S.C. § 30104(b)(4)-(5). The term "expenditure" includes "(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money *or anything of value*, made by any person *for the purpose of influencing any election for Federal office*; and (ii) a written contract, promise, or agreement to make an expenditure." 52 U.S.C. § 30101(9) (emphasis added). As with "contributions," the phrase "anything of value" in the context of "expenditures" includes "all in-kind contributions." 11 C.F.R. § 100.111(e)(1).

50. Moreover, "contributions from the candidate" or "expenditures" from the candidate must also be reported. 11 C.F.R. § 104.3(a)(3)(ii); see also, e.g., FEC Advisory Opinion 1990-09.

51. Here, the Hush Agreement did not have a lawful object or purpose. The Hush Agreement, and the $130,000 payment made pursuant to the agreement, was for the "purpose of influencing" the 2016 presidential election by silencing Plaintiff from speaking openly and publicly about Mr. Trump just weeks before the 2016 election. Defendants plainly intended to prevent American voters from hearing Plaintiff speak about Mr. Trump. This $130,000 payment was a thing "of value" and an "in-kind" contribution exceeding the contribution limits in violation of FECA and FEC regulations. It was also a violation of FECA and FEC regulations because it was not

publicly reported as a contribution. Further, it was a violation of FECA and FEC regulations because it was a thing "of value" and an "in-kind" expenditure that was required to be reported as such. Therefore, because the Hush Agreement did not have a lawful object or purpose, the Agreement was void *ab initio*. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

52. *Second*, the Hush Agreement is also void *ab initio* because it violates public policy by suppressing speech on a matter of public concern about a candidate for President of the United States, mere weeks before the election. Agreements to suppress evidence are void as against public policy, both in California and in most common law jurisdictions. "A bargain that has for its consideration the nondisclosure of discreditable facts, or of facts that the promisee is under a fiduciary duty not to disclose, is illegal." Restatement (First) of Contracts § 557 (1932). Remarkably, illustration 1 in the official comments to section 557 provides the following example of a bargain that is illegal:

> 1. A, a candidate for political office, and as such advocating certain principles, had previously written letters to B, taking a contrary position. B is about to publish the letters, and A fearing that the publication will cost him his election, agrees to pay $1000 for the suppression of the letters. The bargain is ***illegal***.

Restatement (First) of Contracts § 557, Illustration 1 (1932)(emphasis added).

53. *Third*, the Hush Agreement is also without a lawful object or purpose and thus void *ab initio* based on illegality because it was entered for the purpose of covering-up adulterous conduct, a crime in New York, Mr. Trump's home state at the time of the Hush Agreement and at the time of the intimate relationship between Plaintiff and Mr. Trump. N.Y. Penal Law § 255.17 ("A person is guilty of adultery

when he engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse. Adultery is a class B misdemeanor.").

54. *Fourth*, the Hush Agreement is also without a lawful object or purpose and thus void *ab initio* based on illegality because it was entered into by Defendant EC at the behest of Defendant Cohen, a New York attorney then subject to the New York Rules of Professional Conduct. If Mr. Cohen's public statements are true (which is unlikely), he violated Rule 1.4 of the New York Rules of Professional Conduct by entering into an agreement on his client Mr. Trump's behalf without notifying him of the agreement, including, among other things, the fact that the agreement required a payment of $130,000 to be made, that he was making the payment for Mr. Trump on Mr. Trump's behalf, that Mr. Trump was being encumbered with various duties and obligations under the Agreement, that the Agreement and $130,000 payment would possibly subject Mr. Trump to violations of federal campaign finance laws, and that the Agreement would raise questions about whether he had an adulterous affair that Mr. Trump apparently now denies ever occurred.

55. Moreover, if Mr. Cohen's public statements are true, he also violated Rule 1.8(e) of the New York Rules of Professional Conduct by advancing or guaranteeing financial assistance to a client by paying $130,000 from his own personal funds to benefit his client Mr. Trump.

D. There Was No Agreement to Arbitrate Between Plaintiff and EC

56. Separate and apart from Plaintiff's request for an order declaring that no agreement was ever formed between the parties, or that the entirety of the Hush Agreement be declared void *ab initio*, all as set forth above, Plaintiff alternatively seeks an order of this Court declaring that no agreement to arbitrate exists between Plaintiff and EC. Under paragraph 5.2 of the Hush Agreement, entitled "Dispute Resolution," only those "claims and controversies arising between DD [Mr. Trump] on the one hand,

and PP [i.e., Plaintiff] on the other hand" are subject to arbitration. To be clear, there is not presently nor has there ever been any agreement to arbitrate between Plaintiff and EC.

E. The Arbitration Clause Is Void *Ab Initio* Because It Is Unconscionable, Illegal, and Violates Public Policy

57. Moreover, also separate and apart from Plaintiff's request for an order declaring that no agreement was ever formed between the parties, or that the entirety of the Hush Agreement be declared void *ab initio* (as set forth above), Plaintiff alternatively seeks an order of this Court declaring that no agreement to arbitrate exists because no agreement was formed (see Complaint, ¶41, supra), and further, that no agreement to arbitrate exists because paragraphs 5.2 of the Agreement (which contains the arbitration clause) along with various parts of paragraph 5.1 of the Agreement (describing "DD's" remedies that Defendants would presumably argue are available to them in a confidential arbitration proceeding) are void *ab initio* because they unconscionable, illegal, and violates public policy.

58. *First*, the arbitration clause is unconscionable, particularly when combined with the remedies section of the Agreement. The clause is extremely one-sided by conferring significant rights exclusively to Mr. Trump (as "DD" referred to in the Agreement), provided he is a party to the agreement. Among other things, (a) Mr. Trump is given the right to seek injunctive relief *either* in court or arbitration, while Defendants contend Plaintiff must pursue all rights in arbitration, (b) Mr. Trump is given the exclusive right to elect which state's laws will apply to the arbitration (California, Nevada, or Arizona) and he is not required to provide notice of which state's laws he elects will be applied until after he has filed an arbitration proceeding, and (c) Mr. Trump is given the exclusive right to choose venue in *any* location (i.e., anywhere in the country) he selects and is permitted to elect which of two arbitration

agencies the arbitration proceeding may be initiated in (either JAMS or Action Dispute Resolution Services).

59. *Second,* the arbitration clause is illegal and without lawful object or purpose because it was entered with the purpose of keeping facts concerning federal campaign contributions and expenditures secret and hidden from public view by using a confidential arbitration proceeding in violation of FECA's mandates to publicly report campaign contributions and expenditures. In other words, the principal aim and design of the arbitration clause is to keep confidential that which, by law, must be publicly disclosed. Indeed, the clause plainly is designed to prevent the public disclosure of an illegal campaign contribution by mandating that disputes between Plaintiff and Mr. Trump be resolved in a confidential arbitration proceeding shielded from public scrutiny.

60. *Third*, the arbitration clause is void because it violates public policy by suppressing speech on a matter of enormous public concern about a candidate for President of the United States mere weeks before the election. See Restatement (First) of Contracts § 557.

61. *Fourth*, the arbitration clause is illegal and without lawful object or purpose because it was designed to cover up adulterous conduct, a crime in New York, Mr. Trump's home state at the time of the Hush Agreement and at the time of Plaintiff and Mr. Trump's intimate relationship. N.Y. Penal Law § 255.17. It is also illegal and without lawful object or purpose because it was designed to cover up Mr. Cohen's ethical violations, including his violations of Rule 1.4 and 1.8(e) of the New York Rules of Professional Conduct.

62. Defendants dispute all of the foregoing contentions.

63. Accordingly, Ms. Clifford desires a judicial determination of her rights and duties with respect to the alleged agreements in the forms set out in Exhibits 1 and 2.

SECOND CAUSE OF ACTION

Defamation

(Against Defendant Mr. Cohen)

64. Plaintiff restates and re-alleges each and every allegation in Paragraphs 1 through 64 above as if fully set forth herein.

65. On or about February 13, 2018, Mr. Cohen issued a public statement. The entirety of the statement is attached hereto as Exhibit 3. In it, he states in part: "*Just because something isn't true* doesn't mean that it can't cause you harm or damage. I will always protect Mr. Trump." (emphasis added). Mr. Cohen's statement was made in writing and released by Mr. Cohen to the media with the intent that it be widely disseminated and repeated throughout California and across the country (and the world) on television, on the radio, in newspapers, and on the Internet.

66. It was reasonably understood by those who read or heard the statement that Mr. Cohen's defamatory statement was about Ms. Clifford.

67. Both on its face, and because of the facts and circumstances known to persons who read or heard the statement, it was reasonably understood Mr. Cohen meant to convey that Ms. Clifford is a liar, someone who should not be trusted, and that her claims about her relationship with Mr. Trump is "something [that] isn't true." Mr. Cohen's statement exposed Mr. Clifford to hatred, contempt, ridicule, and shame, and discouraged others from associating or dealing with her.

68. Mr. Cohen's defamatory statement was false.

69. Mr. Cohen made the statement knowing it was false or had serious doubts about the truth of the statements.

70. As a result, Plaintiff Ms. Clifford has suffered damages in an amount to be proven at trial according to proof, including but not limited to, harm to her reputation, emotional harm, exposure to contempt, ridicule, and shame, and physical threats of violence to her person and life.

71. In making the defamatory statement identified above, Mr. Cohen acted with malice, oppression, or fraud, and is thus responsible for punitive damages in an amount to be proven at trial according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void *ab initio*, invalid, or otherwise unenforceable.

ON THE FIRST CAUSE OF ACTION (DECLARATORY RELIEF/JUDGMENT)

1. For a judgment declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable;
2. For a judgment declaring that no agreement to arbitrate was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable;
3. For costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION (DEFAMATION)

1. For damages in an amount to be proven at trial;
2. For punitive damages;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all causes so triable. Said demand includes a demand, pursuant to 9 U.S.C. § 4, for a trial by jury concerning whether the parties entered into the agreement at issue by which EC, Mr. Trump, or both, will seek to compel arbitration.

DATED: March 26, 2018 AVENATTI & ASSOCIATES, APC

/s/ Michael J. Avenatti
MICHAEL J. AVENATTI
Attorneys for Plaintiff

EXHIBIT 1

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE; ASSIGNMENT OF COPYRIGHT AND NON-DISPARAGMENT AGREEMENT

1.0 THE PARTIES

1.1 This Settlement Agreement and Mutual Release (hereinafter, this "Agreement") is made and deemed effective as of the 28 day of October, 2016, by and between "**EC, LLC**" and/or **DAVID DENNISON**, (DD), on the one part, and **PEGGY PETERSON**, (PP), on the other part. ("EC, LLC," "DD" and "PP" are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as "EXHIBIT A") This Agreement is entered into with reference to the facts and circumstances contained in the following recitals.

2.0 RECITALS

2.1 Prior to entering into this Agreement, PP came into possession of certain "Confidential Information" pertaining to DD, as more fully defined below, only some of which is in tangible form, which includes, but is not limited to information, certain still images and/or text messages which were authored by or relate to DD (collectively the "Property", each as more fully defined below but which all are included and attached hereto as Exhibit "1" to the Side Letter Agreement).

2.2 (a) PP claims that she has been damaged by DD's alleged actions against her, including but not limited to tort claims proximately causing injury to her person and other related claims. DD denies all such claims. (Hereinafter "PP Claims").

(b) DD claims that he has been damaged by PP's alleged actions against him, including but not limited to the alleged threatened selling, transferring, licensing, publicly disseminating and/or exploiting the Images and/or Property and/or other Confidential Information relating to DD, all without the knowledge, consent or authorization of DD. PP denies all such claims. (Hereinafter "DD Claims").

(c) The PP Claims and the DD Claims are hereinafter collectively referred to as "The Released Claims."

2.3 DD desires to acquire, and PP desires to sell, transfer and turn-over to DD, any and all tangible copies of the Property and any and all physical and intellectual property rights in and to all of the Property. As a condition of DD releasing any claims against PP related to this matter, PP agrees to sell and transfer to DD all and each of her rights in and to such Property. PP agrees to deliver each and every existing copy of all tangible Property to DD (and permanently delete any electronic copies that can not be transferred), and agrees that she shall not possess, nor directly nor indirectly disclose convey, transfer or assign Property or any Confidential Information to any Third Party, as more fully provided herein.

2.4 It is the intention of the Parties that Confidential Information, as defined herein, shall remain confidential as expressly provided hereinbelow. The Parties expressly acknowledge, agree and understand that the Confidentiality provisions herein and the

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representations and warranties made by PP herein and the execution by her of the Assignment & Transfer of Copyright are at the essence of this Settlement Agreement and are a material inducement to DD's entry into this Agreement, absent which DD would not enter into this Agreement. DD expects and requires that PP never communicate with him or his family for any reason whatsoever.

2.5 The Parties wish to avoid the time, expense, and inconvenience of potential litigation, and to resolve any and all disputes and potential legal claims which exist or may exist between them, as of the date of this Agreement including but not limited to the PP Claims and/or the DD Claims. The Parties agree that the claims released include but are not limited to DD's Claims against PP as relates to PP having allowed, whether intentionally, unintentionally or negligently, anyone else other than those listed in section 4.2 herein below to become aware of the existence of and content of the Property, to have gained possession of the Property, and to PP's having allegedly engaged in efforts to disclose, disseminate and/or commercially exploit the Images and/or Property and/or Confidential Information, and any harm suffered by DD therefrom. The Parties agree that the claims released include but are not limited to PP's Claims against DD as relates to DD having allowed, whether intentionally, unintentionally or negligently, anyone else to have interfered with PP's right to privacy or any other right that PP may possess.

2.6 These Recitals are essential, integral and material terms of this Agreement, and this Agreement shall be construed with respect thereto. The Parties enter into this Agreement in consideration of the promises, covenants and conditions set forth herein, and for good and valuable consideration, the receipt of which is hereby acknowledged. It is an essential element of this Settlement Agreement that the Parties shall never directly or indirectly communicate with each other or attempt to contact their respective families. This matter, the existence of this Settlement Agreement and its terms are strictly confidential.

NOW, THEREFORE, the Parties adopt the foregoing recitals as a statement of their intent and in consideration of the promises and covenants contained herein, and further agree as follows:

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3.0 SETTLEMENT TERMS

3.0.1.1 EC, LLC SHALL PAY TO PP $130,000.00 U.S.D. AS FOLLOWS:

3.0.1.1.1 $130,000.00 USD shall be wired into PP's Attorney's Attorney Client Trust Account on or before 1600 hrs. PST on 10/27/16.(Hereinafter "Gross Settlement Amount"). PP's Attorney's Wiring Instructions are:

Bank Name:	City National Bank
Bank Address:	8641 Wilshire Blvd. Beverly Hills, CA 90211
ABA Routing No:	122016066
Beneficiary Account Name:	Keith M. Davidson & Associates, PLC, Attorney Client Trust Account
Beneficiary Account No:	600106201
Beneficiary Address:	8383 Wilshire Blvd. Suite 510 Beverly Hills, CA 90211
SWIFT Code:	CINA US6L

3.0.1.1.2 Keith M. Davidson, Esq. shall receive the Gross Settlement Amount in Trust. No portion of the Gross Settlement Amount shall be disbursed by Attorney for PP unless and until PP executes all required Settlement Documents.

3.1 Undertakings & Obligations by PP. PP will do each of the following by 11/01/16:

(a) PP shall execute this Agreement and return a signed copy to DD:

(b) PP shall transfer and/or assign any and all rights in and to the Property to DD (as set forth hereinbelow), and execute an Assignment & Transfer of Copyright, in the form attached hereto, and return a signed copy of same to DD's counsel;

(c) PP shall deliver to DD every existing copy of all tangible Property. PP shall completely divest herself of any and all artistic media, impressions, paintings, video images, still images, e-mail messages, text messages, Instagram message, facebook posting or any other type of creation by DD. PP shall transfer all physical, ownership and intellectual property rights to DD;

(1) PP shall deliver to DD any and all non-privileged correspondence concerning or related to DD between PP and any 3rd party.

(d) PP shall not, at any time from the date of this Agreement forward, directly or indirectly disclose or disseminate any of the Property or any Confidential Information (including confirmation of the fact that it exists or ever existed, and/or confirming any rumors as to any such existence) to any third party, as more fully provided herein.

(e) PP shall provide to DD (to the extent not already done so and set forth in paragraph 4.2 hereinbelow), summary details disclosing to whom PP (or anyone else on PP's behalf) disclosed, displayed to, disseminated, transferred to, provided a copy to, and/or

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distributed, sold, licensed or otherwise sought to have commercially exploit, the Images and/or Property and/or any Confidential Information.

(f) PP shall provide to DD's counsel the names and contact information of each and any persons or entities who: (1) PP has provided to or who otherwise obtained possession of the original and/or any copies of any of the Images and/or any Property, if any, (ii) to whom PP has scanned the Images and/or any Property at any time, and (iii) to whom PP knows had, has or may potentially have possession of a copy of the Images and/or any Property at any time, including but not limited to the present time (and specify with detail to which of the referenced categories (i.e., possession, shown, past, present, etc.) any name corresponds, the name so relates).

(g) PP shall provide to DD's counsel copies of any agreements and/or other documentation in PP's possession, custody or control, if any, regarding (e) and/or (f) above, that evidences who has or may have been provided a copy of any of the Property.

3.2 Transfer of Property Rights to DD. In further consideration for the promises, covenants and consideration herein, PP hereby transfers and conveys to DD all of PP's respective rights, title and interest in and to the Property, and any and all physical and intellectual property rights related thereto. Without limiting the generality of the foregoing, PP does hereby sell, assign, and transfer to DD, his successors and assigns, throughout the universe in perpetuity, all of PP's entire right, title, and interest (including, without limitation, all copyrights and all extensions and renewals of copyrights), of whatever kind or nature in and to the Property, without reservation, condition or limitation, whether or not such rights are now known, recognized or contemplated, and the complete, unconditional and unencumbered ownership and all possessory interest and rights in and to the Property, which includes, but is not limited to the originals, copies, negatives, prints, positive, proof sheets, CD-roms, DVD-roms, duplicates, outtake and the results of any other means of exhibiting, reproducing, storing, recording and/or archiving any of the Property or related material, together with all rights of action and claims for damages and benefits arising because of any infringement of the copyright to the Property, and assigns and releases to DD any and all other proprietary rights and usage rights PP may own or hold in the copyright and/or Property, or any other right in or to the Property. PP assigns and transfers to DD all of the rights herein granted, without reservation, condition or limitation, and agrees that PP reserves no right of any kind, nature or description related to the Property and contents therein. Notwithstanding the foregoing, if any of the rights herein granted are subject to termination under section 203 of the Copyright Act, or any similar provisions of the Act or subsequent amendments thereof, PP hereby agrees to re-grant such rights to DD immediately upon such termination. All rights granted herein or agreed to be granted hereunder shall vest in DD immediately and shall remain vested in perpetuity. DD shall have the right to freely assign, sell, transfer or destroy the Property as he desires. DD shall have the right to register sole copyright in and to any of the Property with the US Copyright Office. DD shall also have the right, in respect to the Property, to add to, subtract from, change, arrange, revise, adapt, into any and all form of expression or tangible communication, and the right to combine any of the Property with any other works of any kind and/or to create derivative works with any of the Property, and to do with it as she so deems. To the fullest extent allowable under the applicable law, PP shall irrevocably waive and assign to DD any of PP's so-called "moral rights" or "droit moral" (laws for the protection of copyrights outside of the United States), if any, or any similar rights under any principles of law which PP may now have or later have in the Property. With respect to and in furtherance of the above, PP agrees to and shall execute and deliver to DD an

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"Assignment & Transfer of Copyright", in the form attached hereto as Exhibit "B". For greater certainty the foregoing assignment shall be applicable worldwide.

3.2.1 Notwithstanding the foregoing paragraph 3.2, and without in anyway limiting or diminishing from the full transfer and assignment of rights therein without reservation, the Parties understand the purpose of the transfer of rights is to provide DD the fullest possible ability and remedies to prevent and protect against any publication and/or dissemination of the Property.

3.3 Delivery of the Property to DD. Concurrently upon execution of this Agreement, PP, as applicable, shall deliver to DD, by delivery to his counsel herein, all of the Property which is embodied in tangible form (all originals and duplicates), whether documents, canvasses, paper art, digital copies, letters, prints, electronic data, films, tapes, CD-Roms, DVD-Roms, Images recording tapes, photographs, negatives, originals, duplicates, contact sheets, audio recordings, Images recordings, magnetic data, computerized data, digital recordings, or other recorded medium or any other format of embodying information or data. Without limiting the generality of the foregoing, such tangible Property shall include all documents as defined by California Evidence Code §250 which contain any of the Property. PP represents and warrants that the materials delivered pursuant to the terms of this Paragraph 3.3 comprise the totality of all existing originals and duplicates of all Property in any tangible form, whether within their possession, custody or control, and including otherwise (and that PP knows of no other copies or possible or potential copies not in PP's possession and control and delivered pursuant to this paragraph), and that upon such delivery to DD, PP shall not maintain possession, custody or control of any copy of all or any portion of any tangible Property. The Property Delivered under this Paragraph shall become Exhibit 1 to the Side Letter Agreement. For avoidance of any doubt, PP, nor her attorney are entitled to retain possession of said Property after execution of this Agreement. The retention of said Property by PP is a material breach of this agreement.

3.3.1 This Agreement is conditioned on PP's compliance with each and every term of the Settlement Agreement including Paragraph 3.3 and the personal verification by DD or his attorney of the Images and that the Images are comprised of and captures the content previously represented to his counsel to exist and be captured therein (i.e., text messages between PP and DD)), all of which terms are essential and material.

4.0 CONFIDENTIALITY & REPRESENTATIONS & WARRANTIES.

4.1 Definition of Confidential Information. "Confidential Information" means and includes each and all of the following:

(a) All *intangible* information pertaining to DD and/or his family, (including but not limited to his children or any alleged children or any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct or related matters),and/or friends learned, obtained, or acquired by PP, including without limitation information contained in letters, e-mails, text messages, agreements, documents, audio or Images recordings, electronic data, and photographs;

(b) All *intangible* information pertaining to the existence and content of the Property;

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(c) All *intangible* private information (*i.e.*, information not generally available to and/or known by the general public) relating and/or pertaining to DD, including without limitation DD's business information, familial information, any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct, related matters or paternity information, legal matters, contractual information, personal information, private social life, lifestyle, private conduct, (all information/items in 4.1 "(a)", "(b)" and "(c)" are sometimes collectively referred to as, "Intangible Confidential Information");

(d) All *tangible* materials of any kind containing information pertaining to DD learned, obtained, participated or acquired by PP, including without limitation letters, agreements, documents, audio or Images recordings, electronic data, and photographs, canvas art, paper art, or art in any other form on any media. The Images and Photos and all information/items in 4.1(d) are collectively referred to as, the "Property" and/or the "Tangible Confidential Information");

4.2 PP's Representations & Warranties Regarding Prior Disclosures of Tangible Confidential Information. PP represents and warrants that prior to entry into this Agreement, PP has directly or indirectly disclosed any *Tangible* an/or Intangible Confidential Information (i.e., any of the Property), to any Third Party, including without limitation disclosure or indirect disclosure of the content of such Confidential Information in tangible form, other than the following persons or entities to whom PP has made such prior disclosures (herein "PP Disclosed Individuals/Entities"):

a) Mike Mosney
b) Angel Ryan
c) Gina Rodriguez
d) Keith Munyan
e) _____
f) _____
g) _____
h) _____
i) _____

PP shall not be responsible for any subsequent public disclosure of any of the Confidential Information (a) attributable directly to each of them; and/or (b) not disclosed hereinabove as a previously disclosed PP Disclosed Individuals/Entities, and any such disclosure shall be deemed a breach of this Agreement by PP. For greater clarity, PP must not induce, promote or actively inspire anyone to disclose Confidential Information.

PP _____ Page 5 DD

4.3 Representations & Warranties and Agreements.

(a) Representations & Warranties and Agreements By DD. The following agreements, warranties and representations are made by DD as material inducements to PP to enter into this Agreement, and each Party acknowledges that she/he is executing this Agreement in reliance thereon:

(b) DD warrants and represents that, as relates to or in connection with any of PP's attempts to sell, exploit and/or disseminate the Property prior to the date of this Agreement, DD and his counsel will refrain (i) from pursuing any civil action against PP, and/or (ii) absent a direct inquiry from law enforcement, from disclosing PP's name to the authorities. Notwithstanding the foregoing, if DD is informed that or should or if it is believed that either of PP has possession, custody and/or control of any of the Property after the date of this Agreement and/or transferred any copies to any Third Party, and/or it is believed that any of PP, whether directly or indirectly, intends the release, use, display, dissemination, disclosure or exploitation, whether actual, threatened or rumored, of any for the Property, then DD and his counsel shall be entitled to, at DD's sole discretion, (i) contact the respective member of PP, including with legal demands and related statements of liability and legal action, and/or (ii) advance a civil action against the respective member of PP, and/or (iii) disclose any of PP's name to the authorities.

4.3.2 Representations & Warranties and Agreements By PP. The following agreements, warranties and representations are made by PP as material inducements to DD to enter into this Agreement, without which DD would not enter into this Agreement and without which DD would not agree to pay any monies whatsoever hereunder, and with the express acknowledgment that DD is executing this Agreement in reliance on the agreements, warranties, and representations herein which are at the essence of this Agreement, including, the following:

(a) PP agrees and warrants and represents that PP will permanently cease and desist from any efforts to and/or attempting to and/or engaging in and/or arranging the use, License, distribution, dissemination or sale of any of the Confidential Information and/or Property, including any Tangible and/or Intangible Confidential information created by or relating to DD;

(b) PP agrees and warrants and represents that PP will permanently cease and desist from any posting or dissemination or display of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including the Images (including, but not limited to, to any form media outlet, on any blog or posting board, on the Internet, or otherwise);

(c) PP agrees and warrants and represents that PP will permanently cease and desist from using or disseminating or disclosing any information to any Third Persons (including, but not limited to, to any media outlet, on any blog or posting board, on the Internet, or otherwise) about any details of or as to the contents of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including any Text Messages, and/or as to any other personal details of or about or pertaining to DD and/or his family and/or friends and/or social interactions;

(d) PP agrees and warrants and represents that PP will permanently cease and desist from and will not, at any time, make any use of or reference to the name, image or likeness

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of DD in any manner whatsoever, including without limitation, through any print or electronic media of any kind or nature for any purpose, including, but not limited to, on any websites;

(e) PP agrees and warrants and represents that any and all existing copies of the Images, Text Messages and any Property (other than as expressly specified in paragraphs 3.2 and 3.3 herein) have been turned over and provided to counsel; and PP further warrants and represents that the only copy of the Images and Property that has ever existed, at any time, has been turned over to DD's counsel pursuant to this Agreement, and the Images and any Property has never been transferred to or existed in any other form, including not in electronic form, nor on any computer, or electronic device and other storage media;

(f) PP warrants and represents that PP has not provided any copies, whether hard-copy or electronic copies, of the Property to anyone other than as specified in paragraph 4.2 herein);

(g) PP warrants and represents that the information PP is obligated to provide pursuant to the terms herein will be complete and truthful;

(h) PP warrants and represents that PP has not omitted or withheld any information that PP is obligated to provide pursuant to the terms herein;

(i) PP warrants and represents that PP has not contracted to earn and/or collect any monies as compensation from the sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD nor any monies as compensation or an advance for any efforts to sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information or any Tangible and/or Intangible Confidential information created by or relating to DD;

(j) PP warrants and represents that PP has not assigned nor transferred, either in whole or in part, any purported rights in or to the Images and/or any Property to any other person or entity, other than to DD pursuant to this Agreement.

4.3.3 Agreement By PP Not to Disclose/Use Confidential Information. Tangible and/or Intangible Confidential information created by or relating to DD. As further material inducements for DD to enter into this Agreement, PP agrees, represents and warrants that she shall not directly or indirectly, verbally or otherwise, publish, disseminate, disclose, post or cause to be published, disseminated, disclosed, or posted (herein "disclose"), any Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any person, group, firm or entity whatsoever, including, but not limited to, family members, friends, associates, journalists, media organizations, newspapers, magazines, publications, television or radio stations, publishers, databases, blogs, websites, posting boards, and any other enterprise involved in the print, wire or electronic media, including individuals working directly or indirectly for, or on behalf of, any of said persons or entities ("Third Parties" and/or Third Party"). In no event shall PP be relieved of such party's confidentiality obligations herein by virtue of any breach or alleged breach of this Agreement. In no event shall any dispute in connection with this Agreement relieve PP of her confidentiality obligations arising pursuant to this Agreement, and any disclosure of Confidential Information and/or Tangible and/or Intangible Confidential information created by or relating to DD in connection with any such

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proceeding or dispute shall constitute a breach of this Agreement. PP shall use their best efforts to prevent the unauthorized disclosure of Confidential Information in connection with any such proceeding or dispute.

4.3.4 Any direct or indirect disclosure of Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any Third Party by PP and/or any of her representatives, heirs, agents, children, family members, relatives , confidents, advisors, employees, attorneys, transferors, transferees, successors or assigns, and/or any friend of any of PP (collectively "PP Group"), after the date of this Agreement, shall be deemed a disclosure by PP in breach of the terms of this Agreement, entitling the non-breaching Party to all rights and remedies set forth herein.

4.3.5 PP separately and further warrants and represent that, prior to entering into this Agreement, that she has not written, published, caused to be published, or authorized the writing, publication, broadcast, transmission or public dissemination of any interview, article, essay, book, memoir, story, photograph, film, script, Images tape, biography, documentary, whether written, oral, digital or visual, whether fictionalized or not, about the opposing Party to this Agreement or their family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral, which discloses any Confidential Information and/or which includes any description or depiction of any kind whatsoever whether fictionalized or not, about any Party to this agreement or their respective family, other than as expressly disclosed by PP hereto in writing and as set forth herein in paragraph 4.2 above.

4.3.6 Agreement By PP Not to Disparage DD. PP hereby irrevocably agrees and covenants that she shall not, directly or indirectly, publicly disparage DD, nor write, publish, cause to be published, or authorize, consult about or with or otherwise be involved in the writing, publication, broadcast, transmission or dissemination of any book, memoir, letter, story, photograph, film, script, Images, interview, article, essay, biography, diary, journal, documentary, or other written, oral, digital or visual account or description or depiction of any kind whatsoever whether fictionalized or not, about DD or his family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral. PP further warrants and represents that PP has not and will not enter into any written or oral agreement with any third party purportedly requiring or obligating PP to do so. Fore greater clarity PP will never discuss with anyone the contents of this Settlement Agreement, nor will she voluntarily confirm the existence of this Settlement Agreement.

4.4 Disclosure Of Confidential Information Is Prohibited: The Parties to this Agreement hereby recognize and agree that substantial effort and expense have been dedicated to limit the efforts of the press, other media, and the public to learn of personal and business affairs involving DD. PP further acknowledges that any future disclosure of Confidential Information to any Third Party would constitute a serious and material breach of the terms of this Agreement, and shall constitute a breach of trust and confidence, invasion of privacy, and a misappropriation of exclusive property rights, and may also constitute fraud and deceit. Some of the Confidential Information may also constitute and include proprietary business information and trade secrets which have independent economic value. The Parties hereto acknowledge that any unauthorized use, dissemination or disclosure of Confidential Information, or the fabrication and dissemination of false and/or misleading information, about DD would result in irreparable injury to him, and would be injurious to a reasonable person, and/or would constitute an injurious violation of the right of privacy or publicity, and/or would be injurious to his business,

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profession, person, family and/or career. The Parties acknowledge that substantial and valuable property rights and other proprietary interests in the exclusive possession, ownership and use of Confidential Information, and recognizes and acknowledges that such Confidential Information is a proprietary, valuable, special and unique asset which belongs to DD and to which the PP has no claim of ownership or other interest.

4.4.1 Disclosures Permitted By PP. Notwithstanding the foregoing, PP shall only be permitted to disclose Confidential Information to another person or entity only if compelled to do so by valid legal process, including without limitation a subpoena duces tecum or similar legal compulsion, provided that PP shall not make any such disclosure unless PP has first provided DD with notice of such order or legal process not less than ten (10) days in advance of the required date of disclosure pursuant to the Written Notice provisions set forth hereinbelow, providing DD with an opportunity to intervene and with full and complete cooperation should she choose to oppose such disclosure. PP agrees that if the valid legal process can be stopped by her consent or at her behest then PP shall agree to use best efforts to avoid the disclosure of the Confidential Information.

5.0 REMEDIES

5.1 DD's Remedies for Breach of Agreement. Each breach or threatened breach (*e.g.*, conduct by PP reflecting that said person intends to breach the Agreement), including without limitation by breach of any representation or warranty, by failing to deliver to DD all tangible Property as required, by the disclosure or threatened disclosure of any Confidential Information to any Third Party by PP (herein "Prohibited Communication"), or otherwise, shall render PP liable to DD for any and all damages and injuries incurred as a result thereof, including but not limited to the following, all of which rights and remedies shall be cumulative:

5.1.1 Disgorgement of Monies: In the event an Arbitrator determines there has been a breach or threatened breach of this Agreement by PP, PP shall be obligated to account to, and to disgorge and turn over to DD any and all monies, profits, or other consideration, or benefits, which PP, or anyone on PP's behalf or at PP's direction, directly or indirectly derive from any disclosure or exploitation of any of the Confidential Information; and

5.1.2 Liquidated Damages: PP agrees that any breach or violation of this Settlement Agreement by either of PP individually or the PP Group by his/her/their unauthorized disclosure of any of the Confidential Information (as defined in paragraphs 4.1(a), (b), (c), and (d)) to any Third Party, and/or any unauthorized exploitation or prohibited use of the same, and/or by the breach of and/or by any false representations and warranties set forth in this Agreement, and/or any public disparagement of DD by PP (collectively, the "LD Breach Terms"), shall result in substantial damages and injury to DD, the precise amount of which would be extremely difficult or impracticable to determine, even after the Parties have made a reasonable endeavor to estimate fair compensation for such potential losses and damages to DD. Therefore, in addition to disgorgement of the full amount of all monies or other consideration pursuant to paragraph 5.1.2, in the event an Arbitrator determines there has been a breach of the LD Breach Terms of this Agreement by PP individually or the PP Group, PP shall also be obligated to pay, and agree to pay to DD the sum of One-Million Dollars ($1,000,000.00 as a reasonable and fair amount of liquidated damages to compensate DD for any loss or damage

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resulting from each breach, it being understood that the Liquidated damages calculation is on a per item basis. The Parties agree that such sum bears a reasonable and proximate relationship to the actual damages which DD will or might suffer from each breach of the terms of this Agreement and that this amount is not a penalty. Alternatively, at DD's sole discretion, DD may seek to recover actual damages proximately caused by each such breach, according to proof. Any other breaches not a LD Breach Terms shall be subject to a claim for actual damages according to proof; furthermore, any monies held in Trust by PP's Attorney shall be frozen and shall not be disbursed to PP until the Arbitrator finally resolves the allegation of Breach.

5.1.3 Injunctive Relief. PP acknowledges and agrees that any unauthorized disclosure to Third Parties of any Confidential Information will cause irreparable harm to DD, which damages and injuries will most likely not be measurable or susceptible to calculation. PP further acknowledges and agrees that any breach or threatened breach of this Agreement due to the unauthorized disclosure or threatened disclosure by PP to Third Parties, of any Confidential Information shall entitle DD to immediately obtain, either from the Arbitrator and/ or from any other court of competent jurisdiction, an *ex parte* issuance of a restraining order and preliminary injunction or other similar relief (herein "Injunctive Relief") without advance notice to any of PP, preventing the disclosure or any further disclosure of Confidential Information protected by the terms hereof, pending the decision of the Arbitrator or Court. The Parties further acknowledge and agree that in connection with any such proceeding, any Party may obtain from the Court or Arbitrator on an ex parte application or noticed motion without opposition, an order sealing the file in any such proceeding, and the Parties stipulate to the factual and legal basis for issuance of an order sealing the file in any such proceedings. The rights and remedies set forth in this Injunctive Relief Section are without prejudice to any other rights or remedies, legal or equitable, that the Parties may have as a result of any breach of this Agreement.

5.2 Dispute Resolution. In recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes which may arise between them, it is their intention and agreement that any and all claims or controversies arising between DD on the one hand, and PP on the other hand, shall be resolved by binding confidential Arbitration to the greatest extent permitted by law. Arbitration shall take place before JAMS ENDISPUTE ("JAMS") pursuant to JAMS Comprehensive Arbitration Rules and Procedures (including Interim Measures) ("JAMS Rules") and the law selected by DD, (such selection shall be limited to either, California, Nevada or Arizona), or before ACTION DISPUTE RESOLUTION SERVICES ("ADRS") pursuant to the ADRS Rules (including Interim Measures) and the law selected by DD (whichever the claimant elects upon filing an arbitration), in a the location selected by DD, and will be heard and decided by a sole, neutral arbitrator ("Arbitrator") selected either by agreement of the Parties, or if the Parties are unable to agree, then selected under the Rules of the selected arbitration service. The costs and fees associated with any Arbitrator and/or Arbitration service shall be split equally among the parties to any such dispute. The Parties shall have the right to conduct discovery in accordance with the California Code of Civil Procedure Section 1283.05 *et. seq.* or any similar provision existing in the jurisdiction selected by DD and the written discovery requests and results of discovery shall be deemed to constitute Confidential Information. The Arbitrator shall have the right to impose all legal and equitable remedies that would be available to any Party before any governmental dispute resolution forum or court of competent jurisdiction, including without limitation temporary, preliminary and permanent injunctive relief, compensatory damages, liquidated damages, accounting, disgorgement, specific performance, attorneys fees and costs,

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and punitive damages. It is understood and agreed that each of the Parties shall bear his/its own attorneys' fees, expert fees, consulting fees, and other litigation costs (if any) ordinarily associated with legal proceedings taking place in a judicial forum, subject to the Arbitrator's reassessment in favor of the prevailing party to the extent permitted by law. **Each of the Parties understands, acknowledges and agrees that by agreeing to arbitration as provided herein, each of the Parties is giving up any right that he/she/it may have to a trial by judge or jury with regard to the matters which are required to be submitted to mandatory and binding Arbitration pursuant to the terms hereof. Each of the Parties further understands, acknowledges and agrees that there is no right to an appeal or a review of an Arbitrator's award as there would be a right of appeal or review of a judge or jury's decision.**

6.0 MUTUAL RELEASES

6.1 Except for the rights and obligations of the Parties set forth in this Agreement, DD, for himself, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever releases and discharges PP, individually, and all of PP's heirs, and PP's attorneys, and each of them ("PP Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the effective date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Matter, or which could have been asserted in any other legal action or proceeding, except as may be provided herein (the "DD Released Claims").

6.2 Except for the rights and obligations of the Parties set forth in this Agreement, PP, for herself, and her representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever release and discharge DD, individually, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them ("DD Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Action, or which could have been asserted in any other legal action or proceeding (the "PP Released Claims").

6.3 The subject matter referred to in paragraphs 6.1 and 6.2, above (i.e., the DD Released Claims and PP Released Claims), are collectively referred to as the "Released Matters."

6.4 The Parties hereto, and each of them, hereby warrant, represent and agree that each of them is fully aware of §1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

PP

DD

The Parties, and each of them, voluntarily waive the provisions of California Civil Code § 1542, and any other similar federal and state law as to any and all claims, demands, causes of action, or charges of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected.

6.4.1 For avoidance of any doubt, by virtue of this Settlement and this Settlement Agreement, the parties hereby waive any unknown claims against each other individually, and each of their representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them.

6.5 Each of the Parties hereto acknowledges and agrees that this Agreement constitutes a settlement and compromise of claims and defenses in dispute, and shall not be construed in any fashion as an admission of liability by any party hereto.

7.0 CONFIDENTIALITY OF THIS AGREEMENT

7.1 The Parties, respectively, shall not to disclose the terms of this Agreement, either directly or indirectly, to the media or to anyone else other than their respective attorneys and representatives and/or as may be required by law. PP may not comment or make any press releases or otherwise discuss the resolution of the subject of this Agreement.

8.0 MISCELLANEOUS TERMS

8.1 Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the Released Matters hereof between the Parties hereto and supersedes any and all prior negotiations and proposed agreement and/or agreements, written and/or oral, between the Parties. Each of the Parties hereto acknowledges that neither they, nor any other party, nor any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, expressed or implied, written or oral, which is not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement, and each of the Parties hereto acknowledges that she/he has not executed this Agreement in reliance on any promise, representation, and/or warranty not contained herein. This Agreement shall be binding on and inure to the benefit of the Parties, the Releasees, and each of their respective successors and assigns and designees.

8.2 DD's Election of either California, Nevada or Arizona Law & Venue. This Agreement and any dispute or controversy relating to this Agreement, shall in all respects be construed, interpreted, enforced and governed by the laws of the State of California, Arizona or Nevada at DD's election. Attorneys' Fees in the case of a Dispute. In the event of any dispute, action, proceeding or controversy regarding the existence, validity, interpretation, performance, enforcement, claimed breach or threatened breach of this Agreement, the prevailing party in any resulting arbitration proceeding and/or court proceeding shall be entitled to recover as an element of such Party's costs of suit, and not as damages, all attorneys' fees, costs and expenses incurred or sustained by such prevailing Party in connection with such action, including, without limitation, legal fees and costs.

PP

DD

8.3 Attorney Fees and Costs in Formation of this Agreement. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with the creation this Settlement Agreement.

8.4 Waivers; Modification. This Agreement cannot be modified or changed except by written instrument signed by all of the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.5 Scope of Provisions/Severability/Headings. None of the Parties hereto shall be deemed to be the drafter of this Agreement, but it shall be deemed that this Agreement was jointly drafted by each of the Parties hereto. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party herein, but rather construing the terms of this Agreement as a whole according to their fair meaning. In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity or enforceability of the remaining provisions thereof, all of which shall remain in full force and effect. Notwithstanding the foregoing, if a provision is deemed to be illegal the Parties agree to waive any defense on said grounds. In the event that such any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. The captions appearing at the commencement of certain paragraphs herein are descriptive only and for convenience of reference. Should there be any conflict between any such caption or heading and the paragraph at the caption of which it appears, the paragraph, and not such caption, shall control and govern.

8.6 Advice of Counsel and Understanding of this Binding Agreement. Each of the Parties represents, acknowledges, and declares that she/he has received the advice of legal counsel of his/her own choosing regarding the form, substance, and effect of this Agreement. Each of the Parties represents, acknowledges, and declares that she/he has carefully read this Agreement, knows and understands this Agreement's contents, and signs this Agreement freely, voluntarily, and without either coercion or duress. Each of the Parties represents and warrants that she/he is fully competent to manage his/her business affairs, and that she/he has full power and authority to execute this Agreement, and to do any and all of the things reasonably required hereunder; and that this Agreement, when signed by all Parties, is a valid and binding agreement, enforceable in accordance with its terms.

8.7 Further Execution. In order to carry out the terms and conditions of this Agreement, PP agrees to promptly execute, upon reasonable request, any and all documents and instruments necessary to effectuate the terms of this Agreement.

8.8 Notice Provisions. Any notice, demand or request that one Party desires, or is required to give (including service of any subpoena, court pleadings, summons and/or complaint), to the other Party must be promptly communicated to the other Party by using their respective contact information below, by both (i) e-mail or facsimile; *and* (ii) telephone. Either Party may change his or her contact information by notifying the other Party of said change(s) pursuant to the applicable terms herein.

PP

DD

8.8.1 To DD as follows:

ESSENTIAL CONSULTANTS, LLC
C/O: MICHAEL COHEN, ESQ.
500 PARK AVENUE 4TH A
NEW YORK, NY 10022

8.8.2 To PP, as follows:

C/O KEITH M. DAVIDSON, ESQ.
8383 Wilshire Boulevard, Suite 510
Beverly Hills, CA 90211
tel. 323.658.5444
fax. 323-658-5444
e-mail: keith@KmdLaw.com

8.9 This Agreement may be executed with one or more separate counterparts, each of which, when so executed shall be deemed to be an original and, together shall constitute and be one and the same instrument. Any executed copies or signed counterparts of this Agreement, the Declaration, and any other documentation may be executed by scanned/printed pdf copies of signatures and/or facsimile signatures, which shall be deemed to have the same force and effect as if they were original signatures.

IN WITNESS WHEREOF, by their signatures below, the Parties each have approved and executed this Agreement as of the effective date first set forth above.

DATED: _____, 2016

DD

DATED: Oct 28, 2016

PP

ERICA JACKSON
Notary Public, State of Texas
Comm. Expires 01-04-2020
Notary ID 130483626

DATED: 10/28, 2016

EC, LLC

PP

EC
DD

DATED: 10/2/16, 2016

As to Form:

Keith M. Davidson, Esq., Attorney for PP

DATED: _____, 2016

As to Form:

_____

Attorney for DD

DATED: 10/28, 2016

As to Form:

Michael D. Cohen, Esq.

Attorney for [redacted]

Essential Consultants, LLC

PP

DD

EXHIBIT 2

EXHIBIT "A" TO THE **CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE; ASSIGNMENT OF COPYRIGHT AND NON-DISPARAGMENT AGREEMENT**

SIDE LETTER AGREEMENT

DATED 10 / 28 / **2016.**

To Whom It May Concern:

This Side Letter agreement is entered into by and on behalf of the Parties with respect to the Confidential Settlement Agreement and Mutual Release entered into by and between them on or about Oct 28, 2016 ("Settlement Agreement"), in which Stephanie Gregory Clifford a.k.a. Stormy Daniels, is referred to by the pseudonym, "PEGGY PETERSON," and [redacted] is referred to by the pseudonym "DAVID DENNISON."

It is understood and agreed that the true name and identity of the person referred to as " PEGGY PETERSON " in the Settlement Agreement is Stephanie Gregory Clifford a.k.a. Stormy Daniels and that any reference or designation to PEGGY PETERSON shall be deemed the same thing as referring to Stephanie Gregory Clifford a.k.a. Stormy Daniels by her true name as identified herein.

It is understood and agreed that the true name and identity of the person referred to as "DAVID DENNISON" in the Settlement Agreement is [redacted], and that any reference or designation to DAVID DENNISON shall be deemed the same thing as referring to [redacted], by his true name as identified herein.

It is understood and agreed that the true name and identity of the entity referred to as "EC, LLC" in the Settlement Agreement is [redacted] LLC and that any reference or designation to EC, LLC shall be deemed the same thing as referring to [redacted] LLC, by its true name as identified herein.

It is further acknowledged and agreed by the parties that notwithstanding the provisions of Paragraph 7.1 of the Settlement Agreement (which provides that the Settlement Agreement constitutes the entire agreement between the Parties with respect to the matters herein and in supersedes all prior and contemporaneous oral and written agreements and discussions pertaining to the matters herein), this Side Letter agreement shall be deemed part of the agreement between the Parties. Accordingly, Paragraph 7.1 of the Settlement Agreement is hereby amended via supplanting to provide as follows:

> "**7.1.1 Integration.** The Side Letter agreement entered into by the Parties concurrently with their entry into this Agreement shall be deemed part of this Agreement, and this Agreement and the Side Letter agreement together constitute the entire agreement between the Parties with

respect to the matters herein and supersedes all prior and contemporaneous oral and written agreements and discussions pertaining to the matters herein."

For avoidance of doubt, it is further agreed that this Side Letter agreement shall constitute Confidential Information as defined in the Settlement Agreement, that neither this Side Letter agreement nor any portion hereof may be disclosed to anyone except as and to the extent expressly provided in the Settlement Agreement, and that any unauthorized disclosure or use of this Side Letter agreement or any portion hereof shall constitute a material breach of the confidentiality provisions of the Settlement Agreement.

It is further agreed that neither party shall keep a copy of this document, and that only Keith M. Davidson, Esq. AND [redacted] counsel for the parties herein), shall maintain possession of it or access to this Side Letter agreement. FOR AVOIDANCE OF DOUBT, THE PARTIES HERETO AGREE AND CONFIRM THAT THIS SIDE LETTER AGREEMENT IS DEEMED "ATTORNEY'S EYES ONLY."

This Side Letter agreement may be executed in counterparts and when each Party has signed and delivered one such counterpart to the other Party, each counterpart shall be deemed an original, and all counterparts taken together shall constitute one and the same Agreement, which shall be binding and effective as to the Parties. The Agreement may be executed by facsimile or electronic PDF signatures, which shall have the same force and effect as if they were originals.

By signing below, each of the Parties signifies their agreement to the terms hereof and each of their respective counsel signify their approval as to the form of this letter agreement.

PEGGY PETERSON a.k.a. Stephanie Gregory Clifford a.k.a. Stormy Daniels

10/28/16
date

ERICA JACKSON
Notary Public, State of Texas
Comm. Expires 01-04-2020
Notary ID 130483626

DAVID DENNISON a.k.a. _____

_____
date

Keith M. Davidson, Esq.

10/31/16
date

[redacted], Esq.

10/28/16
date

EXHIBIT 3

"In late January 2018, I received a copy of a complaint filed at the Federal Election Commission (FEC) by Common Cause. The complaint alleges that I somehow violated campaign finance laws by facilitating an excess, in-kind contribution. The allegations in the complaint are factually unsupported and without legal merit, and my counsel has submitted a response to the FEC.

I am Mr. Trump's longtime special counsel and I have proudly served in that role for more than a decade. In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly. The payment to Ms. Clifford was lawful, and was not a campaign contribution or a campaign expenditure by anyone.

I do not plan to provide any further comment on the FEC matter or regarding Ms. Clifford."

"Just because something isn't true doesn't mean that it can't cause you harm or damage. I will always protect Mr. Trump."

Stormy Daniels: Motion to Compel Arbitration

Multiple Documents

Part	Description
1	2 pages
2	Memorandum
3	Declaration Brent H. Blakely
4	Exhibit B-F
5	Exhibit G-I
6	Declaration Michael D. Cohen

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Attorneys for Defendant
ESSENTIAL CONSULTANTS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

v.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:18-CV-02217-SJO-FFM

DEFENDANT ESSENTIAL CONSULTANT, LLC'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION

Assigned for All Purposes to the Hon. S. James Otero

Date: **April 30, 2018**
Time: **10:00 a.m.**
Location: **350 West 1st Street**
Courtroom 10C, 10th Floor
Los Angeles, CA 90012

Action Filed: March 6, 2018

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 30, 2018, at 10:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 10C, located at the United States District Court, 350 West 1st Street, Los Angeles, California 90012, the Honorable S. James Otero presiding, Defendant Essential Consultants, LLC ("EC") will move and hereby does move for an order compelling Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson ("Clifford" or "Plaintiff") to arbitrate any and all disputes arising under the written *Confidential Settlement Agreement and Mutual Release* entered into by EC and Clifford on or about October 28, 2016 (the "Settlement Agreement"), including but not limited to the first cause of action pleaded in Plaintiff's First Amended Complaint ("FAC") in this action. Such arbitration should be ordered to occur in the currently pending arbitration between the parties with ADR Services, Inc. ("ADRS") in Los Angeles, California, pursuant to the written agreements of the parties. EC will also move and hereby does move for an order staying the first cause of action in the FAC pending the outcome of the arbitration.

This motion will be and is based on this Notice, the accompanying Memorandum of Points and Authorities, the accompanying Declarations of Michael D. Cohen and Brent H. Blakely (with exhibits), the anticipated reply papers, all other papers on file in this action, all materials that may be properly considered in connection with this motion, and oral argument at the hearing. This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on March 21, 2018.

Dated: April 2, 2018

BLAKELY LAW GROUP

By: */s/ Brent H. Blakely*
BRENT H. BLAKELY
Attorneys for Defendant ESSENTIAL CONSULTANTS, LLC

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Attorneys for Defendant
ESSENTIAL CONSULTANTS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

v.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:18-CV-02217-SJO-FFM

DEFENDANT ESSENTIAL CONSULTANT, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION

Assigned for All Purposes to the Hon. S. James Otero

Date: **April 30, 2018**
Time: **10:00 a.m.**
Location: **350 West 1st Street**
Courtroom 10C, 10th Floor
Los Angeles, CA 90012

Action Filed: March 6, 2018

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I. INTRODUCTION

Defendant and moving party Essential Consultants, LLC ("EC") and Plaintiff Stephanie Clifford aka "Stormy Daniels" aka "Peggy Peterson" aka "PP" (herein, "Clifford") are signatories to a written *Confidential Settlement Agreement and Mutual Release* dated October 28, 2016 (the "Settlement Agreement"). Declaration of Michael D. Cohen ("Cohen Decl."), Ex. A, Settlement Agreement.

This motion seeks to enforce the arbitration provision in the Settlement Agreement, which was negotiated at arms' length by the parties' respective counsel, and pursuant to which Clifford accepted $130,000 as consideration. The strong policy favoring arbitration set forth by Congress in the Federal Arbitration Act ("FAA") dictates that this motion be granted, and that Clifford be compelled to arbitration, as she knowingly and voluntarily agreed to do.

Paragraph 5.2 of the Settlement Agreement contains an arbitration provision that requires Clifford to arbitrate any and all claims that may arise between Peggy Peterson ("PP") and David Dennison ("DD"), stating in pertinent part:

> Dispute Resolution. In recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes which may arise between them, it is their intention and agreement that any and all claims or controversies arising between DD on the one hand, and PP on the other hand, shall be resolved by binding confidential Arbitration to the greatest extent permitted by law.

According to Clifford's allegations, Peggy Peterson ("PP") is a pseudonym for Clifford, and David Dennison ("DD") is a pseudonym for Defendant Donald J. Trump ("Mr. Trump"). Declaration of Brent H. Blakely ("Blakely Decl."), Ex. B, Complaint, ¶ 18 and Ex. C, First Amended Complaint ("FAC"), ¶ 19.

The first cause of action in the FAC is for Declaratory Relief against Mr.

Trump (and EC). This claim undeniably falls within the arbitration provision: a claim or controversy between PP and DD.

Clifford asserts in the FAC that the Settlement Agreement was never formed because it was not signed by Mr. Trump, and thus the arbitration provision contained therein is unenforceable. This argument is without merit.

The first paragraph of the Settlement Agreement defines the parties to the agreement as EC, LLC "**and/or**" DAVID DENNISON (DD), "**on the one part**," and PEGGY PETERSON (PP), "**on the other part**." Ex. A, p. 0 (emphasis added). This provision demonstrates the parties' intent for the Settlement Agreement to be binding once signed by EC and Clifford, and regardless of whether it was also signed by DD.

In conformance with this intent, and according to her own admissions, Clifford and EC signed the Settlement Agreement, and Clifford accepted $130,000 in consideration from EC, despite not receiving a signature from Mr. Trump. Ex. B, ¶¶ 16, 22-23; Ex. C, ¶¶ 17, 23-24. Then, over the course of the next sixteen (16) months, Clifford did not at any time: reject the Settlement Agreement; offer to return or return the $130,000; or assert that the Settlement Agreement is unenforceable because it was not signed by Mr. Trump, or for any other reason. Cohen Decl., ¶ 3.

In fact, Clifford did not assert any claim challenging the validity of the Settlement Agreement until she filed this action on March 6, 2018. To this day, Clifford has not returned the $130,000 she received from EC. Thus, there is no question that a valid agreement to arbitrate Clifford's claims against DD (and EC) was formed. *See infra* Section III.b.

On March 26, 2018, Clifford filed the FAC, which added several new challenges purportedly directed to the enforceability of the arbitration provision itself, as opposed to the enforceability of the Settlement Agreement as a whole. These allegations are a sham and were added in a transparent attempt to circumvent the holding in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006), which requires that Clifford's challenges to the Settlement Agreement be decided by

the arbitrator. Blakely Decl., ¶¶ 7-8.[1]

Under the Ninth Circuit's "crux of the complaint" test, Clifford's challenges to the enforceability of the arbitration clause are effectively the same as her challenges to the Settlement Agreement as a whole. *See Bridge Fund Capital Corp. v. Fastbucks Franchise Corp.*, 622 F.3d 996, 1001 (9th Cir. 2010). Thus, the Court need not decide those issues for purposes of the instant motion. However, to the extent the Court does consider Clifford's challenges to the arbitration provision, they should be rejected. For example, Clifford's argument that the arbitration provision is unconscionable fails for several reasons. *See infra,* Section III.d.3.

Pursuant to well-established U.S. Supreme Court jurisprudence, the Court simply needs to determine that Clifford agreed to arbitrate any claim or controversy between her and DD arising under the Settlement Agreement. Clifford's admissions in her Complaint and FAC confirm that she agreed to do just that.

Accordingly, EC respectfully requests that the Court issue an order compelling Clifford to arbitrate her dispute with DD (and EC).

II. FACTUAL BACKGROUND

Clifford is an adult-film actress and exotic dancer. In October 2016, according to an exclusive news report, Clifford unsuccessfully attempted to sell a story about an alleged one-night-stand with Mr. Trump to tabloid magazines and related outlets for $200,000. Blakely Decl., Ex. D, 3/29/18 *Daily Mail* Article.

Instead, on or about October 28, 2016, Clifford (who was represented by legal counsel) entered into the Settlement Agreement with EC. Ex. A, p. 14; Ex. B, ¶ 22; Ex. C, ¶ 23; Cohen Decl., ¶¶ 2-3. In the Settlement Agreement, Clifford agreed to

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[1] Clifford also added a second cause of action against a newly named defendant, Michael Cohen, for defamation. This claim should be dismissed pursuant to California's anti-SLAPP statute. Blakely Decl., Ex. I. However, as set forth in Section III.e. below, arbitration between EC and Clifford should proceed, regardless of whether Clifford's claim against Mr. Cohen is also subject to arbitration.

accept $130,000 from EC in exchange for, among other things, her promise not to disclose any Confidential Information (as defined in the Settlement Agreement), including any of DD's "alleged sexual partners, alleged sexual actions or alleged sexual conduct." Ex. A, pp. 4-5; Ex. B, ¶¶ 16, 22-23; Ex. C, ¶¶ 17, 23-24. In the Settlement Agreement, Clifford also promised to arbitrate any dispute that might later arise between her and DD. Ex. A, pp. 10.

EC paid Clifford the sum of $130,000, as required under the Settlement Agreement. Ex. B, ¶ 23; Ex. C, ¶ 24; Cohen Decl., ¶ 3. For the next sixteen months, Clifford did not: reject the Settlement Agreement; assert that the Settlement Agreement was unenforceable because it was not signed by Mr. Trump; or make any attempt to return the $130,000 that she was paid by EC. Cohen Decl., ¶ 3.

During that time, Clifford performed all of her obligations under the Settlement Agreement, and made no public statements disclosing Confidential Information. Cohen Decl., ¶ 4. Prior to February 2018, Clifford's only complaint relating to the Settlement Agreement was in October 2016, when she complained that she was not receiving the $130,000 due to her under the Settlement Agreement quickly enough. *Id*.

In February 2018, Clifford threatened to breach the Settlement Agreement by publicizing allegations that constitute Confidential Information. On or about February 22, 2018, EC filed an arbitration proceeding with ADR Services, Inc. ("ADRS") in Los Angeles (the "Arbitration"), pursuant to the arbitration provision in the Settlement Agreement. Cohen Decl., ¶ 5. Upon EC's emergency application for a Temporary Restraining Order ("TRO"), the arbitrator (a retired California Superior Court judge) issued an order prohibiting Clifford from violating the Settlement Agreement by, among other things, disclosing any Confidential Information to the media or in court filings (the "TRO"). *Id*. at ¶¶ 6-7, Ex. E, TRO.

Clifford has violated the Settlement Agreement and the TRO by, among other things, filing the Complaint and FAC in this action, and also by disclosing

Confidential Information to the news media, including in a nationally televised interview with Anderson Cooper on *60 Minutes*, which reportedly was watched by twenty-two million viewers. Clifford further breached the Settlement Agreement by sending her attorney of record in this action, Michael Avenatti, to participate in dozens of interviews on national television programs, wherein he has repeatedly disclosed Confidential Information.[2]

Within days of filing this action, and the massive news coverage that it generated, Clifford made appearances at various adult entertainment clubs, claiming publicly that her pay has quadrupled from the publicity of this lawsuit. Blakely Decl., Ex. F, 3/11/18 CNN article and Ex. G, 3/9/18 *Rolling Stone* article.

On March 21, 2018, counsel for the parties participated in the Local Rule 7-3 conference of counsel. Blakely Decl., ¶ 7. During the conference, EC's counsel specifically informed counsel for Clifford that, pursuant to *Buckeye Check Cashing, Inc. v. Cardegna*, *supra*, Clifford's defenses to the enforcement of the Settlement Agreement as a whole must be decided by the arbitrator, not the Court. *Id*. Five days later, Clifford filed the FAC, which includes several new challenges to the arbitration provision, and a second cause of action against Mr. Cohen.

III. CLIFFORD'S FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF SHOULD BE COMPELLED TO ARBITRATION

Where the making of an agreement to arbitrate is not "in issue," as is the case here, the District Court should order the parties to proceed with arbitration upon petition of the aggrieved party. 9 U.S.C. § 4. Section 4 states, in pertinent part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court

[2] Section 4.3.4 of the Settlement Agreement provides that any disclosure of Confidential Information by Clifford's counsel is deemed to be a disclosure by her.

> which, save for such agreement, would have jurisdiction under title 28…for an order directing that such arbitration proceed in the manner provided for in such agreement…. The court shall hear the parties, and **upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue**, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

Id. (emphasis added.)

Here, the Settlement Agreement contains an agreement by EC and Clifford to arbitrate any dispute between PP and DD. The Complaint and FAC were filed by Clifford against DD and EC, assert a claim arising under the Settlement Agreement, and thus undeniably fall within the scope of the arbitration provision.

Contrary to Clifford's assertion, a valid agreement to arbitrate was formed. By Clifford's own admission, she signed the Settlement Agreement, accepted the consideration required of EC thereunder and did not raise any objection to its enforceability until approximately sixteen months thereafter. Thus, Clifford knowingly and voluntarily agreed to arbitrate this dispute. The Court need not go any further to grant this motion and compel this matter to arbitration. Thereafter, Clifford's claims of invalidity or unenforceability of the Settlement Agreement should be determined by the arbitrator. *See infra*, Sections III.c. and III.d.

a. <u>The Federal Arbitration Act Establishes A Liberal Policy Favoring The Enforcement Of Arbitration Agreements</u>

"[T]he Federal Arbitration Act (FAA or Act), 9 U.S.C. § 1 *et seq.* (2000 ed. and Supp. V), establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution." *Preston v. Ferrer*, 552 U.S. 346, 349 (2008); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) ("Section 2 is a congressional declaration of a liberal federal policy

favoring arbitration agreements."); *Mortensen v. Bresnan Comm., LLC*, 722 F.3d 1151, 1160 (9th Cir. 2013) ("the FAA's purpose is to give preference (instead of mere equality) to arbitration provisions."). "The Act, which rests on Congress' authority under the Commerce Clause, supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration." *Id*.

The FAA "mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement **has been signed**." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (bold added); *Republic of Nicaragua v. Standard Fruit Co.*, 937 F.2d 469, 475 n.8 (9th Cir. 1991) (the FAA "reflects the strong Congressional policy favoring arbitration by making such clauses 'valid, irrevocable, and enforceable.'"). The FAA "is phrased in mandatory terms," thus a District Court "has little discretion to deny an arbitration motion." *Republic of Nicaragua*, *supra*, 937 F.2d at 475. "If a contract contains an arbitration clause, claims brought under or against that contract are presumed arbitrable." *Guadagno v. E*Trade Bank*, 592 F.Supp.2d 1263, 1272 (C.D. Cal. 2008).

In *Gaudagno v. E*Trade Bank*, the plaintiff filled out an online application for an E*Trade account, and clicked a box acknowledging that she had reviewed E*Trade's account agreement, which contained an arbitration clause. 592 F.Supp.2d at 1267. This Court rejected plaintiff's argument that she did not assent to the arbitration agreement, and granted defendant's motion to compel arbitration. *Id*. at 1273. In doing so, this Court held that any "[d]oubts should be resolved in favor of arbitrability." *Id*. at 1272; *see also Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.").

b. <u>Clifford Entered Into A Valid Arbitration Agreement</u>

The Ninth Circuit uses "general state-law principles of contract interpretation to decide whether a contractual obligation to arbitrate exists." *Goldman, Sachs & Co.*

v. City of Reno, *supra*, 747 F.3d at 743 (9th Cir. 2014). Under those principles, there should be no question that an enforceable arbitration agreement was reached.

Clifford admits that she (and EC) signed the Settlement Agreement, that she was represented by counsel in connection therewith, and that EC paid her $130,000 pursuant to the Settlement Agreement. Ex. B, ¶¶ 16, 22-23. By doing so, Clifford accepted the terms of Settlement Agreement, including her obligation to arbitrate contained therein. *See* Cal. Civ. Code § 1589 ("A **voluntary acceptance of the benefit of a transaction** is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.") (emphasis added); Cal. Civ. Code § 1584 ("Performance of the conditions of a proposal, or the **acceptance of the consideration offered with a proposal**, is an acceptance of the proposal.") (emphasis added.)

1. Clifford's Agreement To Arbitrate Is Enforceable Regardless Of Whether DD Also Signed The Agreement

Clifford is bound by the terms of the Settlement Agreement, including the arbitration provision, even though it was not signed by DD. First, the Settlement Agreement contemplated a binding agreement between Clifford and EC, regardless of whether DD also signed. Second, California law does not require all parties to sign a contract for it to be binding on those who did sign it. "It is not the rule that a contract, which on its face purports to be between the parties named in the instrument, must invariably be executed by all whose names appear in the instrument before it will be binding on any." *Kaneko v. Okuda*, 195 Cal.App.2d 217, 225 (1961). "In the absence of a showing that a contract is not to be deemed complete unless signed by all parties, **the parties signing may be bound though others have not signed**." *Id.* (emphasis added); *see also Angell v. Rowlands*, 85 Cal.App.3d 536, 540 (1978).

Here, the first paragraph of the Settlement Agreement demonstrates that the parties intended for the Settlement Agreement to be binding regardless of whether it

was signed by DD. It expressly defines the parties to the agreement as EC, LLC "**and/or**" DAVID DENNISON (DD), "**on the one part**," and PEGGY PETERSON (PP), "**on the other part**." Ex. A, p. 0 (emphasis added).

If this language is not clear enough, it is well-settled under California law that the Court need look no further than Clifford's subsequent conduct to determine that she intended for the Settlement Agreement to be binding without DD's signature. "Where any doubt exists as to the purport of the parties' dealings as expressed in the wording of their contract, the court may look to…subsequent acts or declarations of the parties 'shedding light upon the question of their mutual intention at the time of contracting.' (citation)." *Barham v. Barham*, 33 Cal.2d 416, 423 (1949). "[I]t is said that 'a construction given the contract by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight and will, when reasonable, be adopted and enforced by the court.' (citation)." *Id.*

In *Crestview Cemetery Ass'n v. Dieden*, 54 Cal.2d 744, 757 (1960), the California Supreme Court held that the subsequent actions of the parties to a contract demonstrated their belief that the "contract had been fully performed." The Court stated: "The practical construction placed on the contract by the parties is far more convincing than the construction arrived at in an attempt to escape a liability already accrued." *Id*. at 755.[3]

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[3] In doing so, the California Supreme Court quoted the following passage from its opinion in *Mitau v. Roddan*, 149 Cal. 1, 14 (1906):

> It is to be assumed that parties to a contract best know what was meant by its terms, and are the least liable to be mistaken as to its intention; that each party is alert to his own interests, and to insistence on his rights, and that whatever is done by the parties contemporaneously with the execution of the contract is done under its terms as they understood and intended it should be. Parties are far less liable to have been mistaken as to the intention

(footnote continued)

Clifford signed the Settlement Agreement, accepted the $130,000 that EC was obligated to pay her, and, despite not receiving any signature from Mr. Trump, Clifford did not reject the Settlement Agreement, did not deem it null and void because it was supposedly missing a signature, and did not return, or offer to return, the $130,000 she was paid, prior to filing this lawsuit approximately sixteen months thereafter. Ex. B, ¶¶ 16, 22-23; Ex. C, ¶¶ 17, 23-24; Cohen Decl., ¶ 3. Further, Clifford performed all of her obligations under the Settlement Agreement during those sixteen months and made no public statements that EC is aware of disclosing Confidential Information. Cohen Decl., ¶ 4. Prior to February 2018, Clifford's only complaint relating to the Settlement Agreement was that she was not receiving the payment quickly enough. *Id*. This is powerful evidence that Clifford intended for the Settlement Agreement to be binding absent DD's signature.

2. Clifford Received Adequate Consideration Under The Settlement Agreement

Under California Civil Code § 1550, "sufficient cause or consideration" is necessary for an enforceable contract. However, "[a]dequacy of consideration need not be proved where the defendant has already accepted the consideration." *Abers v. Rounsavell*, 189 Cal.App.4th 348, 362 (2010), citing *Beab, Inc. v. First Western Bank & Tr. Co.*, 204 Cal.App.2d 680, 685 (1962). Because Clifford accepted EC's consideration under the Settlement Agreement ($130,000), and made no attempt to

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> of their contract during the period while harmonious and practical construction reflects that intention, than they are when subsequent differences have impelled them to resort to law, and one of them then seeks a construction at variance with the practical construction they have placed upon it.

Crestview Cemetery Ass'n v. Dieden, 54 Cal.2d at 753; *see also City of Hope Nat. Med. Ctr. v. Genentech, Inc.*, 43 Cal.4th 375, 393 (2008) ("A party's conduct occurring between execution of the contract and a dispute about the meaning of the contract's terms may reveal what the parties understood and intended those terms to mean.")

reject such consideration for nearly sixteen months, there should be no question that such consideration was adequate.

Regardless, "[a] consideration of one dollar is ordinarily sufficient to support a contract at law." *Abers v. Rounsavell*, *supra*, 189 Cal.App.4th at 362. "'A written instrument is presumptive evidence of a consideration' (Civ.Code, § 1614), and in any event all the law requires for sufficient consideration is the proverbial 'peppercorn.'" *San Diego City Firefighters, Local 145, AFL-CIO v. Bd. of Admin. of San Diego City Employees' Ret. Sys.*, 206 Cal.App.4th 594, 619 (2012).

Moreover, the consideration that Clifford received from EC ($130,000) was sufficient to support all of her obligations under the Settlement Agreement, including to arbitrate, independent of whether the Settlement Agreement also provided for non-monetary consideration from DD. "[W]here there is consideration for any of the agreements specified in a contract[,] the contract as a whole cannot be said to lack mutuality or consideration, nor can any particular promise or agreement contained therein be singled out and deemed inoperative because no special or particular consideration appears to have been given or promised for it." *Brawley v. Crosby Research Found.*, 73 Cal.App.2d 103, 118 (1946), quoting *Tennant v. Wilde*, 98 Cal.App. 437, 442 (1929). "In other words, '[w]hile consideration is a necessary element of every contract, it is not necessary that each separate promise or covenant should have a distinct consideration.'" *Daily Transit Mix, LLC v. Daily Transit Mix Corp.*, 2011 WL 5416188, at *10 (Cal. Ct. App. Nov. 9, 2011), citing *Brawley v. Crosby Research Found.*, *supra*, 73 Cal.App.2d at 118. Thus, Clifford should be required to arbitrate this dispute, regardless of whether she received separate consideration from DD under the Settlement Agreement.

c. <u>Clifford's Challenges To The Contract As A Whole Should Be Decided By The Arbitrator, Not The Court</u>

The U.S. Supreme Court has held that "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the

arbitrator." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. at 444. In *Buckeye Check Cashing*, the Court held that a claim that the subject contract was illegal and void *ab initio* must be decided by the arbitrator, not the court. *Id*; *see also Preston v. Ferrer*, *supra*, 552 U.S. at 349. The holding in *Buckeye Check Cashing* followed the decision in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-404 (1967), wherein the Supreme Court held that the FAA "does not permit the federal court to consider claims of fraud in the inducement of the contract generally," as opposed to a claim of "fraud in the inducement of the arbitration clause itself." *See also Mentor Capital, Inc. v. Bhang Chocolate Co.*, No. 3:14-CV-3630 LB, 2014 WL 6485666, at *4-6 (N.D. Cal. Nov. 19, 2014) (held that claim for rescission of entire agreement for failure of consideration must be decided by arbitrator), citing *Buckeye Check Cashing v. Cardegna*, *supra*, 546 U.S. at 444-446.

"[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract." *Buckeye Check Cashing, Inc. v. Cardegna*, *supra*, 546 U.S. at 445-446. "[U]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." *Id; Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 71 (the Supreme Court requires "the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene."). In *Guadagno v. E*Trade Bank*, *supra*, 592 F.Supp.2d at 1270, this Court held: "If a party challenges the validity of an arbitration clause itself, rather than the entire contract containing the clause, the arbitration clause's validity is for the court, rather than an arbitrator, to decide." (citing *Buckeye Check Cashing, Inc. v. Cardegna*, *supra*, 546 U.S. at 445-446.)

d. <u>The "Crux Of The Complaint" Is A Challenge To The Settlement Agreement As A Whole, Not The Arbitration Provision</u>

Clifford's newly added, sham challenges to the validity of the arbitration provision should be viewed as nothing more than challenges to the Settlement Agreement as a whole, and thus are to be decided by the arbitrator. Following the

U.S. Supreme Court's holding in *Buckeye Check Cashing*, the Ninth Circuit Court of Appeals has "applied the 'crux of the complaint' rule as a method for differentiating between challenges to the arbitration provision alone and challenges to the entire contract." *Bridge Fund Capital Corp. v. Fastbucks Franchise Corp.*, 622 F.3d 996, 1001 (9th Cir. 2010). "The 'crux of the complaint' matters when the complaint itself makes clear that the challenge to the arbitration clause is the same challenge that is being made to the entire contract." *Id*.

In *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1263-1264 (9th Cir. 2006), the Ninth Circuit held that "when the crux of the complaint challenges the validity or enforceability of the agreement containing the arbitration provision, then the question of whether the agreement, as a whole, is unconscionable must be referred to the arbitrator." Prior to Clifford's thinly veiled attempt to circumvent the holding of *Buckeye Check Cashing, Inc.* by filing the FAC, the Complaint demonstrated that Clifford's challenges to arbitration clause are the same as her challenges to the Settlement Agreement as a whole:

- Paragraph 38 alleges, in pertinent part, that the Settlement Agreement was "never formed" because "Mr. Trump never signed" it; and "as a … result, there is no agreement to arbitrate between the parties."
- Paragraph 39 alleges, in pertinent part, that the Settlement Agreement is "invalid, unenforceable, and/or void under the doctrine of unconscionability"; and "as a … result, there is no agreement to arbitrate between the parties."
- Paragraph 40 alleges, in pertinent part, that the Settlement Agreement is "invalid, unenforceable, and/or void because [it] is illegal and/or violate[s] public policy"; and "as a … result, there is no agreement to arbitrate between the parties."

Ex. B, pp. 6-7. Clifford's newly asserted defenses to the enforceability of the arbitration provision in the FAC are also the same as her defenses to the validity of

the Settlement Agreement as a whole:

- Paragraph 41 alleges, in pertinent part, that "no agreement was ever formed or existed" and "as a … result, there is no agreement to arbitrate between the parties."
- Paragraphs 42 and 43 allege that the Settlement Agreement as a whole is unconscionable, while paragraph 58 also alleges that the arbitration provision is unconscionable.
- Paragraphs 44 through 55 allege that the Settlement Agreement as a whole is void *ab initio* because it is illegal and violates public policy, while paragraphs 59 through 61 allege that the arbitration provision is void *ab initio* because it is illegal and violates public policy.

Ex. C, pp. 8-15.

Thus, the "crux of the complaint" is a challenge to the Settlement Agreement as a whole, not the arbitration provision contained therein.

1. The Authorities Relied Upon By Clifford To Argue That The Court Should Decide "Formation" Are Highly Distinguishable

Clifford contends that her challenge to the formation of the Settlement Agreement should be decided by the Court, not the arbitrator. However, the authorities Clifford relied upon during the parties' Local Rule 7-3 conference of counsel are highly distinguishable. Blakely Decl., ¶ 7.

In *Sanford v. MemberWorks, Inc.*, 483 F.3d 956, 964 (9th Cir. 2007), the plaintiff alleged that she never received, much less signed, the membership agreement containing the arbitration clause, and that she did not even known about the membership until approximately 13 months after she was supposedly sent the agreement. *Id.* at 958-959. Under those facts, the Ninth Circuit held that the District Court should determine whether an enforceable arbitration agreement was formed. This case is very different: here, Clifford acknowledges that she signed and received the agreement, along with the consideration required of EC thereunder.

In *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1144 (9th Cir. 1991), the cities of Lawndale, San Marino, and Palmdale, and the Palmdale Redevelopment Agency, claimed that the person who signed the subject agreements on their behalf, an individual "who worked in various financial capacities for those entities," did not have authority to bind them to those agreements, which opened investments accounts with defendant (in which the plaintiffs lost $8 million). *Id*. at 1140–1141. Under those facts, the Ninth Circuit held that the District Court should determine whether the signatory to the agreements containing the arbitration clauses had authority to bind the plaintiffs to those agreements. *Id*. By contrast, Clifford has not, nor can she, make any argument that she lacked the authority to enter into the Settlement Agreement.

In *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 741, 747 (9th Cir. 2014), the Ninth Circuit held that the forum selection clauses in Goldman, Sachs & Co.'s Broker-Dealer Agreements with the City of Reno, which stated that "all actions and proceedings ... shall be brought in the ... District of Nevada," superseded Goldman's default obligation to arbitrate under FINRA's general rules. Here, Clifford makes no such argument.

In *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 303-304 (2010), the Court held that the District Court should determine arbitrability of a dispute over **when** the contract was formed, because this issue governed whether the arbitration agreement was in existence and enforceable during the relevant time period. Here, there is no dispute that the Settlement Agreement was executed by Clifford and EC more than a year before this dispute arose.

Moreover, the cases cited in Clifford's Motion for Expedited Jury Trial for the proposition that the court should decide her challenges to the formation of the Settlement Agreement also are highly distinguishable. Dkt. No. 16, pp., 11-12.

In *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1287 (9th Cir. 2009), the Ninth Circuit held that an arbitrator did not have the authority to issue an

injunction against non-parties, "such as cousins of former spouses" of signatories, and a "a non-party grandmother" of a signatory, to an arbitration agreement. The Court held that "these collateral relatives are not in privity with the…signatories." *Id*. Here, there is no dispute that EC is seeking to enforce the arbitration provision against a signatory to the Settlement Agreement (Clifford).

In *Doherty v. Barclays Bank Delaware*, No. 16-CV-01131-AJB-NLS, 2017 WL 588446, at *4 (S.D. Cal. Feb. 14, 2017), the defendant, one of the top ten issuers of credit cards in the United States, alleged that plaintiff was bound by the arbitration provision contained in defendant's "Cardmember Agreement" because plaintiff was an authorized user of his father's credit card account. However, the plaintiff claimed that he did not know he was an authorized user on the account, and that he was added as an authorized user without his knowledge. *Id*. at *1, 4. Under those facts, the District Court denied the defendant's motion to compel arbitration. *Id*. at *4. Here, there is no dispute that Clifford signed the Settlement Agreement.

In *Switch, LLC v. Ixmation, Inc.*, No. 15-CV-01637-MEJ, 2015 WL 4463672, at *3 (N.D. Cal. July 21, 2015), the plaintiff argued that "it did not sign or otherwise agree to" the defendant's "Proposal," which contained the subject arbitration provision. Under those facts, the District Court denied the defendant's motion to compel arbitration. *Id*. at *5. Again, there is no similar dispute here.

In contrast to the authorities relied upon by Clifford, in *Teledyne, Inc. v. Kone Corp*., 892 F.2d 1404, 1410 (9th Cir. 1989), the Ninth Circuit held that the arbitrator, not the District Court, must decide whether an agreement signed by both parties, but that defendant claimed was an unenforceable "DRAFT", was formed. In doing so, the Court held that cases must "be submitted to arbitration unless there is a challenge to the arbitration provision which is *separate* and *distinct* from any challenge to the underlying contract." *Id*. (emphasis in original), citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, *supra*, 388 U.S. at 402-404.

2. The Arbitration Provision Is Not Unconscionable

Clifford argues that the arbitration provision in the Settlement Agreement is unconscionable based on various theories. To the extent the Court even decides this issue, it should find that none of these arguments have merit.

First, under the FAA, there are strict limits on the types of unconscionability arguments that may be raised against an arbitration agreement. 9 U.S.C. § 2 limits the grounds for denying enforcement of arbitration agreements to "such grounds as exist at law or in equity for the revocation of any contract." The U.S. Supreme Court has interpreted this rule to prohibit unconscionability arguments directed to the substantive effect of the arbitration clause itself. Thus, in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 340-341 (2011), the Court held that a California doctrine holding that contractual waivers of class action arbitration were unconscionable was preempted by the FAA, even though it was an application of a state law rule. Thus, to the extent that Clifford seeks to use unconscionability doctrine to impose substantive limits on the arbitration clause, these arguments must fail.

Second and independently, the arbitration clause is not unconscionable under California law. "Under California law, unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." *Mohamed v. Uber Technologies, Inc.*, 848 F.3d 1201, 1210 (9th Cir. 2016) (broad delegation of arbitrability issues to arbitrator is not unconscionable) (internal quotations omitted). "**Both substantive and procedural unconscionability must be present in order for a court to find a contract unconscionable**, but they need not be present in the same degree… Recently, the California Supreme Court has emphasized that unconscionability requires a substantial degree of unfairness beyond a simple old-fashioned bad bargain… Rather, unconscionable contracts are those that are so one-sided as to shock the conscience." *Id.* (emphasis added; internal quotations omitted).

"Procedural unconscionability focuses on two factors in contract formation: oppression and surprise…. Oppression arises when there is inequality in bargaining power between the parties to a contract, resulting in no real opportunity to negotiate the terms of the contract and the absence of meaningful choice. Surprise involves the extent to which the supposedly agreed terms were hidden from the party seeking to avoid enforcement of the agreement." *Chalk v. T-Mobile USA, Inc.*, 560 F.3d 1087, 1093-94 (9th Cir. 2009) (arbitration clause in readable type in cellular service agreement was not procedurally unconscionable).

Here, there is no procedural unconscionability. There is no evidence that Clifford was forced to enter into the Settlement Agreement, had no meaningful choice to do so, or had no choice but to accede to the terms of the arbitration clause as drafted. The Settlement Agreement was the antithesis of standard form adhesion contracts imposed by large corporations that the procedural ucnconscionability doctrine addresses. Clifford had the power to walk away, the power to negotiate the terms of the agreement, and only entered into the agreement after she unsuccessfully attempted to sell her story for $200,000. Ex. D. Because there is no procedural unconscionability, all of Clifford's unconscionability defenses fail.

In any event, Clifford also has not shown substantive unconscionability. Her contention is exactly what *Mohamed* states cannot constitute substantive unconscionability, namely, that she made an old fashioned bargain that she now regrets, not that any terms of the Settlement Agreement shock the conscience. Clifford has shown no unfairness in the arbitration process (an argument that is barred under *Concepcion* anyway), and no unfairness in the terms of the arbitration clause. For instance, Clifford has not shown how she is prejudiced by being required to go to the arbitrator to get an injunction to enforce the Settlement Agreement, or that the choice of law rule in the Settlement Agreement has harmed her in any way. Nor has she shown that the other terms of the agreement—a straightforward promise to pay $130,000 in exchange for various confidentiality obligations—were so one-sided as to

shock the conscience. If this agreement is unconscionable, then any confidentiality agreement is unconscionable, and that is not the law. *Borgarding v. JP Morgan Chase Bank*, 2016 WL 8904413 at *9 (C.D. Cal. Oct. 31, 2016) ("A confidentiality clause, however, does not, render the entire arbitration agreement substantively unconscionable.").

Finally, even if there is a provision (such as the choice of law provision) of the arbitration agreement that is found to step too far under unconscionability doctrine, any such provision is severable from the rest of the arbitration agreement. The core agreement is to arbitrate all disputes arising under the Settlement Agreement; restrictions on injunctive relief and special choice of law rules are not central to the bargain and can be excised if the Court determines that they are unconscionable. *Mohamed v. Uber Technologies, Inc*, *supra*, 848 F.3d at 1213-14 (holding that waiver of private attorney general suits, which was unenforceable, was severable from remainder of arbitration clause).

e. <u>The Newly Added Second Cause Of Action Against Michael Cohen Does Not Prevent Arbitration Of The First Cause Of Action</u>

Clifford cannot avoid arbitration of her first cause of action against DD and EC on the basis that her second cause of action asserts a non-arbitrable claim against Mr. Cohen. "[W]hen a complaint contains both arbitrable and nonarbitrable claims, the [Federal Arbitration] Act requires courts to 'compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums.'" *KPMG LLP v. Cocchi*, 565 U.S. 18, 22 (2011), citing *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217 (1985). "The Act has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation." *Id*. at 19.

"Moreover, a plaintiff cannot avoid arbitration merely by claiming that one or more of its claims for relief is against a defendant who is not a signatory to the

agreement." *Encore Prods., Inc. v. Promise Keepers*, 53 F.Supp.2d 1101, 1113 (D. Colo. 1999), citing *Hilti, Inc. v. Oldach*, 392 F.2d 368, 369 n. 2 (1st Cir. 1968) ("arbitration should not be foreclosed simply by adding persons to a civil action who are not parties to the arbitration agreement because such an inclusion would thwart the federal policy in favor of arbitration"); *Steinberg & Lyman v. Takacs*, 774 F.Supp. 885, 888 (S.D.N.Y.1991) ("while [plaintiff] asserts that notions of judicial economy favor having this Court try the entire action at one time, rather than sending only two of the defendants to arbitration, such an argument does not withstand the mandate of the [FAA].")

IV. THE COURT SHOULD STAY THIS ACTION PENDING THE OUTCOME OF THE ARBITRATION

The Court should stay all proceedings with respect to the first cause of action, pending the completion of the arbitration. 9 U.S.C. § 3. Section 3 provides, in pertinent part:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had…

V. CONCLUSION

For the foregoing reasons, the instant Motion to Compel Arbitration should be granted; Clifford should be ordered to arbitration in the currently pending arbitration between the parties with ADRS, consistent with the parties' agreement; and the first cause of action in the FAC should be stayed pending the outcome of the arbitration.

Dated: April 2, 2018

BLAKELY LAW GROUP

By: */s/ Brent H. Blakely*
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

v.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:18-CV-02217-SJO-FFM

DECLARATION OF BRENT H. BLAKELY IN SUPPORT OF MOTION TO COMPEL ARBITRATION

Assigned for All Purposes to the Hon. S. James Otero

Date: **April 30, 2018**
Time: **10:00 a.m.**
Location: **350 West 1st Street**
Courtroom 10C, 10th Floor
Los Angeles, CA 90012

Action Filed: March 6, 2018

DECLARATION OF BRENT H. BLAKELY

I, Brent H. Blakely, declare:

1. I am an attorney duly licensed to practice before all courts of the State of California and in the U.S. District Court for the Central District of California, among other courts. I make this declaration based on my own personal knowledge and, if called and sworn as a witness, I could and would competently testify hereto.

2. I am a partner of the law firm of Blakely Law Group, counsel of record for Defendant Essential Consultants, LLC ("EC").

3. Attached hereto as **Exhibit B** is a true and correct copy of the Complaint, without exhibits, filed by Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson ("Clifford") in Los Angeles Superior Court, Case Number BC696568, on March 6, 2018. EC removed the Complaint to this court on March 16, 2018. The exhibits to the Complaint are contained in Dkt. No. 1, Exhibit 1.

4. Attached hereto as **Exhibit C** is a true and correct copy of the First Amended Complaint ("FAC"), without exhibits, filed by Clifford on March 26, 2018. The exhibits to the FAC are contained in Dkt. No. 14.

5. Attached hereto as **Exhibit D** is a true and correct copy of the article entitled, "*EXCLUSIVE: How Stormy Daniels tried to sell story about her one-night-stand with Donald Trump for $200,000 THREE weeks before the election but worked out a deal with Trump's lawyer Michael Cohen after she got no takers*," which was published by the *Daily Mail* on or about March 29, 2018, at the following URL: http://www.dailymail.co.uk/news/article-5554437/Stormy-Daniels-tried-sell-story-sex-Trump-200-000-weeks-election.html.

6. Attached hereto as **Exhibit F** is a true and correct copy of the article entitled, "*Stormy Daniels says Trump scandal has been good for business*," which was published by *CNN* on or about March 11, 2018, at the following URL: https://www.cnn.com/2018/03/10/ politics/stormy-daniels-interview/index.html.

7. Attached hereto as **Exhibit G** is a true and correct copy of the article entitled, "*One Night with Stormy Daniels, the Hero America Needs*," which was published by *Rolling Stone* on or about March 9, 2018, at the following URL: https://www.rollingstone.com/ culture/features/one-night-with-stormy-daniels-the-hero-america-needs-w517692.

8. On March 21, 2018, I met with counsel for Clifford, Ahmed Ibrahim, in person at my offices to discuss the instant Motion to Compel Arbitration ("Motion"). Charles J. Harder, counsel for Defendant Donald J. Trump, was also present in person. Michael Avenatti, also counsel for Clifford, participated by telephone. During the conference, we discussed our respective positions regarding the Motion, along with the authorities upon which we rely, and I specifically informed counsel for Clifford that, pursuant to *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006), Clifford's defenses to the enforcement of the Settlement Agreement as a whole must be decided by the arbitrator, not the Court. In response, counsel for Clifford cited the following cases: *Sanford v. MemberWorks, Inc*., 483 F.3d 956, 964 (9th Cir. 2007), *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1144 (9th Cir. 1991), *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 741, 747 (9th Cir. 2014) and *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 303-304 (2010). For the reasons set forth in EC's accompanying memorandum of points and authorities, these cases are highly distinguishable from this case.

9. Thus, no agreement to eliminate the need for the Motion was reached. A true and correct copy of my email exchange with Mr. Avenatti summarizing our discussions is attached hereto as **Exhibit H**.

10. Attached hereto as **Exhibit I** is a true and correct copy of my March 27, 2018 letter to counsel for Clifford, Michael Avenatti, setting forth the basis upon which defendant Michael Cohen intends to file an anti-SLAPP motion pursuant California Code of Civil Procedure § 425.16 in connection with Clifford's second cause of action against Mr. Cohen for defamation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 2, 2018, at Los Angeles, California.

/s/ *Brent H. Blakely*
BRENT H. BLAKELY

Exhibit B

Michael J. Avenatti, Bar No. 206929
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a.k.a. Stormy Daniels a.k.a. Peggy Peterson

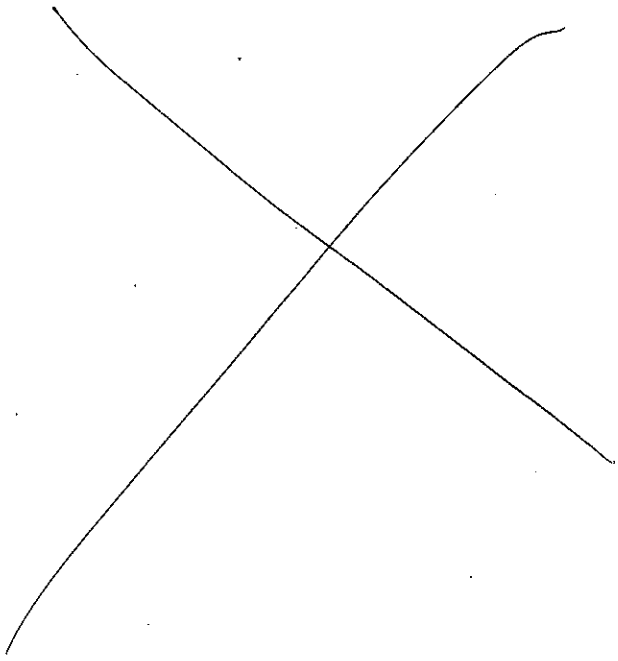
SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual, Plaintiff, vs. DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive Defendants.	Case No. BC696568 **COMPLAINT FOR DECLARATORY RELIEF**

CIT/CASE: BC696568
LEA/DEF#:

RECEIPT #: CCH505376134
DATE PAID: 03/06/18 03:46 PM
PAYMENT: $435.00
RECEIVED: 310
CHECK: $435.00
CASH: $0.00
CHANGE: $0.00
CARD: $0.00



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Doc# 1 Page# 2 - Doc ID = 1730293032 - Doc Type = OTHER

Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson ("Ms. Clifford" or "Plaintiff") hereby alleges the following:

THE PARTIES

1. Plaintiff Ms. Clifford, an individual, is a resident of the State of Texas.

2. Defendant Donald J. Trump a.k.a. David Dennison ("Mr. Trump"), an individual, is a resident of the District of Columbia (among other places).

3. Defendant Essential Consultants, LLC ("EC") is a Delaware limited liability company formed on October 17, 2016.

4. Mr. Trump and EC together shall be referred to hereafter as "Defendants."

5. The true names and capacities of the defendants DOES 1 through 10, inclusive, whether individual, plural, corporate, partnership, associate or otherwise, are not known to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of defendants DOES 1 through 10, inclusive, when the same have been ascertained.

6. Plaintiff is also informed and believe and thereon alleges that DOES 1 to 10 were the agents, principals, and/or alter egos of Defendants, at all times herein relevant, and that they are therefore liable for the acts and omissions of Defendants.

JURISDICTION AND VENUE

7. Jurisdiction for this matter properly lies with this Court because Plaintiff seeks declaratory relief.

8. Venue is appropriate in the County of Los Angeles, and this Court has personal jurisdiction over Defendants and each of them, by reason of the fact that, among other things, (a) the alleged agreement that is at issue in this Complaint was purportedly made and negotiated, at least in substantial part, in the County of Los Angeles, and (b) many of the events giving rise to this action arose in California, including within the County of Los Angeles.

FACTUAL BACKGROUND

9. Ms. Clifford began an intimate relationship with Mr. Trump in the Summer of 2006 in Lake Tahoe and continued her relationship with Mr. Trump well into the year 2007. This relationship included, among other things, at least one "meeting" with Mr. Trump in a bungalow at the Beverly Hills Hotel located within Los Angeles County.

10. In 2015, Mr. Trump announced his candidacy for President of the United States.

11. On July 19, 2016, Mr. Trump secured the Republican Party nomination for President.

12. On October 7, 2016, the Washington Post published a video, now infamously known as the *Access Hollywood Tape*, depicting Mr. Trump making lewd remarks about women. In it, Mr. Trump described his attempt to seduce a married woman and how he may start kissing a woman that he and his companion were about to meet. He then added: "I don't even wait. And when you're a star, they let you do it, you can do anything . . ."

13. Within days of the publication of the *Access Hollywood Tape*, several women came forward publicly to tell their personal stories about their sexual encounters with Mr. Trump.

14. Around this time, Ms. Clifford likewise sought to share details concerning her relationship and encounters with Mr. Trump with various media outlets.

15. As a result of Ms. Clifford's efforts aimed at publicly disclosing her story and her communications with various media outlets, Ms. Clifford's plans came to the attention of Mr. Trump and his campaign, including Mr. Michael Cohen, an attorney licensed in the State of New York. Mr. Cohen worked as the "top attorney" at the Trump Organization from 2007 until after the election and presently serves as Mr. Trump's personal attorney. He is also generally referred to as Mr. Trump's "fixer."

16. After discovering Ms. Clifford's plans, Mr. Trump, with the assistance of his attorney Mr. Cohen, aggressively sought to silence Ms. Clifford as part of an effort to avoid her telling the truth, thus helping to ensure he won the Presidential Election. Mr. Cohen subsequently prepared a draft non-disclosure agreement and presented it to Ms. Clifford and her attorney (the "Hush Agreement"). Ms. Clifford at the time was represented by counsel in California whose office is located in Beverly Hills, California within the County of Los Angeles.

17. The parties named in the Hush Agreement were Ms. Clifford, Mr. Trump, and Essential Consultants LLC. As noted above, Essential Consultants LLC ("EC") was formed on October 17, 2016, just weeks before the 2016 presidential election. On information and belief, EC was created by Mr. Cohen with Mr. Trump's knowledge for one purpose – to hide the true source of funds to be used to pay Ms. Clifford, thus further insulating Mr. Trump from later discovery and scrutiny.

18. By design of Mr. Cohen, the Hush Agreement used aliases to refer to Ms. Clifford and Mr. Trump. Specifically, Ms. Clifford was referred to by the alias "Peggy Peterson" or "PP." Mr. Trump, on the other hand, was referred to by the alias "David Dennison" or "DD."

19. Attached hereto as Exhibit 1 is a true and correct copy of the Hush Agreement, titled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement. Exhibit 1 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

20. Attached hereto as Exhibit 2 is a true and correct copy of the draft Side Letter Agreement, which was Exhibit A to the Hush Agreement. Exhibit 2 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

21. Importantly, the Hush Agreement imposed various conditions and obligations not only on Ms. Clifford, but also on Mr. Trump. The agreement also required the signature of all parties to the agreement, including that of Mr. Trump. Moreover, as is customary, it was widely understood at all times that unless all of the parties signed the documents as required, the Hush Agreement, together with all of its terms and conditions, was null and void.

22. On or about October 28, 2016, only days before the election, two of the parties signed the Hush Agreement - Ms. Clifford and Mr. Cohen (on behalf of EC). Mr. Trump, however, did not sign the agreement, thus rendering it legally null and void and of no consequence. On information and belief, despite having detailed knowledge of the Hush Agreement and its terms, including the proposed payment of monies to Ms. Clifford and the routing of those monies through EC, Mr. Trump purposely did not sign the agreement so he could later, if need be, publicly disavow any knowledge of the Hush Agreement and Ms. Clifford.

23. Despite Mr. Trump's failure to sign the Hush Agreement, Mr. Cohen proceeded to cause $130,000.00 to be wired to the trust account of Ms. Clifford's attorney. He did so even though there was no legal agreement and thus no written nondisclosure agreement whereby Ms. Clifford was restricted from disclosing the truth about Mr. Trump.

24. Mr. Trump was elected President of the United States on November 8, 2016.

25. In January 2018, certain details of the draft Hush Agreement emerged in the news media, including, among other things, the existence of the draft agreement, the parties to the draft agreement, and the $130,000.00 payment provided for under the draft agreement. Also in January 2018, and concerned the truth would be disclosed, Mr. Cohen, through intimidation and coercive tactics, forced Ms. Clifford into signing a false statement wherein she stated that reports of her relationship with Mr. Trump were false.

26. On or about February 13, 2018, Mr. Cohen issued a public statement regarding Ms. Clifford, the existence of the Hush Agreement, and details concerning the Hush Agreement. He did so without any consent by Ms. Clifford, thus evidencing Mr. Cohen's apparent position (at least in that context) that no binding agreement was in place. Among other things, Mr. Cohen stated: "In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly." Mr. Cohen concluded his statement with lawyer speak: "Just because something isn't true doesn't mean that it can't cause you harm or damage. *I will always protect Mr. Trump.*" (emphasis added).

27. Importantly, at no time did Mr. Cohen claim Ms. Clifford did not have an intimate relationship with Mr. Trump. Indeed, were he to make such a statement, it would be patently false.

28. Because the agreement was never formed and/or is null and void, no contractual obligations were imposed on any of the parties to the agreement, including any obligations to keep information confidential. Moreover, to the extent any such obligations did exist, they were breached and/or excused by Mr. Cohen and his public statements to the media.

29. To be clear, the attempts to intimidate Ms. Clifford into silence and "shut her up" in order to "protect Mr. Trump" continue unabated. For example, only days ago on or about February 27, 2018, Mr. Trump's attorney Mr. Cohen surreptitiously initiated a bogus arbitration proceeding against Ms. Clifford in Los Angeles. Remarkably, he did so without even providing Ms. Clifford with notice of the proceeding and basic due process.

30. Put simply, considerable steps have been taken by Mr. Cohen in the last week to silence Ms. Clifford through the use of an improper and procedurally defective arbitration proceeding hidden from public view. The extent of Mr. Trump's involvement in these efforts is presently unknown, but it strains credibility to conclude that Mr. Cohen is acting on his own accord without the express approval and knowledge of his client Mr. Trump.

31. Indeed, Rule 1.4 of New York Rules of Professional Conduct governing attorneys has required Mr. Cohen *at all times* to promptly communicate all material information relating to the matter to Mr. Trump, including but not limited to "any decision or circumstance with respect to which [Mr. Trump's] informed consent [was] required" and "material developments in the matter including settlement or plea offers." Moreover, this same Rule required Mr. Cohen *at all times* to "reasonably consult with [Mr. Trump] about the means by which [his] objectives are to be accomplished" and to "keep [Mr. Trump] reasonably informed about the status of the matter."

32. Accordingly, unless Mr. Cohen flagrantly violated his ethical obligations and the most basic rules governing his license to practice law (which is highly unlikely), there can be no doubt that Mr. Trump *at all times* has been fully aware of the negotiations with Ms. Clifford, the existence and terms of the Hush Agreement, the payment of the $130,000.00, the use of EC as a conduit, and the recent attempts to intimidate and silence Ms. Clifford by way of the bogus arbitration proceeding.

33. Because there was never a valid agreement and thus, no agreement to arbitrate, any subsequent order obtained by Mr. Cohen and/or Mr. Trump in arbitration is of no consequence or effect.

FIRST CAUSE OF ACTION

Declaratory Relief

(Against all Defendants)

34. Plaintiff restates and re-alleges each and every allegation in Paragraphs 1 through 33 above as if fully set forth herein.

35. This action concerns the legal significance, if any, of the documents attached hereto as Exhibit 1, entitled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement, and Exhibit 2, entitled Side Letter Agreement.

36. California Code of Civil Procedure section 1060 authorizes declaratory relief for any person who desires a declaration of rights or duties with respect to one another. In cases of actual controversy relating to the legal rights and duties of the respective parties, such a person may seek a judicial declaration of his or her rights and duties relative to an instrument or contract, or alleged contract, including a determination of any question of construction or validity arising under the instrument or contract, or alleged contract. This includes a determination of whether a contract was ever formed.

37. An actual controversy exists between Plaintiff and Defendants as to their rights and duties to each other. Accordingly, a declaration is necessary and proper at this time.

38. Specifically, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 between Plaintiff and Defendants were never formed, and therefore do not exist, because, among other things, Mr. Trump never signed the agreements. Nor did Mr. Trump provide any other valid consideration. He thus never assented to the duties, obligations, and conditions the agreements purportedly imposed upon him. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

39. In the alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable, and/or void under the doctrine of unconscionability. Plaintiff contends that, as a result, she is not bound by any of the duties,

obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

40. In the further alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable, and/or void because they are illegal and/or violate public policy. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

41. Defendants dispute these contentions.

42. Accordingly, Ms. Clifford desires a judicial determination of her rights and duties with respect to the alleged agreements in the forms set out in Exhibits 1 and 2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable.

ON THE FIRST CAUSE OF ACTION

1. For a judgment declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable.

2. For costs of suit; and

3. For such other and further relief as the Court may deem just and proper.

DATED: March 6, 2018

AVENATTI & ASSOCIATES, APC

MICHAEL J. AVENATTI
Attorneys for Plaintiff

Exhibit C

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Attorneys for Plaintiff Stephanie Clifford
a.k.a. Stormy Daniels a.k.a. Peggy Peterson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual, Plaintiff, vs. DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive Defendants.	Case No. 2:18-CV-02217-SJO-FFM **FIRST AMENDED COMPLAINT FOR:** **(1) DECLARATORY RELIEF/JUDGMENT; AND** **(2) DEFAMATION** **DEMAND FOR JURY TRIAL**

Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson ("Ms. Clifford" or "Plaintiff") hereby alleges the following:

THE PARTIES

1. Plaintiff Ms. Clifford, an individual, is a resident of the State of Texas.

2. Defendant Donald J. Trump a.k.a. David Dennison ("Mr. Trump"), an individual, is a resident of the District of Columbia (among other places).

3. Defendant Essential Consultants, LLC ("EC") is a Delaware limited liability company formed on October 17, 2016.

4. Defendant Michael Cohen ("Mr. Cohen"), an individual, is a resident of the State of New York.

5. Mr. Trump, EC, and Mr. Cohen together shall be referred to hereafter as "Defendants."

6. The true names and capacities of the defendants DOES 1 through 10, inclusive, whether individual, plural, corporate, partnership, associate or otherwise, are not known to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of defendants DOES 1 through 10, inclusive, when the same have been ascertained.

7. Plaintiff is also informed and believe and thereon alleges that DOES 1 to 10 were the agents, principals, and/or alter egos of Defendants, at all times herein relevant, and that they are therefore liable for the acts and omissions of Defendants.

JURISDICTION AND VENUE

8. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction over Plaintiff's claims based on the parties' diversity of citizenship and because the amount in controversy exceeds $75,000.

9. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391, and this Court has personal jurisdiction over Defendants and each of them, by reason of the fact that, among other things, (a) the alleged agreement that is at issue in this Complaint was purportedly made and negotiated, at least in substantial part, in the County of Los Angeles, and (b) many of the events giving rise to this action arose in California, including within the County of Los Angeles.

FACTUAL BACKGROUND

10. Ms. Clifford began an intimate relationship with Mr. Trump in the summer of 2006 in Lake Tahoe and continued her relationship with Mr. Trump well into the year 2007. This relationship included, among other things, at least one "meeting" with Mr. Trump in a bungalow at the Beverly Hills Hotel located within Los Angeles County.

11. In 2015, Mr. Trump announced his candidacy for President of the United States.

12. On July 19, 2016, Mr. Trump secured the Republican Party nomination for President.

13. On October 7, 2016, the Washington Post published a video, now infamously known as the *Access Hollywood Tape*, depicting Mr. Trump making lewd remarks about women. In it, Mr. Trump described his attempt to seduce a married woman and how he may start kissing a woman that he and his companion were about to meet. He then added: "I don't even wait. And when you're a star, they let you do it, you can do anything . . ."

14. Within days of the publication of the *Access Hollywood Tape*, several women came forward publicly to tell their personal stories about their sexual encounters with Mr. Trump.

15. Around this time, Ms. Clifford likewise sought to share details concerning her relationship and encounters with Mr. Trump with various media outlets.

16. As a result of Ms. Clifford's efforts aimed at publicly disclosing her story and her communications with various media outlets, Ms. Clifford's plans came to the attention of Mr. Trump and his campaign, including Mr. Michael Cohen, an attorney licensed in the State of New York. Mr. Cohen worked as the "top attorney" at the Trump Organization from 2007 until after the election and presently serves as Mr. Trump's personal attorney. He is also generally referred to as Mr. Trump's "fixer."

17. After discovering Ms. Clifford's plans, Mr. Trump, with the assistance of his attorney Mr. Cohen, aggressively sought to silence Ms. Clifford as part of an effort to avoid her telling the truth, thus helping to ensure he won the Presidential Election. Mr. Cohen subsequently prepared a draft non-disclosure agreement and presented it to Ms. Clifford and her attorney (the "Hush Agreement"). Ms. Clifford at the time was represented by counsel in California whose office is located in Beverly Hills, California within the County of Los Angeles.

18. The parties named in the Hush Agreement were Ms. Clifford, Mr. Trump, and Essential Consultants LLC. As noted above, Essential Consultants LLC ("EC") was formed on October 17, 2016, just weeks before the 2016 presidential election. On information and belief, EC was created by Mr. Cohen with Mr. Trump's knowledge for one purpose – to hide the true source of funds to be used to pay Ms. Clifford, thus further insulating Mr. Trump from later discovery and scrutiny.

19. By design of Mr. Cohen, the Hush Agreement used aliases to refer to Ms. Clifford and Mr. Trump. Specifically, Ms. Clifford was referred to by the alias "Peggy Peterson" or "PP." Mr. Trump, on the other hand, was referred to by the alias "David Dennison" or "DD."

20. Attached hereto as Exhibit 1 is a true and correct copy of the Hush Agreement, titled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement. Exhibit 1 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

21. Attached hereto as Exhibit 2 is a true and correct copy of the draft Side Letter Agreement, which was Exhibit A to the Hush Agreement. Exhibit 2 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

22. Importantly, the Hush Agreement imposed various conditions and obligations not only on Ms. Clifford, but also on Mr. Trump. The agreement also required the signature of all parties to the agreement, including that of Mr. Trump. Moreover, as is customary, it was widely understood at all times that unless all of the parties signed the documents as required, the Hush Agreement, together with all of its terms and conditions, was null and void.

23. On or about October 28, 2016, only days before the election, two of the parties signed the Hush Agreement - Ms. Clifford and Mr. Cohen (on behalf of EC). Mr. Trump, however, did not sign the agreement, thus rendering it legally null and void and of no consequence. On information and belief, despite having detailed knowledge of the Hush Agreement and its terms, including the proposed payment of monies to Ms. Clifford and the routing of those monies through EC, Mr. Trump purposely did not sign the agreement so he could later, if need be, publicly disavow any knowledge of the Hush Agreement and Ms. Clifford.

24. Despite Mr. Trump's failure to sign the Hush Agreement, Mr. Cohen proceeded to cause $130,000.00 to be wired to the trust account of Ms. Clifford's attorney. He did so even though there was no legal agreement and thus no written nondisclosure agreement whereby Ms. Clifford was restricted from disclosing the truth about Mr. Trump.

25. Mr. Trump was elected President of the United States on November 8, 2016.

26. In January 2018, certain details of the draft Hush Agreement emerged in the news media, including, among other things, the existence of the draft agreement, the parties to the draft agreement, and the $130,000.00 payment provided for under the

draft agreement. Also in January 2018, and concerned the truth would be disclosed, Mr. Cohen, through intimidation and coercive tactics, forced Ms. Clifford into signing a false statement wherein she stated that reports of her relationship with Mr. Trump were false.

27. On or about February 13, 2018, Mr. Cohen issued a public statement regarding Ms. Clifford, the existence of the Hush Agreement, details concerning the Hush Agreement, and an attack on Ms. Clifford's truthfulness. He did so without any consent by Ms. Clifford, thus evidencing Mr. Cohen's apparent position (at least in that context) that no binding agreement was in place. Among other things, Mr. Cohen stated: "In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly." Mr. Cohen concluded his statement by stating: "Just because something isn't true doesn't mean that it can't cause you harm or damage. *I will always protect Mr. Trump.*" (emphasis added). This statement was made in writing by Mr. Cohen and released by Mr. Cohen to the media with the intent that it be widely disseminated and repeated throughout the United States. Attached hereto as Exhibit 3 is a true and correct copy of Mr. Cohen's statement. Exhibit 3 is incorporated herein by this reference and made a part of this Complaint as if fully set forth herein.

28. Importantly, at no time did Mr. Cohen make a direct assertion that Ms. Clifford did not have an intimate relationship with Mr. Trump. Indeed, were he to make such a statement, it would be patently false. Mr. Cohen's statement was not a mere statement of opinion, but rather has been reasonably understood to be a factual statement implying or insinuating that Ms. Clifford was not being truthful in claiming that she had an intimate relationship with Mr. Trump.

29. Because the agreement was never formed and/or is null and void, no contractual obligations were imposed on any of the parties to the agreement, including

any obligations to keep information confidential. Moreover, to the extent any such obligations did exist, they were breached and/or excused by Mr. Cohen and his public statements to the media.

30. To be clear, the attempts to intimidate Ms. Clifford into silence and "shut her up" in order to "protect Mr. Trump" continue unabated. For example, only days ago on or about February 27, 2018, Mr. Trump's attorney Mr. Cohen surreptitiously initiated a bogus arbitration proceeding against Ms. Clifford in Los Angeles. Remarkably, he did so without even providing Ms. Clifford with notice of the proceeding and basic due process.

31. Put simply, considerable steps have been taken by Mr. Cohen in the last week to silence Ms. Clifford through the use of an improper and procedurally defective arbitration proceeding hidden from public view. The extent of Mr. Trump's involvement in these efforts is presently unknown, but it strains credibility to conclude that Mr. Cohen is acting on his own accord without the express approval and knowledge of his client Mr. Trump.

32. Indeed, Rule 1.4 of the New York Rules of Professional Conduct governing attorneys has required Mr. Cohen *at all times* to promptly communicate all material information relating to the matter to Mr. Trump, including but not limited to "any decision or circumstance with respect to which [Mr. Trump's] informed consent [was] required" and "material developments in the matter including settlement or plea offers." Moreover, this same Rule required Mr. Cohen *at all times* to "reasonably consult with [Mr. Trump] about the means by which [his] objectives are to be accomplished" and to "keep [Mr. Trump] reasonably informed about the status of the matter."

33. Further, Rule 1.8(e) of the New York Rules of Professional Conduct provides that attorneys "shall not advance or guarantee financial assistance to the client[.]" Although the Rule provides for certain exceptions, such as permitting lawyers to pay court costs and expenses for indigent clients, plainly, none of these exceptions

apply to Mr. Cohen's purported financial assistance of $130,000 on behalf of his client, Mr. Trump.

34. Accordingly, unless Mr. Cohen flagrantly violated his ethical obligations and the most basic rules governing his license to practice law (which is highly unlikely), there can be no doubt that Mr. Trump *at all times* has been fully aware of the negotiations with Ms. Clifford, the existence and terms of the Hush Agreement, the payment of the $130,000.00, the use of EC as a conduit, and the recent attempts to intimidate and silence Ms. Clifford by way of the bogus arbitration proceeding.

35. Because there was never a valid agreement and thus, no agreement to arbitrate, any subsequent order obtained by Mr. Cohen and/or Mr. Trump in arbitration is of no consequence or effect.

FIRST CAUSE OF ACTION

Declaratory Relief/Judgment

(Against Defendants Mr. Trump and EC)

36. Plaintiff restates and re-alleges each and every allegation in Paragraphs 1 through 35 above as if fully set forth herein.

37. This action concerns the legal significance, if any, of the documents attached hereto as Exhibit 1, entitled Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment [sic] Agreement, and Exhibit 2, entitled Side Letter Agreement.

38. California Code of Civil Procedure § 1060 authorizes declaratory relief for any person who desires a declaration of rights or duties with respect to one another. In cases of actual controversy relating to the legal rights and duties of the respective parties, such a person may seek a judicial declaration of his or her rights and duties relative to an instrument or contract, or alleged contract, including a determination of any question of construction or validity arising under the instrument or contract, or alleged contract. This includes a determination of whether a contract was ever formed.

39. 28 U.S.C. § 2201 creates a remedy for the entry of a declaratory judgment in cases of "actual controversy", whereby the court may declare the rights and other legal relations of any interested party seeking such declaration. Any such declaration shall have the force and effect of a final judgment or decree.

40. An actual controversy exists between Plaintiff and Defendants as to their rights and duties to each other. Accordingly, a declaration is necessary and proper at this time.

A. No Agreement Was Formed – Lack of Signature, Consideration, or Consent

41. Specifically, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 between Plaintiff and Defendants were never formed, and therefore do not exist, because, among other things, Mr. Trump never signed the agreements (which was an express condition of the Hush Agreement that had to occur for the formation of a valid and binding agreement). Nor did Mr. Trump provide any other valid consideration. He thus never assented to the duties, obligations, and conditions the agreements purportedly imposed upon him, which included express obligations imposed on Mr. Trump to provide Plaintiff with releases, a covenant not to sue, and representations and warranties (all of which were separate and apart from the $130,000 payment). Plaintiff contends that, as a result, no agreement was ever formed or ever existed and, consequently, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

B. The Agreement Is Unconscionable

42. In the alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable, and/or void under the doctrine of unconscionability. By way of example only (and not limitation), the Hush Agreement contains a "Liquidated Damages" provision in favor of

"DD" (Mr. Trump) purporting to require Plaintiff to pay $1 Million for "each breach" calculated on a "per item basis." However, $1 Million for "each breach" bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. Instead, the liquidated damages clause was intended to inflict a penalty designed to intimidate and financially cripple Plaintiff. It is therefore void as a matter of law.

43. By way of further example, while on the one hand, the Hush Agreement purports to impose astonishingly broad restrictions on speech and disclosure upon Plaintiff (including prohibiting disclosure of matters that are of public record), on the other hand, Defendants, with few exceptions, have no such restrictions imposed upon them and are thus permitted to disclose matters covered by the Agreement, and publicly disparage Plaintiff and impugn her credibility. As but one illustration of the one-sided nature of the Hush Agreement, EC, through Mr. Cohen, violated paragraph 7.1 of the Agreement by disclosing terms of the Agreement to the *Wall Street Journal* on or about January 12, 2018. Although the Agreement attempts to impose astonishingly Draconian consequences and penalties upon Plaintiff for a breach of the Agreement, no such remedies are available to Plaintiff for Defendants' breach of the Agreement. An agreement that sanctions such overly-harsh, one-sided results without any justification and which allocates risks of the bargain in such an objectively unreasonable and unexpected manner is unconscionable as a matter of law. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

C. The Agreement Is Void *Ab Initio* Because It Is Illegal and Violates Public Policy

44. In the further alternative, Plaintiff seeks an order of this Court declaring that the agreements in the forms set out in Exhibits 1 and 2 are invalid, unenforceable,

and/or void because they are illegal, or that they violate public policy. Essential to the "*existence*" of a contract is that the contract have a "lawful object" or lawful purpose. See, e.g., Cal. Civ. Code § 1550. No such lawful purpose existed in the Hush Agreement for at least the following reasons.

45. *First*, the Hush Agreement was entered with the illegal aim, design, and purpose of circumventing federal campaign finance law under the Federal Election Campaign Act (FECA), 52 U.S.C. §§ 30101, *et seq.*, and Federal Election Commission (FEC) regulations. The purposes and aims of the FECA include the promotion of transparency, the complete and accurate disclosure of the contributors who finance federal elections, and the restriction on the influence of political war chests funneled through the corporate form.

46. In order to effectuate these purposes, FECA imposes various contribution limits, and reporting and public disclosure requirements, on candidates for Federal office, including the office of President of the United States. With regards to the 2016 Presidential Election, FECA required that the maximum any "person"—defined to include "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons" —was permitted to contribute to any candidate was $2,700. 52 U.S.C. §§ 30101(11); 30116(a)(1)(A), (c); see also FEC, Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017). Mr. Trump and his campaign for the presidency were subject to FECA and its contribution limit at all relevant times.

47. The term "contribution" is defined broadly to include "any gift, subscription, loan, advance, or deposit of money *or anything of value* made by any person *for the purpose of influencing any election for Federal office*[.]" 52 U.S.C. § 30101(8)(A) (emphasis added); see also 11 C.F.R. §§ 100.51-100.56. The phrase "anything of value" includes "all in-kind contributions." 11 C.F.R. § 100.52(d)(1). In other words, "the provision of any goods or services without charge or at a charge that

is less than the usual and normal charge for such goods or services is a contribution." Id.

48. In addition, under FECA, Mr. Trump and his campaign for the presidency were required to report the identification of each person who made a contribution to his campaign with an aggregate value in excess of $200 within an election cycle. 52 U.S.C. § 30104(b)(3)(A). Mr. Trump and his campaign for the presidency were also required to report the name and address of each person *to whom* an expenditure in an aggregate amount in excess of $200 within the calendar year was made by his campaign committee.

49. FECA also imposes similar requirements on the reporting of "expenditures." 52 U.S.C. § 30104(b)(4)-(5). The term "expenditure" includes "(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money *or anything of value*, made by any person *for the purpose of influencing any election for Federal office*; and (ii) a written contract, promise, or agreement to make an expenditure." 52 U.S.C. § 30101(9) (emphasis added). As with "contributions," the phrase "anything of value" in the context of "expenditures" includes "all in-kind contributions." 11 C.F.R. § 100.111(e)(1).

50. Moreover, "contributions from the candidate" or "expenditures" from the candidate must also be reported. 11 C.F.R. § 104.3(a)(3)(ii); see also, e.g., FEC Advisory Opinion 1990-09.

51. Here, the Hush Agreement did not have a lawful object or purpose. The Hush Agreement, and the $130,000 payment made pursuant to the agreement, was for the "purpose of influencing" the 2016 presidential election by silencing Plaintiff from speaking openly and publicly about Mr. Trump just weeks before the 2016 election. Defendants plainly intended to prevent American voters from hearing Plaintiff speak about Mr. Trump. This $130,000 payment was a thing "of value" and an "in-kind" contribution exceeding the contribution limits in violation of FECA and FEC regulations. It was also a violation of FECA and FEC regulations because it was not

publicly reported as a contribution. Further, it was a violation of FECA and FEC regulations because it was a thing "of value" and an "in-kind" expenditure that was required to be reported as such. Therefore, because the Hush Agreement did not have a lawful object or purpose, the Agreement was void *ab initio*. Plaintiff contends that, as a result, she is not bound by any of the duties, obligations, or conditions set forth in Exhibits 1 and 2. Moreover, as a further result, there is no agreement to arbitrate between the parties.

52. *Second*, the Hush Agreement is also void *ab initio* because it violates public policy by suppressing speech on a matter of public concern about a candidate for President of the United States, mere weeks before the election. Agreements to suppress evidence are void as against public policy, both in California and in most common law jurisdictions. "A bargain that has for its consideration the nondisclosure of discreditable facts, or of facts that the promisee is under a fiduciary duty not to disclose, is illegal." Restatement (First) of Contracts § 557 (1932). Remarkably, illustration 1 in the official comments to section 557 provides the following example of a bargain that is illegal:

> 1. A, a candidate for political office, and as such advocating certain principles, had previously written letters to B, taking a contrary position. B is about to publish the letters, and A fearing that the publication will cost him his election, agrees to pay $1000 for the suppression of the letters. The bargain is ***illegal***.

Restatement (First) of Contracts § 557, Illustration 1 (1932)(emphasis added).

53. *Third*, the Hush Agreement is also without a lawful object or purpose and thus void *ab initio* based on illegality because it was entered for the purpose of covering-up adulterous conduct, a crime in New York, Mr. Trump's home state at the time of the Hush Agreement and at the time of the intimate relationship between Plaintiff and Mr. Trump. N.Y. Penal Law § 255.17 ("A person is guilty of adultery

when he engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse. Adultery is a class B misdemeanor.").

54. *Fourth*, the Hush Agreement is also without a lawful object or purpose and thus void *ab initio* based on illegality because it was entered into by Defendant EC at the behest of Defendant Cohen, a New York attorney then subject to the New York Rules of Professional Conduct. If Mr. Cohen's public statements are true (which is unlikely), he violated Rule 1.4 of the New York Rules of Professional Conduct by entering into an agreement on his client Mr. Trump's behalf without notifying him of the agreement, including, among other things, the fact that the agreement required a payment of $130,000 to be made, that he was making the payment for Mr. Trump on Mr. Trump's behalf, that Mr. Trump was being encumbered with various duties and obligations under the Agreement, that the Agreement and $130,000 payment would possibly subject Mr. Trump to violations of federal campaign finance laws, and that the Agreement would raise questions about whether he had an adulterous affair that Mr. Trump apparently now denies ever occurred.

55. Moreover, if Mr. Cohen's public statements are true, he also violated Rule 1.8(e) of the New York Rules of Professional Conduct by advancing or guaranteeing financial assistance to a client by paying $130,000 from his own personal funds to benefit his client Mr. Trump.

D. <u>There Was No Agreement to Arbitrate Between Plaintiff and EC</u>

56. Separate and apart from Plaintiff's request for an order declaring that no agreement was ever formed between the parties, or that the entirety of the Hush Agreement be declared void *ab initio*, all as set forth above, Plaintiff alternatively seeks an order of this Court declaring that no agreement to arbitrate exists between Plaintiff and EC. Under paragraph 5.2 of the Hush Agreement, entitled "<u>Dispute Resolution</u>," only those "claims and controversies arising between DD [Mr. Trump] on the one hand,

and PP [i.e., Plaintiff] on the other hand" are subject to arbitration. To be clear, there is not presently nor has there ever been any agreement to arbitrate between Plaintiff and EC.

E. The Arbitration Clause Is Void *Ab Initio* Because It Is Unconscionable, Illegal, and Violates Public Policy

57. Moreover, also separate and apart from Plaintiff's request for an order declaring that no agreement was ever formed between the parties, or that the entirety of the Hush Agreement be declared void *ab initio* (as set forth above), Plaintiff alternatively seeks an order of this Court declaring that no agreement to arbitrate exists because no agreement was formed (see Complaint, ¶41, supra), and further, that no agreement to arbitrate exists because paragraphs 5.2 of the Agreement (which contains the arbitration clause) along with various parts of paragraph 5.1 of the Agreement (describing "DD's" remedies that Defendants would presumably argue are available to them in a confidential arbitration proceeding) are void *ab initio* because they unconscionable, illegal, and violates public policy.

58. *First*, the arbitration clause is unconscionable, particularly when combined with the remedies section of the Agreement. The clause is extremely one-sided by conferring significant rights exclusively to Mr. Trump (as "DD" referred to in the Agreement), provided he is a party to the agreement. Among other things, (a) Mr. Trump is given the right to seek injunctive relief *either* in court or arbitration, while Defendants contend Plaintiff must pursue all rights in arbitration, (b) Mr. Trump is given the exclusive right to elect which state's laws will apply to the arbitration (California, Nevada, or Arizona) and he is not required to provide notice of which state's laws he elects will be applied until after he has filed an arbitration proceeding, and (c) Mr. Trump is given the exclusive right to choose venue in *any* location (i.e., anywhere in the country) he selects and is permitted to elect which of two arbitration

agencies the arbitration proceeding may be initiated in (either JAMS or Action Dispute Resolution Services).

59. *Second*, the arbitration clause is illegal and without lawful object or purpose because it was entered with the purpose of keeping facts concerning federal campaign contributions and expenditures secret and hidden from public view by using a confidential arbitration proceeding in violation of FECA's mandates to publicly report campaign contributions and expenditures. In other words, the principal aim and design of the arbitration clause is to keep confidential that which, by law, must be publicly disclosed. Indeed, the clause plainly is designed to prevent the public disclosure of an illegal campaign contribution by mandating that disputes between Plaintiff and Mr. Trump be resolved in a confidential arbitration proceeding shielded from public scrutiny.

60. *Third*, the arbitration clause is void because it violates public policy by suppressing speech on a matter of enormous public concern about a candidate for President of the United States mere weeks before the election. See Restatement (First) of Contracts § 557.

61. *Fourth*, the arbitration clause is illegal and without lawful object or purpose because it was designed to cover up adulterous conduct, a crime in New York, Mr. Trump's home state at the time of the Hush Agreement and at the time of Plaintiff and Mr. Trump's intimate relationship. N.Y. Penal Law § 255.17. It is also illegal and without lawful object or purpose because it was designed to cover up Mr. Cohen's ethical violations, including his violations of Rule 1.4 and 1.8(e) of the New York Rules of Professional Conduct.

62. Defendants dispute all of the foregoing contentions.

63. Accordingly, Ms. Clifford desires a judicial determination of her rights and duties with respect to the alleged agreements in the forms set out in Exhibits 1 and 2.

SECOND CAUSE OF ACTION

Defamation

(Against Defendant Mr. Cohen)

64. Plaintiff restates and re-alleges each and every allegation in Paragraphs 1 through 64 above as if fully set forth herein.

65. On or about February 13, 2018, Mr. Cohen issued a public statement. The entirety of the statement is attached hereto as Exhibit 3. In it, he states in part: "*Just because something isn't true* doesn't mean that it can't cause you harm or damage. I will always protect Mr. Trump." (emphasis added). Mr. Cohen's statement was made in writing and released by Mr. Cohen to the media with the intent that it be widely disseminated and repeated throughout California and across the country (and the world) on television, on the radio, in newspapers, and on the Internet.

66. It was reasonably understood by those who read or heard the statement that Mr. Cohen's defamatory statement was about Ms. Clifford.

67. Both on its face, and because of the facts and circumstances known to persons who read or heard the statement, it was reasonably understood Mr. Cohen meant to convey that Ms. Clifford is a liar, someone who should not be trusted, and that her claims about her relationship with Mr. Trump is "something [that] isn't true." Mr. Cohen's statement exposed Mr. Clifford to hatred, contempt, ridicule, and shame, and discouraged others from associating or dealing with her.

68. Mr. Cohen's defamatory statement was false.

69. Mr. Cohen made the statement knowing it was false or had serious doubts about the truth of the statements.

70. As a result, Plaintiff Ms. Clifford has suffered damages in an amount to be proven at trial according to proof, including but not limited to, harm to her reputation, emotional harm, exposure to contempt, ridicule, and shame, and physical threats of violence to her person and life.

71. In making the defamatory statement identified above, Mr. Cohen acted with malice, oppression, or fraud, and is thus responsible for punitive damages in an amount to be proven at trial according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void *ab initio*, invalid, or otherwise unenforceable.

ON THE FIRST CAUSE OF ACTION (DECLARATORY RELIEF/JUDGMENT)

1. For a judgment declaring that no agreement was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable;
2. For a judgment declaring that no agreement to arbitrate was formed between the parties, or in the alternative, to the extent an agreement was formed, it is void, invalid, or otherwise unenforceable;
3. For costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION (DEFAMATION)

1. For damages in an amount to be proven at trial;
2. For punitive damages;
3. For pre-judgment and post-judgment interest;
4. For costs of suit; and
5. For such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all causes so triable. Said demand includes a demand, pursuant to 9 U.S.C. § 4, for a trial by jury concerning whether the parties entered into the agreement at issue by which EC, Mr. Trump, or both, will seek to compel arbitration.

DATED: March 26, 2018 AVENATTI & ASSOCIATES, APC

/s/ Michael J. Avenatti
MICHAEL J. AVENATTI
Attorneys for Plaintiff

Exhibit D

EXCLUSIVE: How Stormy Daniels tried to sell story about her one-night-stand with Donald Trump for $200,000 THREE weeks before the election but worked out a deal with Trump's lawyer Michael Cohen after she got no takers

- **Stormy Daniels's manager offered her client's story to celebrity magazines, television shows and websites in the run-up to the 2016 election**
- **The titillating tell all was peddled to the media around October 17, three weeks before the election**
- **But the adult actress apparently had no takers as Hillary was expected to win at the time, and Stormy's story would have been worth a fraction of her asking price**
- **Daniels then accepted the $130k from Trump's lawyer Michael Cohen, who had made her the offer after Trump won the nomination**
- **'It looks to me that she accepted Cohen's money because she could not get the money she wanted from anyone else,' one media executive said**
- **Daniels told her version of her tryst with Trump to Anderson Cooper on CBS's 60 Minutes on Sunday**
- **Stormy made it seem as though she did not seek to sell her story, telling Cooper: 'Suddenly people are reaching out to me again, offering me money. Large amounts of money'**

By MARTIN GOULD FOR DAILYMAIL.COM
PUBLISHED: 14:30 EDT, 29 March 2018 | **UPDATED:** 16:08 EDT, 29 March 2018

The porn star whose bombshell claims about sex with **Donald Trump** have rocked his presidency desperately tried to sell her story for $200,000 — nearly 50 percent more than the 'hush' money she received, DailyMail.com can reveal.

Stormy Daniels's manager made the rounds of celebrity magazines, television shows, and websites in the run-up to the 2016 presidential election, hoping someone would bite.

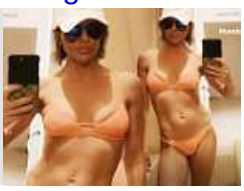
She promised a story of Stormy's titillating sexcapade with the man who would soon be in the Oval Office.

But with polling day getting ever closer, and her chances of a payday getting more remote as Trump appeared doomed to lose to **Hillary Clinton**, Daniels gave up on her money chase and accepted the $130,000 that Trump attorney Michael Cohen had dangled in front of her in a bid to keep the story quiet.

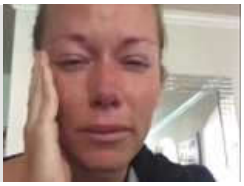
Cohen insists he paid the money out of his own pocket and was not reimbursed by either the Trump campaign or the Trump Organization.

'It looks to me that she accepted Cohen's money because she could not get the money she wanted from anyone else,' one media executive said.

Stormy Daniels's tried to sell her story about sex with Trump to multiple celebrity magazines, television shows, and websites in the run-up to the 2016 election

Lisa Rinna, 54, displays toned figure in skimpy orange bikini after Real Housewives of Beverly Hills fight
Actress took to Snapchat to show off body


Andie MacDowell, 59, has 'no shame' with sex scenes in new film and 'yoga, sleep' keeps her a size 4
Actress romps with Chris O'Dowd in flick


Kendra Wilkinson CONFIRMS she is splitting from husband Hank Baskett in tearful Instagram post
'10 years. I did everything I could,' she said in clip


'I was in shock. She really just came for me': Woman 'attacked' by Blac Chyna with stroller at Six Flags claims she only patted Dream's hand


She's his ride or die! Cookie rescues Lucious by hiding a RAZOR under her tongue in heart-stopping spring premiere of Empire
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'You'd die if I told you who it was!' Kaley Cuoco reveals she dumped famous ex because he was such a bad TIPPER - so just who is her 'cheap' ex?


Love on the lawn! Trump praises First Lady Melania for organizing Easter Egg Roll at the White House and gives her a kiss for the cameras


Kyle Richards, 49, proves she's still a pinup as she poses in string bikini for eye-popping selfie
Real Housewives Of Beverly Hills star


Tori Spelling celebrates Easter with her family... after 'mental breakdown' and three police calls
Actress-turned-reality star is 45 next month


Rory McIlroy, a Canadian hockey star and top chef: New book looks into Meghan Markle's rumored past romances before she met Prince Harry


Stormy's manager had promised a titillating story of their one-night-stand. Daniels provided this picture of herself with Trump to back her claim

Daily Mail tv **Stormy Daniels tried to sell story weeks before election**

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George Michael helped couple have 'miracle baby'

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Tia Mowry dons flowing pink frock over pregnant belly for family-filled baby shower in Beverly Hills
The 39-year-old actress was all-smiles

John Legend leaves NYC with Chrissy Teigen and their daughter Luna in a silk robe... after winning performance in Jesus Christ Superstar Live

Justin Theroux hugs Paul Rudd in NYC... as 'he has barely spoken to Jennifer Aniston since split'
Newly single actor was dressed casually

Incredible footage shows Blac Chyna appear to throw Dream's stroller at woman before being held back during huge melee at Six Flags park

'It was like the least surprising thing!' Seth Rogen says porn star Stormy Daniels told him

DailyMail.com was among the outlets approached by Stormy's manager Gina Rodriguez in October 2016. We turned her down.

Daniels told her version of her tryst with Trump to Anderson Cooper on CBS's 60 Minutes on Sunday. Cooper reported that she had sold her story to a tabloid magazine for $15,000 years before, but it did not run because of libel threats from Cohen and she was never paid.

After Trump won the Republican presidential nomination interest in Daniels's story grew and she claims she turned down offers to speak.

Stormy made it seem as though she did not seek to sell her story, telling Cooper: 'Suddenly people are reaching out to me again, offering me money. Large amounts of money. Was I tempted? Yes - I struggle with it,' she told Cooper.

Then, she claims, Cohen approached her with his $130,0000 offer.

But the fact is that Stormy's team was aggressively pursuing a deal to sell her story to the highest bidder.

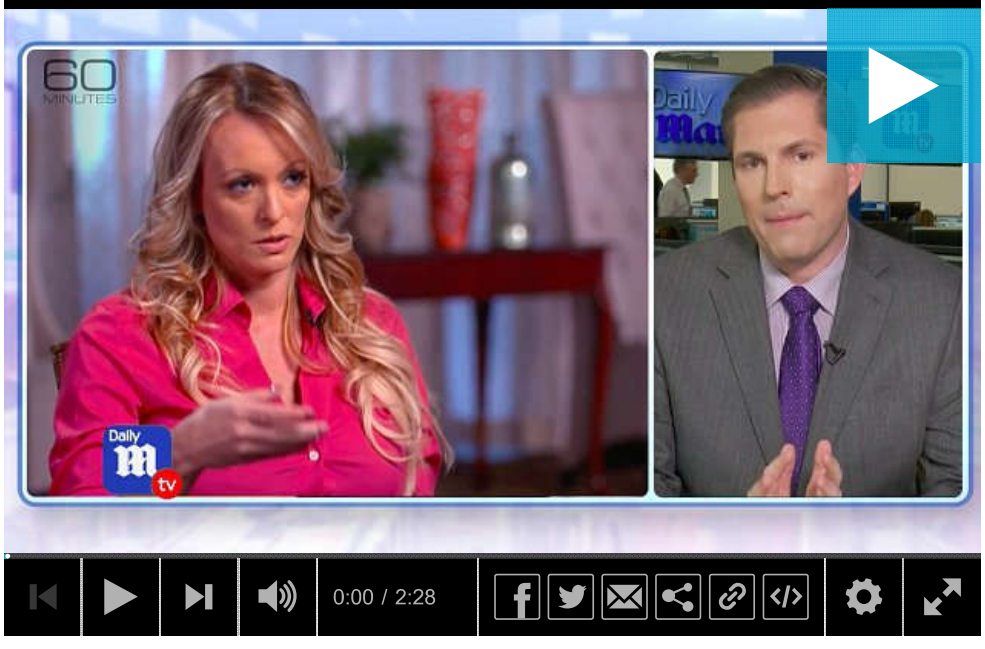
During the 60 Minutes interview, Daniels, 39, said she had 'swatted' the future president's backside a couple of times with a copy of Trump Magazine and that they had had sex just once in a Nevada hotel suite.

Cooper did not ask her to elaborate on what the sex was like.

Daniels, 39, an adult film actress whose body of work includes The Witches of Breastwick, Camp Cuddlypines Powertool Massacre, and Spreading My Seed, mused to Cooper on whether she should now be speaking out.

She pointed out she was not being paid for the interview and when Cooper asked her if the notoriety would help her 'Make America Horny Again' tour of strip clubs, she replied that she could end up being shunned.

Stormy Daniels breaks silence on Trump relationship



about alleged Donald Trump affair over a decade ago

Donald Trump Jr and estranged wife Vanessa smile and laugh as they put on a united front while taking their kids to the White House Easter Egg Roll

Hair-raising! Jared Leto, 46, sports vibrant colorful blue track pants and a seriously shaggy beard for an afternoon stroll in New York City

Willow Smith celebrates Easter by wrapping her long dreadlocks in beautiful pastel-colored ribbons
Will and Jada's daughter is now 17

'I feel like an a**hole': Busy Philipps breaks down in TEARS as she admits she left her nine-year-old daughter's beloved teddy bears in a Hawaii hotel

Jennifer Lopez and Alex Rodriguez: Superstar

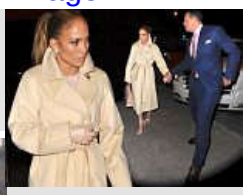
Daniels ultimately did not receive any takers on her story because Hillary Clinton was expected to secure the presidency, meaning her story would have been worth a fraction of her asking price

She was then forced to accept the $130k 'hush money' from Trump's lawyer Michael Cohen (left) who had made her the offer after Trump won the nomination

'I could automatically be alienating half of my fan base right at this very moment,' she said.

But in 2016, Daniels saw her opportunity to cash in on the one-night-stand that she says occurred 10 years earlier, and she had a picture of herself in a body-hugging cropped black tank top standing next to Trump in a yellow golf shirt and red cap, to back her claim.

couple hold hands as they enjoy Easter dinner date in West Hollywood
Dined at Craig's



Bikini-clad Elsa Pataky, 41, shares a kiss with hubby Chris Hemsworth as he grabs her pert derrière on the beach in Australia with Matt Damon

EXCLUSIVE: Did Liev Schreiber's girlfriend skip March For Our Lives because she's pro-gun? Photos show beauty queen and family posing with rifles

'A perfect morning!': Makeup-free Jennifer Garner leaves Ben Affleck with the kids as she hikes with a cute blonde pal in the hills of Hawaii

Farrah Abraham sports baby blue floral dress and slides for Easter brunch with nine-year-old daughter Sophia in Los Angeles
Made a cute duo

REVEALED: Don Jr. and estranged wife Vanessa spent Easter TOGETHER with kids as his alleged ex- lover Aubrey O'Day marks holiday with sassy pics

Meghan Markle's tortoiseshell sunglasses are FINALLY back in stock - six months after they sold out when she wore them on her first official outing with Harry

'It's powerful, but simple': Hugh Jackman reveals the secret behind his unbreakable marriage to wife Deborra-lee Furness as they celebrate 22 years

She can't stop! Miley Cyrus goes braless in see-through dress and gets spanked by the Easter bunny in risque videos
Sexy photo session

Drake sports 'album hour' dark circles under his eyes... as his legal battle with Detail heats up

Rodriguez pushed Daniels's story to the media around October 7, three weeks before the election and the same day that Cohen registered a limited liability company called Essential Solutions in Delaware. Rodriguez said she was keen for the story to appear before the final presidential debate between Trump and Clinton, set for October 19.

Some 10 days later, Essential Solutions paid Daniels $130,000 after she signed an agreement not to talk about Trump. The agreement used pseudonyms — David Dennison for Trump and Peggy Peterson for Daniels.

Daniels and her attorney Michael Avenatti claim the agreement is non-binding because Trump did not sign in, although Cohen did.

Trump, then 60, was playing in a celebrity golf tournament at the Edgewood Tahoe Golf Course in Stateline, Nevada, in July 2006, finishing 62nd in a field of 80. Daniels was working a gifting suite for Wicked Pictures, one of the leading porn companies, and says he invited her up to his suite at the Harrah's Casino.

Attorney Michael Avenatti, who is representing Daniels, says the $130,000 agreement was not binding because Trump did not sign it

Trump's wife Melania had given birth to their only child, Barron, just three months earlier.

Once she got to the room, Daniels says Trump showed her a copy of his new magazine — which had a picture of the businessman in a navy suit and blue tie on the cover under the caption 'On Top of the World.'

She says she asked him whether boasting about himself normally worked with women, a question she says surprised him.

'He looked very taken aback, like he didn't really understand what I was saying.' she told Cooper.

'And I was like, "Someone should take that magazine and spank you with it." I don't think anyone's ever spoken to him like that, especially, you know, a young woman who looked like me.

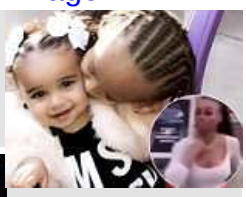
'And I said "Give me that," and I just remember him going, "You wouldn't. Hand it over." And so he did, and I was like, "Turn around, drop 'em."

'So he turned around and pulled his pants down a little,' she added saying he was wearing underwear. 'I just gave him a couple swats. '

Daniels — real name Stephanie Clifford — said Trump then stopped talking about himself and even offered to see if he could persuade NBC executives to allow her to appear on his TV show, Celebrity Apprentice.

White House denies Trump has sexual relationship with Stormy

Daniels's account had many similarities to one from former Playboy centerfold Karen MacDougal, who says she had a year-long affair with Trump starting in June 2006



video of daughter Dream hugging her brother at Six Flags just moments before she THREW a stroller at a woman

Human Ken Doll Rodrigo Alves catches the eye in a blue velvet suit as he enjoys a night out in London
Wore a sheer lace shirt and a matching corset

Maria Shriver and kids attend church service days after Arnold Schwarzenegger's open-heart surgery
With her children Patrick, Katherine and Christina

Stormi's first Easter: Kylie Jenner joins beau Travis Scott in swooning over baby daughter during lavish festivities at family home in Hidden Hills

Lupita Nyong'o and Angela Bassett attend revival of Tony award winning Children of a Lesser God
Actresses were in high spirits posing for pics

Kim Kardashian flaunts her TINY waist on Instagram in Fendi fur...after Photoshop fail
She's a top star who only has taste for the finest things

Topless Toni Garrn flaunts her flawless figure on bikini break with gal pals in Miami
The blonde beauty enjoyed a sunny day in Miami with her friends

John Legend leads all-star cast in rocking production of Jesus Christ Superstar Live in NYC
The singer rocked out on Easter Sunday

Meghan Markle's father is 'terrified' of walking her down the aisle but will do it 'to represent America because he worships her', his son reveals

The day Meghan Markle posted back her wedding ring to the husband who made her a star: New book portrays a calculating princess-to-be

After dinner in the room, she says she went to the bathroom and when she returned she found Trump 'perched' on the edge of the bed.

'I realized exactly what I'd gotten myself into. And I was like, "Ugh, here we go." And I just felt like I had it coming for making a bad decision for going to someone's room alone and I just heard the voice in my head, "Well, you put yourself in a bad situation and bad things happen, so you deserve this."

They then had unprotected sex, she claims, although Cooper did not ask her for any further details. She said she did not consider herself a victim as the sex was consensual, even though she insists she was not physically attracted to him.

Trump denies ever having sex with Daniels, but the $130,000 payout could bring more problems to his presidency as there are now calls to have it investigated as an illegal campaign contribution from Cohen.

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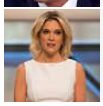
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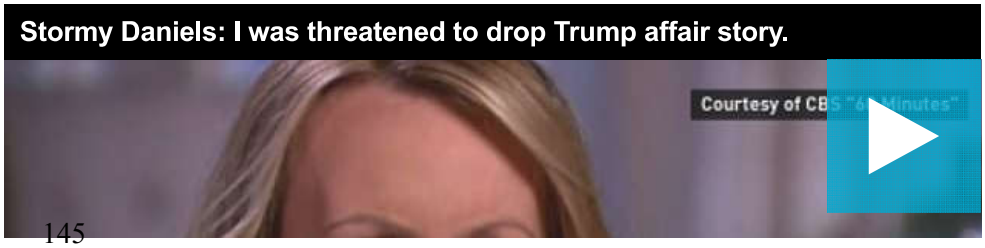
White House claims Trump is TOO BUSY to tweet about Stormy...

Daniels said she stayed in contact with Trump and went to his suite at the Beverly Hills Hotel the following year to discuss her possible appearance on Celebrity Apprentice. She said he made her watch a Shark Week documentary and then came on to her but she left without having sex.

Daniels's account had many similarities to one from former Playboy centerfold Karen MacDougal, who says she had a year-long affair with Trump starting in June 2006, the month before his alleged night with Daniels.

Both said Trump had told them they reminded him of his daughter Ivanka, and both said he told them that he and Melania slept in separate rooms despite only being married for around 18 months at the time.

Clifford said Trump offered to pay her for the sex. Cooper did not ask Daniels whether he made a similar offer to her.



'Pregnant' Chloe Green joins 'Hot Felon' Jeremy Meeks for dinner with her parents Sir Phillip and Tina... amid claims she's expecting their first child

Beyoncé 'books 11 HOUR studio sessions' ahead of Coachella performance... after going vegan for event
Singer, 36, desperate for flawless performance

It's Meghan McMarkle! Prince Harry's fiancé is descended from Scottish king Robert the Bruce (and is a distant cousin of her husband-to-be)

Jessica Alba celebrates Easter: Actress dotes on three-month-old son Hayes during fun family day... as husband Cash Warren enjoys ski trip

Sealed with a kiss! Matt Damon shares sweet kiss with wife Luciana Barrosa in rare PDA during vacation with Chris Hemsworth and wife Elsa Pataky

Andrea Corr, 43, parades her incredible figure in a tiny black bikini as she makes a

Share or comment on this article

splash on boat trip in Barbados
The Irish singer

Prince Philip misses his third appearance in 10 days when he pulls out of royals' Easter church service as hip problem continues to trouble him

Mommy and me! Fergie bonds with her son Axl as they pay a visit to the Easter Bunny at holiday party in LA
Adorable outing

Alessandra Ambrosio buys flowers as she shops with mystery man... as model moves on from ex fiancé of ten years Jamie Mazur
Moving on

She's back! Amber Rose returns to Instagram with booty-full display just days after DELETING all her photos
Uploaded sexy pictures

Chloe Green 'is planning shotgun wedding' with beau Jeremy Meeks in Miami amid pregnancy claims
After Hot Felon's divorce is finalized

She's his biggest fan! Chrissy Teigen spends time with hubby John Legend before live-tweeting Jesus Christ Superstar
Married duo of five years

Brooklyn Beckham wears a blue sling after sharing a shirtless snap of his painful arm injury as he joins his family for the Miami Open Finals

Exhibit F

Stormy Daniels says Trump scandal has been good for business

By Nick Valencia and Dakin Andone, CNN

Updated 11:10 AM ET, Sun March 11, 2018

Source: CNN

Stormy Daniels: Controversy is overshadowing my films 02:23

Pompano Beach, Florida (CNN) — Interest in Stephanie Clifford, the porn star known as Stormy Daniels, is at an all-time high, and she's using it to her advantage, she told CNN after a performance Friday at the Solid Gold gentleman's club in Pompano Beach, Florida.

Clifford has been in the news since The Wall Street Journal reported in January that President Donald Trump's personal lawyer, Michael Cohen, paid her $130,000 weeks before the 2016 presidential election to keep quiet about an alleged affair with Trump.

In her interview with CNN, Clifford wouldn't answer any questions about the lawsuit or comment on Trump or their alleged relationship.

She did, however, talk about how all the attention has affected her life.

"Now, yes, I'm more in demand," Clifford told CNN. "Like I said in the Rolling Stone interview, if somebody came up to you and said, 'Hey, you know that job that you've been doing forever? How about next week I pay you quadruple,' show me one person who's going to say no."

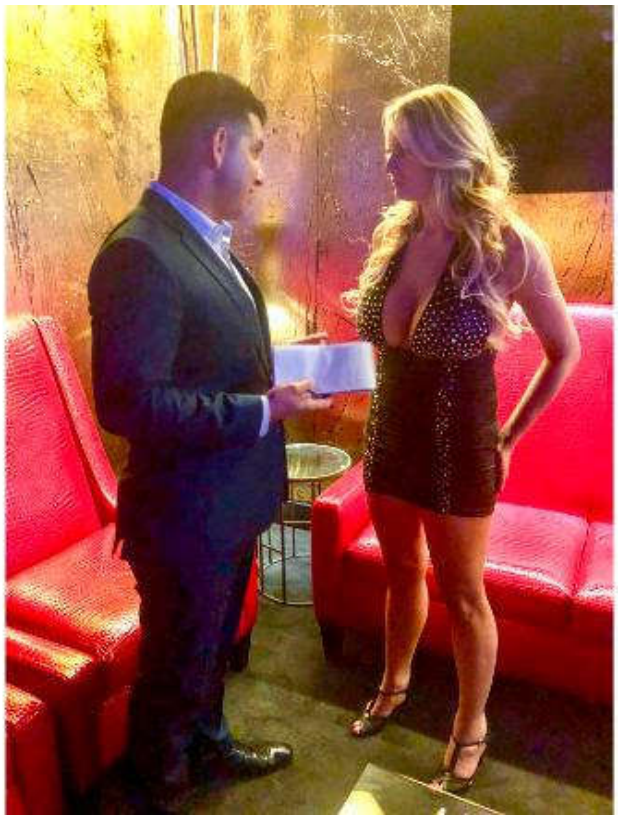
Clifford has been in the adult entertainment business for 17 years, she said. According to her website, she started out as a dancer in Louisiana before moving to Los Angeles to make porn films. Now, she said, she not only acts but writes and directs films as well.

"The phone has been blowing up," said Craig Korka, manager of the Solid Gold club. "Interest is volcanic. It's like the perfect storm."

Related Article: Read CNN's interview with Stormy Daniels

Clifford's name dominated headlines this week after she sued Trump, saying a nondisclosure agreement was void because the President never signed it. On Friday, hours before Clifford went out on stage, Cohen told CNN he used funds from his own home equity line of credit to make the payment.

And later, an email provided to CNN by Clifford's attorney showed Cohen used his Trump Organization signature in an email. Her lawyer, Michael Avenatti, said he believes it's proof that Cohen was acting in a professional capacity as Trump's attorney in the negotiations.



Stephanie Clifford, better known as Stormy Daniels, talks to CNN's Nick Valencia on Friday in Pompano Beach, Florida.

Cohen has never stated the reason for payment. He and the White House have said Trump had no knowledge of the payment, and the White House has said Trump has denied having a relationship with Clifford.

While the notoriety has put a bigger spotlight on Clifford's career, she said, the attention also has its downsides.

"It's sort of been a double-edged sword where a lot of people are very interested in booking me for dancing and stuff like this," Clifford told CNN, taking away time from films and projects she's supposed to be promoting.

What bothers her, she said, is the "flat-out lies" that have been spread about her. "Like that I'm broke," she said. "I'm actually one of the most successful adult movie directors in the business."

In 2014, Clifford was inducted into the Adult Video News Hall of Fame. She also has appeared in such mainstream box-office hits as "The 40-Year-Old Virgin" and "Knocked Up."

But even Clifford admitted she's capitalizing on the moment when interest in her career is at an all-time high. The attention has helped her in the short term, as more people turn out for shows on her "Make America Horny Again" tour (a play on Trump's campaign slogan "Make America Great Again").

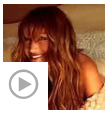
Related Article: Porn star's attorney: Cohen used his Trump Organization signature in email

"I'm getting more dance bookings. I usually only dance once a month, and now I'm dancing three or four times a month. So that's been really great," she said.

CNN's Nick Valencia reported from Pompano Beach, and Dakin Andone wrote and reported from Atlanta. CNN's Hadas Gold, Konstantin Toropin and Veronica Stracqualursi contributed to this report.

Rare blue ice sparkles like jewels in Michigan's Mackinac Straits, drawing photographers and tourists

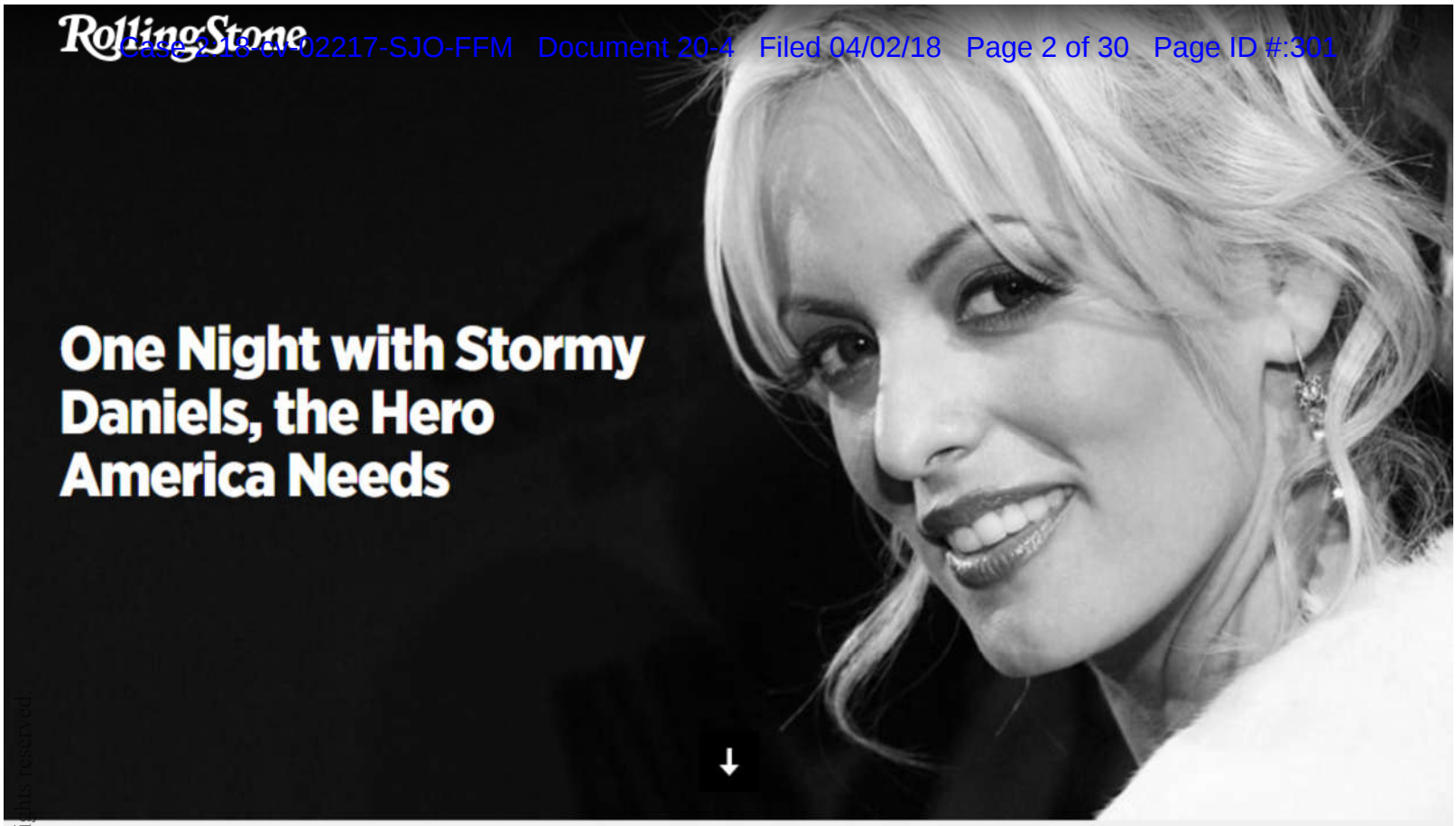
Post-Soviet swingers versus the Kremlin



Jane Seymour opens up about Playboy shoot

White House scolds Cabinet officials after embarrassing ethics reports

Exhibit G



Frozen g-strings, squirt guns and hot wax – how Trump's alleged porn-star fling is unapologetically cashing in on a presidential scandal

By Denver Nicks
March 9, 2018

Stormy Daniels answers the door of her Houston hotel room wearing little

athletic shorts and a green Pantera tank top over a sports bra, her long blond hair in a loose ponytail. We shake hands and she jumps back onto her bed, sitting up with her legs tucked under her in half lotus. Her assistant and longtime friend Kayla Paige, a retired adult-film actress and wife of Limp Bizkit founding member Sam Rivers, buzzes with aimless energy around the room they're sharing. They'd only just woken up and are in the middle of a discussion about penile implants, which I confess I didn't know is a thing. Then Paige half-jokingly wonders if she needs vaginal lip reduction surgery and drops her pants for reference. She isn't wearing panties.

Daniels rolls her eyes and laughs. I stand for a moment unsure where to sit, then motion to the other bed, which Paige says I can sit on. "I don't have anything," she assures me with a chuckle. I sit on the edge of the bed and Daniels and I make small talk. Her safe word, I learn, is "penguin."

"Penguins have terrible breath," she says.

"How do you know penguins have terrible breath?" I ask.

RELATED

Stormy Daniels Sues Trump, Claims He Never Signed 'Hush Agreement'

Adult film star asks judge to void non-disclosure agreement regarding alleged affair with President

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"They smell like they've been eating bad vagina. I got to pet one at a zoo – if you ever go to the zoo, the penguin habitat is the stinkiest one. It smells like a really bad porn set."

She goes on like this for half an hour, bouncing from topic to topic. They had dinner last night with retired adult-film icon Randy Spears, an old friend; they need to do a Walmart run later; a fan sent Stormy a piece of very expensive Louis Vuitton luggage. Finally we get to the business of a proper interview. I ask what everyone is getting wrong about Stormy Daniels right now.

"If I was nominated for best sex scene at multiple award shows," Daniels says, "how was I not current?"

"That I somehow needed this current situation to happen to revive or restart my career," she says, without skipping a beat. She's been doing porn and stripping consistently for the past 15 years and had 17 total nominations at last year's adult-film awards shows, including for director of the year. "If I was nominated for best sex scene at multiple award shows," she says, "how was I not current?"

In the month since news reports first revealed that Donald Trump's attorney, Michael Cohen, paid Stormy Daniels $130,000, allegedly in exchange for her silence about a 2006 tryst the then-27-year-old porn star had with Trump, her celebrity had skyrocketed. She appeared on Jimmy Kimmel, was parodied on *Saturday Night Live*, and embarked on a nationwide "Make America Horny Again" strip club tour. Through Cohen, she issued a statement denying the affair, but then in public seemed to fan the story's flames by coyly denying the denial.

But she was also in the uncomfortable position of being a political problem for the president of the United States. Behind the scenes, she was in a tug of war with Cohen, as she sought to free herself from the nondisclosure agreement she'd signed – in a cruel twist, after news broke of the alleged affair between Donald Trump and Stormy Daniels, Stormy Daniels was the one person on Earth forbidden from talking about it.

Hated by the right, mocked by the left and pursued doggedly by unscrupulous press over a decade-old tryst with a man twice her age, Daniels was at that very center of the swirling centrifuge of wide-eyed WTF weirdness that is America in the age of Trump. And in the midst of all of it she was doing a national strip-club tour with a title that played on Trump's campaign slogan. At a time when many people might attempt seclusion, Daniels was, in the parlance of our times, leaning in.

Stormy Daniels in 2006, two years after she won Best New Starlet at the AVNs. Gordon Rondelle/REX/Shutterstock

My inbox is flooded daily with unsolicited press releases, and this meeting began with one such message, promoting a "Make America Horny Again" tour date at a club on Long Island. The release was riddled with typos, so I did what anyone does with something like that in 2018: posted a screenshot of it with a snarky tweet pointing out how Trump's alleged porn-star ex-mistress's PR people can't spell. Daniels herself responded minutes later, "Haha! Not from my PR team. But my guess is someone from the club is gonna get in trouble for not proofreading."

Moments later, she followed that up: "Side note: Wish I had a PR team. That sounds very fancy...although I'd make said team do other mundane shit just so I could say things like 'When you're done spelling checking the release about anal, can you get my Gstring out of the freezer & help me scrape the candle wax off it?'" In the exchange that followed she sent me a picture of her actual G-strings in the freezer – "overpriced butt floss," she called them.

Needless to say, I was intrigued. She seemed funny and quick, but also thick-skinned and refreshingly playful in response to my light Internet derision. I asked if she'd be up for an interview, DM'd her my phone number. A few days later I got a call from "No Caller ID."

"Hello?" I said, hesitantly.

"You shouldn't answer calls from blocked numbers," a female voice said. I stayed silent. "This is Stormy," she said.

"Oh," I said. "I thought you were my ex-girlfriend."

"Not yet!" Daniels chirped.

We arranged to meet in Houston a few days later, when her tour passed through town.

"I have two choices," Daniels says of the Trump scandal. "Sit at home and feel sorry for myself, or make lemonade out of lemons."

Sitting across from one another in her hotel room, she tells me a little about her childhood. Daniels was born in Baton Rouge, Louisiana, in 1979, and grew up with her mom. Her dad was rarely around. Her name at birth was Stephanie Clifford, but Stormy is in every other sense her real name – it's what she went by growing up before it became her stage name. "Up until this, if someone called me Stephanie, I thought you were the IRS," she says. "No one calls me Stephanie. My own child doesn't even know that Stephanie is my name."

She left home at 17 and soon started stripping, and then doing porn. She became one of only a handful of contract girls with Wicked Pictures, one of the industry's leading companies, and in 2004 won "Best New Starlet" at the AVN Awards, often called "the Oscars of porn." She continued acting and directing under contract with Wicked until January when, she says, she left the company and signed a contract with Digital Playground, another dominant studio in the adult-film industry.

She's been stripping all along too, except for a forced interlude last year after she broke her back in a horse-riding accident. "A lot of the bookings were already in place before all the current things came to light," Daniels says. In fact, there really is no "Make America Horny Again" tour per se. The name was concocted independently by a club owner in South Carolina, and "other clubs just jumped on board," she says. The "Make America Horny Again" tour – a name Daniels finds irksomely cheesy – has evolved around her, almost independent of her, much like the maelstrom involving the payment and the president, with one key difference: Unlike the Trump and Stormy scandal, if she wants to turn the tour off, she can. But Stormy Daniels is facing her newfound infamy head-on.

"I can't make it go away," she says. "I don't have a magic wand to erase what people are saying. So I have two choices: Sit at home and feel sorry for myself, or make lemonade out of lemons." She was already dancing – now she's dancing more, for a much higher rate. "I would be a fucking idiot to turn it down," she says. "We live in a capitalist society. I think if anyone, in any field, was approached and someone said, 'Hi! You know that job you are already doing? Would you like to do it next week for quadruple your normal pay?' Show me one person who would say no."

Daniels is currently on a "Make America Horny Again" strip-club tour – though she finds the name irksomely cheesy. Patrick Fallon/ZUMA

About eight hours before showtime, I join Paige on a Walmart run for props: a laundry basket, a sponge, squirt guns and body wash. Daniels would have only a light dinner before that night's show, so Paige and I stop at a Chipotle. As we sit eating our burrito bowls, I ask her what it was like when the Trump news broke.

"It was just weird to me, because I remember being on set years ago and we would hear him calling all the time – it was like a joke," Paige says. "She would put him on speakerphone and walk away and he'd still be talking." At the time, no one thought much about it, she says, because there wasn't much to it.

"She was just a girl that met a rich dude that runs pageants, and, like, 'Fuck it, let's go hang out, who cares?' " Paige says. "Who hasn't gone and fucked someone we regret?"

When we get back to the hotel, Paige disrobes almost immediately and starts romping around the room naked, getting ready for the night. As Daniels and I sit down to talk some more, barely audible moans start issuing from the room next door, then a loud and distinct cry of arousal – by the sound of it, someone is having rather good sex.

Paige and I press our ears against the wall. "Look at you two," Daniels says with mock ridicule. "Should I offer to give them some direction?" All of us laugh.

On the surface, Daniels seems to be having fun with everything going on. But underneath her peppy, inviting façade, this looks like an ordeal for her. In addition to come-ons from fans, she gets a steady stream of hateful messages on social media, mostly from women – I watch them pour in all afternoon while we talk. She's quick to brush off all the hate mail, but she also keeps showing it to me, as if to convince me, and perhaps herself, of how little it bothers her.

"Don't get me wrong, I'm not an angel," says Daniels. "I'm capitalizing on this."

Then there are the news reports she says are untrue. She shows me an item in TMZ that she says falsely claims she took her dirty laundry to a strip-club appearance – for years she's used a Walmart laundry basket to carry her show props. There was a report in the *Los Angeles Times* in which a club manager is quoted complaining of her arriving late – she shows me text messages that she says indicate the club manager flatly disavowing the quote. "I'm trying to salvage my reputation as a stripper!" she says. The trolls that do get under her skin are those who say she, at 38, is too old to be plying the sex-fantasy trade. "I mean, a woman doesn't reach her sexual peak until 40, right?" she says.

Plus, there's the fact that there are things she wants to tell me – to tell everyone – that she can't. She can't even say why she can't. She's frustrated.

"It's supershitty," she says, looking me dead in the eyes, moaning neighbors in the background. "I'm just trying to do things to keep it fun."

Amid all of it, her life – the quiet, private life that has almost nothing to do with porn or Trump –has been turned upside down.

Daniels lives with her daughter and partner in a quiet community in the Dallas metro area, where she keeps seven horses, including a pony for her little girl. She's a nationally ranked equestrian (the back injury last year was from a show-jumping accident), and her personal Instagram account is of the wife-and-mother variety, riddled with pictures of horses. Though she doesn't talk to her mom or her biological father, she's close to the celebrity photographer Keith Munyan, who is a generation older than Stormy and also grew up in small-town Louisiana. (She calls Munyan her dad.)

Glendon Crain, whom she's been with since 2009, is a professional heavy-metal drummer who has played in bands like Godhead and Hollywood Undead and toured alongside the likes of Katy Perry and Korn; he's not unaccustomed to dealing with media, but the scale and intensity of this have been something else entirely. Since the story broke, Daniels says, she's been hounded by reporters, disinvited from a friend's wedding, and seen her daughter disinvited from a birthday party.

"My daughter didn't deserve any of this," Daniels says. "[Crain] didn't deserve any of this. Don't get me wrong, I'm not an angel. I'm capitalizing on this." But the idea that she needed 15 minutes of fame, or orchestrated or wanted any of this, she says, is absurd. "I didn't retire, I wasn't trying to retire, I wasn't in any sort of need to do this," she says. "It eclipses everything else that I've worked hard on that I wanted to be known as, and I was very happily living incognito back home."

When we arrive at the Vivid strip club in Houston, the place is almost sleepy, with blank-faced women bouncing and rotating under purple lights while a few dozen men drink beers and watch. There's a bar along the length of one wall and a fish tank in the corner where a hallway leads to the smoking patio and the private rooms in the back. In a small beige-and-brown, paper-strewn office in the bowels of the club, Daniels sits at the desk and takes her props out of a suitcase. She asks me to light some candles, which she tucks away in another room to burn undisturbed for a while.

A little after 11 p.m., it's finally time for Daniels to hit the stage. The Cult's "Fire Woman" kicks off as she walks out, and she struts up and down the catwalk in a hooded red cape. She's got intense in-character focus, and the place transforms. "Is that really her?" a guy standing at the tip rail says to no one in particular. Daniels lays down a blanket at the front of the stage and places her tray of burning candles on it. She lifts one up to her face, pours wax down her enormous breasts and into the front of her G-string. She orders a guy at the tip rail to spin around and lay back onto the stage, then drops her crotch onto his face, writhing over him. Paige works the crowd, eliciting tips, and at the end of the set, about 15 minutes after it began, she scurries about the stage sweeping up cash. Daniels cleans up and, around midnight, sits at a table to sign fan merch before doing it all again in a couple of hours. No one can say she doesn't work hard for her money.

Watching Daniels that night in full command of the crowd, titillating strangers for cash and flirting with her fans like a pro, I think of how she's portrayed as a dumb bimbo in the *SNL* parody, in which Cecily Strong says that in 2018 Stormy Daniels is the hero America deserves. Whether that's true or not, in 2018 Stormy Daniels may be the hero America needs.

A decade and a half working in porn imbues a person with an unusual frankness, a kind of extreme authenticity. A successful porn star with a career like Daniels' must be comfortable in her own skin and with other people's bodies, including the weird-looking parts (penises and vaginas, anuses and perinea), and with the various kinds of discharge the human body produces – all things the rest of us would rather stop thinking about

when the erotic moment has passed and we put our clothes back on. Porn stars also have to be comfortable dwelling in the contradictions of porn: in fans' fantasies, but also in the mundane world of bills, groceries, hobbies and, in Daniels' case, being a mom; in exposing the most intimate parts of themselves doing one of the most intimate things humans do, while maintaining a life as an authentic person who feels passion and love. Maybe what America needs most in 2018, as we stew in rage, simultaneously enthralled, bewildered and revolted by ourselves, is a porn star to help us take a long, uncompromising, compassionate look at our country and culture, gross parts and all.

Daniels before her Long Island appearance earlier this year. Mike Pont/Getty

At around 3 a.m., back in the office, Daniels changes into street clothes and deflates a sex doll she had used in her act. She and Paige pack up her props and costumes and count out cash to tip the DJ. She gathers up her things, takes one last glance around the room where she'd prepped for two shows a night, three nights in a row, and flashes me a smile.

"Time to go put my G-strings in the freezer!"

Though she didn't mention it once, throughout the course of the day we spent together, Daniels had been staring down the barrel of a restraining order filed by Michael Cohen to prevent her from speaking about the alleged affair or the NDA. She'd learned of it when she landed on her flight to Houston. She had recently retained a new attorney who was aggressively representing her interests, but when we met, the precise meaning of the restraining order was not yet clear and the fact of its existence not yet something she could discuss.

On the following Tuesday, Daniels filed a lawsuit against Donald Trump asking the court to declare the NDA she signed regarding the alleged affair invalid on the grounds that Trump himself never signed it. In her complaint, she confirmed that the affair took place and alleges that in

myriad ways Cohen, acting as Trump's agent, has intimidated and coerced her from October 2016, when she first agreed to sign the agreement, to the present.

"I was fine with saying nothing," Daniels tells me when we catch up over the phone a few days later. "But I am not fine with being bullied into lying, or being bullied at all.

"Standing up to bullies is kind of my thing," she says, cheerfully. "They started it."

Press Secretary Sarah Huckabee Sanders denied Daniels' claims when asked yesterday. Watch below.

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Exhibit H

From: Michael J. Avenatti <mavenatti@eaganavenatti.com>
Sent: Wednesday, March 21, 2018 9:05 PM
To: Brent Blakely
Cc: Ahmed Ibrahim; Judy K. Regnier; Charles Harder
Subject: RE: Clifford v. Trump et. al.

Brent:

The attaching of such an email is not common practice in my experience. Further, as I have indicated, there are a number of inaccuracies in your email. I see little point in pointing them out now as there can be no question that we have collectively met our meet and confer obligations.

In any event, however, I wish to point out that we provide two additional case cites which were not addressed in your summary but that we provided.

One is Sanford v. MemberWorks, Inc., which held that "when one party disputes 'the making of the arbitration agreement,' the Federal Arbitration Act requires that 'the court [ ] proceed summarily to the trial thereof' before compelling arbitration under the agreement." 483 F.3d 956, 962 (9th Cir. 2007) (quoting 9 U.S.C. § 4). The Court "interpreted this language to encompass not only challenges to the arbitration clause itself, but also challenges to the making of the contract containing the arbitration clause." Id. The Court thus concluded: "challenges to the existence of a contract as a whole must be determined by the court prior to ordering arbitration." Id.

The other is Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1140–41 (9th Cir. 1991) ("[A] party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate.").

Moreover, contrary to your assertions during the meet and confer, Buckeye did not involve a challenge to the formation of the contract. Indeed, this is not our interpretation of Buckeye; it is the one advanced by Justice Thomas writing for the Supreme Court in 2010: "In *Buckeye*, the formation of the parties' arbitration agreement was not at issue because the parties agreed that they had 'concluded' an agreement to arbitrate and memorialized it as an arbitration clause in their loan contract." Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 300–01, 130 S. Ct. 2847, 2858, 177 L. Ed. 2d 567 (2010).

There was also no challenge to the very formation and existence of the contract in Guadagno v. E'Trade Bank, 592 F. Supp. 2d 1263 (C.D. Cal. 2008). Thus, there was no occasion to consider the issue that is now before the Court. Nothing stated in the opinion is contrary to Sanford.

We also discussed at the meet and confer that there is no agreement to arbitrate between our client and EC. The agreement only speaks to disputes between our client and "DD" or Donald Trump (and you refuse to tell us whether he is a party to the agreement in our view).

Regards,

Michael

Michael J. Avenatti, Esq.

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From: Brent Blakely [bblakely@blakelylawgroup.com]
Sent: Wednesday, March 21, 2018 7:40 PM
To: Michael J. Avenatti
Cc: Ahmed Ibrahim; Judy K. Regnier; Charles Harder
Subject: RE: Clifford v. Trump et. al.

Dear Mr. Avenatti:

As I indicated in my prior email, if you have anything to add or clarify to the summary, please do so. I in no way wrote the email to mischaracterize our discussions. Rather, given Judge Otero's Standing Order, the email, which will be attached to Essential Consultants' motion, was written to ensure that the Court is satisfied that the parties sufficiently discussed the merits of their respective motions pursuant to Local Rule 7-3. This is a common practice in the Central District of California, which has stringent requirements regarding meet and confer discussions as set forth in Local Rule 7-3 and the Courts' respective Standing Orders.

Regards, Brent

Brent H. Blakely, Esq.
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Facsimile: 310.546.7401
www.blakelylawgroup.com

From: Michael J. Avenatti [mailto:mavenatti@eaganavenatti.com]
Sent: Wednesday, March 21, 2018 7:25 PM
To: Brent Blakely
Cc: Ahmed Ibrahim; Judy K. Regnier; Charles Harder
Subject: Re: Clifford v. Trump et. al.

Brent:

This does not accurately reflect what transpired. In any event, it is of no moment, because it was a meet and confer and no agreement was reached.

Please refrain from trying to summarize meet and confers in the future. I have never seen this done before in my career and it appears that you are undertaking this now for some self-serving reason that is not immediately apparent.

On a more important issue, have you or Mr. Harder determined yet whether Mr. Trump is a party to the agreement? Perhaps you can simply ask him?

Michael

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mavenatti@eaganavenatti.com

On Mar 21, 2018, at 10:19 PM, Brent Blakely <bblakely@blakelylawgroup.com> wrote:

> Dear Mr. Avenatti:
>
> It was a pleasure meeting you today and discussing the parties' respective motions pursuant to Local Rule 7-3. In summary, we discussed the following:
>
> Essential Consultants' Motion to Compel Arbitration:
>
> As I had set forth in my prior email, the Federal Arbitration Act ("FAA") established a clear preference for enforcing arbitration agreements. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24 (1983) Because the FAA "is phrased in mandatory terms," a district court "has little discretion to deny an arbitration motion." *Republic of Nicaragua v. Standard Fruit Co.,*, 937 F.2d 469, 475 (9th Cir. 1991). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25 (1983).
>
> You indicated today that Plaintiff was going to oppose Essential Consultants' anticipated Petition to Compel Arbitration because you believe that the parties did not enter into a valid and binding agreement. I responded that under the FAA, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator, not the court. *Buckeye Check Cashing, Inc. v. Cardgna*, 546 U.S. 440,

449 (2006); *Grove Lumber & Bldg. Supply, Inc. v. Argonaut Ins. Co.*, 2008 WL 2705169, at *7 (C.D. Cal. July 7, 2008). Specifically, the district court "can only determine whether a written arbitration agreement exists, and if it does, enforce it 'in accordance with its terms.'" *Weyerhaeuser Co. v. Western Seas Shipping Co*., 743 F.2d 635, 637 (9th Cir.), cert denied, 469 U.S. 1061 (1984). Under the FAA, a challenge to the validity of the contract as a whole must go to the arbitrator, not the court. *Buckeye Check Cashing*, 546 U.S. at. 449.

We also cited the decision in *Guadagno v. E'Trade Bank*, 592 F. Supp. 2d 1263 (C.D. Cal. 2008) wherein Judge Otero reiterated the well-established principles I've mentioned above. (*Id*. at 1270)

In the present case there is no dispute that the agreement in question contains an arbitration provision, which was signed by your client and EC. (Moreover, your client was represented by counsel and received substantial consideration.) You also agreed that the scope of this arbitration clause was broad, and did not contend that the arbitration clause did not cover the subject matter of the present dispute.

I have taken a look at the two cases you cited in your email, *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 742 (9th Cir. 2014) and *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287 (2010). Neither of these cases are on point, as both involved a dispute as to the existence and scope of an arbitration agreement.

Based on the foregoing, I once again request that you stipulate to have this dispute, and your argument that Plaintiff is not bound by the Confidential Settlement Agreement, decided by an arbitrator.

Plaintiff's Motion for Expedited Discovery:

You indicated that you wanted to seek the following expedited discovery: 1) a two hour deposition of Mr. Cohen, 2) a two hour deposition of President Trump, and 3) ten to twenty document requests. You also indicated that the need for the expedited discovery is to support Plaintiff's challenge to the validity of the Confidential Settlement Agreement.

We responded that, for the same reasons given in support of Essential Consultants' anticipated Petition to Compel Arbitration, there is no merit to Plaintiff's proposed motion for expedited discovery. Specifically, evidence pertaining to the validity or supposed invalidity of the Confidential Settlement Agreement is irrelevant at this juncture of the proceedings due to the simple fact that a challenge to the validity of the contract as a whole goes to the arbitrator, not the District Court. *Buckeye Check Cashing*, 546 U.S. at. 449. Thus, if a Court finds that there is an arbitration agreement, then, as a matter of substantive federal arbitration law, the arbitration agreement is severable from the remainder of the contract. An arbitration agreement survives even in a contract that the arbitrator later finds to be void. *Rent-A-Ctr. W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 (2010) (a challenge to the contract as a whole "does not prevent a court from enforcing a specific agreement to arbitrate"). Thus, an arbitrator may resolve the merits of a dispute even if the arbitrator finds the contract as a whole to be void for illegality or otherwise unenforceable. See *Buckeye*, 546 U.S. at 448-49. As such, your desire to obtain expedited discovery regarding your underlying claims does not satisfy the "good cause"

requirement set forth by the courts. See e.g., *Sky Angel U.S., LLC v. Nat'l Cable Satellite Corp.*, 296 F.R.D. 1 (DC Dist. Court. 2013).

I've done my best to accurately summarize our discussion. Please let me know if I've inadvertently misstated and/or omitted anything.

Regards,

Brent Blakely

Brent H. Blakely, Esq.
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From: Michael J. Avenatti [mailto:mavenatti@eaganavenatti.com]
Sent: Tuesday, March 20, 2018 3:15 PM
To: Brent Blakely
Cc: Ahmed Ibrahim; Judy K. Regnier; Charles Harder
Subject: Re: Clifford v. Trump et. al.

Counsel:

In furtherance to my email below, the basis of our motion for expedited discovery and trial setting is as follows:

Plaintiff contends no agreement was formed. Thus, there was no agreement to arbitrate. Where "the parties contest the *existence* of an arbitration agreement, the presumption in favor of arbitrability does not apply." Goldman, Sachs & Co. v. City of Reno, 747 F.3d 733, 742 (9th Cir. 2014) (emphasis in original). This issue will be decided by the Court. Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 130 S.Ct. 2847, 2855, 177 L.Ed.2d 567 (2010) ("[W]here the dispute at issue concerns contract formation, the dispute is generally for courts to decide."). And it will require a jury trial, 9 U.S.C. § 4, accompanied by discovery.

Accordingly, because there are numerous factual questions that bear on the issue of whether a contract exists that will have to be resolved in the trial, we are entitled to discovery from your respective clients. This includes prompt limited depositions of Mr. Trump and Mr. Cohen (not to exceed two hours each), along with responses to document demands (less than 10).

Michael

Michael J. Avenatti, Esq.
Eagan Avenatti, LLP
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Newport Beach, CA 92660
Tel: (949) 706-7000
Fax: (949) 706-7050
Cell: (949) 887-4118
mavenatti@eaganavenatti.com

On Mar 20, 2018, at 6:02 PM, Michael J. Avenatti <mavenatti@eaganavenatti.com> wrote:

> Mr. Blakely:
>
> We can meet at your office at 9:30 tomorrow - the time originally planned. We assume counsel for all parties will be present.
>
> We will be providing authority for the motion we intend on filing before the meeting. Note that we will not be filing a motion for remand, however.
>
> Thank you.
>
> Michael
>
> Michael J. Avenatti, Esq.
> Eagan Avenatti, LLP
> 520 Newport Center Drive, Ste. 1400
> Newport Beach, CA 92660
> Tel: (949) 706-7000
> Fax: (949) 706-7050
> Cell: (949) 887-4118
> mavenatti@eaganavenatti.com
>
> The preceding email message (including any attachments) contains information that may be confidential, protected by the attorney-client or other applicable privileges, or constitutes non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

On Mar 20, 2018, at 5:54 PM, Brent Blakely <bblakely@blakelylawgroup.com> wrote:

Dear Mr Averatti:

I was looking at the Judge's standing order, which states:

"The Court strongly emphasizes that under L.R. 7-3, discussion of the substance of contemplated motions are to take place, if at all possible, in person. (emphasis in original) Only in exceptional cases will a telephonic conference be allowed."

It's clear from this Order that the Court requires LR 7-3 conferences to occur in person. I would recommend my office as the half-way point but am flexible regarding time and location. Please let me know if you are available to meet at my office tomorrow, and at what time.

Regards, Brent

Brent H. Blakely, Esq.
Blakely Law Group
1334 Parkview Ave., Suite 280
Manhattan Beach, California 90266
Telephone: 310.546.7400
Facsimile: 310.546.7401
www.blakelylawgroup.com

From: Brent Blakely [mailto:bblakely@blakelylawgroup.com]
Sent: Monday, March 19, 2018 12:14 PM
To: 'Michael J. Avenatti'
Cc: 'Ahmed Ibrahim'; 'Judy K. Regnier'; 'Charles Harder'
Subject: RE: Clifford v. Trump et. al.

Dear Mr. Avenatti:

Thank you for your response. We are available to meet and confer with you this Wednesday at 9:30 a.m. on the parties' respective motions. I can initiate the call, which will also include Charles Harder.

I believe that the LR 7-3 meet and confer would be more productive if each side were to set forth the basis for their proposed motion(s) beforehand. With regard to Essential Consultants' Motion to Compel Arbitration, it would appear that controlling authority mandates that this case be stayed and that the dispute be decided in arbitration.

The Federal Arbitration Act ("FAA") established a clear preference for enforcing arbitration agreements. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24 (1983) ("Section 2 is a congressional declaration of a liberal federal policy favoring arbitration agreements."); accord *Mortensen v. Bresnan Comm*., LLC, 722 F.3d 1151, 1160 (9th Cir. 2013) ("the FAA's purpose is to give preference (instead of mere equality)to arbitration provisions"). Accordingly, the FAA "mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985)(emphasis in original); *Republic of Nicaragua v. Standard Fruit Co*., 937 F.2d 469, 475 n.8 (9th Cir. 1991) (FAA "reflects the strong Congressional policy favoring arbitration by making such clauses 'valid, irrevocable, and enforceable'"). Because the FAA "is phrased in mandatory terms," a district court "has little discretion to deny an arbitration motion." *Republic of Nicaragua*, 937 F.2d at 475. "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25 (1983).

A district court "can only determine whether a written arbitration agreement exists, and if it does, enforce it 'in accordance with its terms.'" Importantly, under the FAA a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator, not the court. *Buckeye Check Cashing, Inc. v. Cardgna*, 546 U.S. 440, 449 (2006).

I would appreciate it if Plaintiff were to reciprocate and provide us with the basis of her proposed Motion to Remand and Motion for Expedited Discovery prior to our conference on Wednesday.

Regards,

Brent Blakely

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From: Michael J. Avenatti [mailto:mavenatti@eaganavenatti.com]
Sent: Monday, March 19, 2018 12:59 AM
To: Brent Blakely
Cc: Ahmed Ibrahim; Judy K. Regnier
Subject: Re: Clifford v. Trump et. al.

Mr. Blakely:

I am available this Wednesday morning to meet and confer on this issue pursuant to the local rule. At that time, I would like to also meet and confer on our anticipated motion for remand and motion for expedited discovery. Please confirm we can meet and confer on all three motions this Wednesday at 9:30 am by telephone.

Thank you. All rights are expressly reserved.

Michael

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mavenatti@eaganavenatti.com

On Mar 16, 2018, at 4:25 PM, Brent Blakely <bblakely@blakelylawgroup.com> wrote:

Dear Mr. Avenatti:

I left a message for you at your office at about 2:00 PM today, to please call me back. As I stated in the message, I am counsel for Essential Consultants, LLC in the lawsuit filed by you on behalf of Stephanie Clifford aka Stormy Daniels. The purpose for my call is to request that you stipulate to submit your lawsuit to the pending arbitration proceeding at ADR Services, Inc., case no. 18-1118-JAC (the "Arbitration") which my client filed against your client regarding the same and related subject matter as your lawsuit. Your lawsuit even makes reference to the Arbitration, and was filed nearly two weeks after the Arbitration was filed.

As we assume you are aware, applicable law strongly favors the arbitration of disputes when the parties have agreed to submit their disputes to arbitration—which is the case here. See 9 USC § 1; *Perry v. Thomas*, 482 U.S. 483, 489 (1987); *Hall v. Nomura Sec. Int'l*, 219 Cal.App.3d 43, 48 (1990); *Lehto v. Underground Constr. Co.*, 69 Cal.App.3d 933, 939 (1977) among many other legal authorities.

If you do not intend to consent to arbitration, Essential Consultants LLC will be filing a motion to compel arbitration in the United States District Court, Central District of California, where the case has been removed. Please let me know when you are available to discuss this matter pursuant to Local Rule 7-3.

Regards,

Brent Blakely

Brent H. Blakely, Esq.
Blakely Law Group

1334 Parkview Ave., Suite 280
Manhattan Beach, California 90266
Telephone: 310.546.7400
Facsimile: 310.546.7401
www.blakelylawgroup.com

From: Brent Blakely
[mailto:bblakely@blakelylawgroup.com]
Sent: Friday, March 16, 2018 2:05 PM
To: 'mavenatti@eaganavenatti.com'
Subject: Clifford v. Trump et. al.

Dear Mr. Avenatti:

I represent Essential Consultants LLC in connection with the above-referenced matter. Can you please call me at your earliest possible convenience to discuss the case.

Regards,

Brent Blakely

Brent H. Blakely, Esq.
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Exhibit I

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March 27, 2018

VIA EMAIL & U.S. MAIL
Mr. Michael J. Avenatti
Avenatti & Associates, APC
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Email: mavenatti@eoalaw.com

Re: **Clifford v. Trump, et. al.**
Case No. 18-cv-02217-SJO-FFM

Dear Mr. Avenatti:

I am writing to request an in-person meet and confer conference pursuant to Local Rule 7-3 regarding the First Amended Complaint you recently filed. Defendant Michael Cohen is considering filing an anti-SLAPP motion pursuant to California Code of Civil Procedure §425.16 in connection to Clifford's Second Cause of Action for Defamation. Under the statute, "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

Here, Cohen's alleged statement arose in connection with a public issue. *See e.g., Paris Hilton v. Hallmark Cards et al.*, 580 F.3d 874 (9th Cir. 2009). Ms. Clifford will have the burden of establishing that there is a probability of her prevailing on her defamation claim.

As set forth in the First Amended Complaint, Clifford's defamation claim is premised on the following statement by Mr. Cohen:

"*Just because something isn't true doesn't mean that it can't cause you harm or damage. I will always protect Mr. Trump.*"

"Defamation consists of, among other things, a false and unprivileged publication, which has a tendency to injure a party in its occupation." *Wilbanks v. Wolk* (2004) 121

Cal.App.4th 883, 901. *Washer v. Bank of America* (1948) 87 Cal. App. 2d. 501, 509. The *sine qua non* of recovery for defamation … is the existence of falsehood.' Because the statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected." *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112.

Truth is an absolute defense to defamation. *Washer v. Bank of America* (1948) 87 Cal. App. 2d. 501, 509. Nothing about the aforementioned statement, which is not directed at anyone in particular, is untrue. Indeed, as of this date, Ms. Clifford had stated on at least three different occasions, including in a letter that she signed one month before Mr. Cohen's alleged statement, that she did **not** have an intimate relationship with Mr. Trump. Thus, her statements which are completely contradictory—that she did **not**, and that she did, have an intimate relationship—cannot both be true.

Ms. Clifford's defamation claim also will fail because when Mr. Cohen made the alleged statement, he was engaging in his constitutionally protected right to express his opinion. "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert Welch, Inc*. 418 U.S. 323, 339-340 (1974).

Finally, Ms. Clifford will be required to establish a prima facie claim that she suffered actual damages. Because the purported libelous statement would require further consideration of extrinsic facts, it is not libel *per se*. Cal. Civil Code §45a. Thus, Ms. Clifford would have to prove that she suffered special damages as a proximate result thereof. Again, as of the time Mr. Cohen made this statement, Ms. Daniels had stated on at least three different occasions that she did **not** have an intimate relationship with Mr. Trump. Even if one were to distort Mr. Cohen's statement to the length that you attempt in the First Amended Complaint, it can hardly be said that Mr. Cohen's statement, which nowhere contradicts Ms. Clifford's stated position at this time, somehow damaged Ms. Clifford.

Should Ms. Clifford's defamation claim fail to survive an anti-SLAPP challenge, she would be held responsible for Mr. Cohen's legal fees.

Moreover, you have exposed yourself personally to potential sanctions for filing a frivolous pleading in violation of Federal Rule of Civil Procedure, Rule 11, which was

enacted to deter abusive pretrial tactics and to streamline litigation by excluding baseless filings. *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 392-393; *Golden Eagle Distributing Corp. v. Burroughs Corp*., 801 F. 2d 1531, 1542 (9th Cir. 1986).

We therefore ask that you reconsider Ms. Clifford's Second Cause of Action for Defamation against Mr. Cohen, and stipulate to the voluntary dismissal of same.

I have a trial beginning on April 3, 2018 in another matter and therefore request that we hold the meet and confer conference regarding Mr. Cohen's anti-SLAPP motion **this week**. As the prior meet and confer conference was held at my office, I'll be happy to travel to Newport Beach for this one.

Naturally, all of my client's claims are expressly reserved and none are waived.

Sincerely,

BRENT H. BLAKELY

cc: Charles J. Harder, Esq. (via email)
Ryan Stonerock, Esq. (via email)

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Attorneys for Defendant
ESSENTIAL CONSULTANTS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

v.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:18-CV-02217-SJO-FFM

DECLARATION OF MICHAEL D. COHEN IN SUPPORT OF MOTION TO COMPEL ARBITRATION

Assigned for All Purposes to the Hon. S. James Otero

Date: **April 30, 2018**
Time: **10:00 a.m.**
Location: **350 West 1st Street**
Courtroom 10C, 10th Floor
Los Angeles, CA 90012

Action Filed: March 6, 2018

DECLARATION OF MICHAEL D. COHEN

I, Michael D. Cohen, declare as follows:

1. I am the President of Essential Consultants, LLC ("EC"). I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify to the matters stated herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of the *Confidential Settlement Agreement and Mutual Release* (the "Settlement Agreement") entered into between EC and Plaintiff Stephanie Clifford aka "Stormy Daniels" aka "Peggy Peterson" aka "PP" ("Clifford" or "Plaintiff") on or about October 26, 2016. The initial draft of the Settlement Agreement was prepared by Clifford's attorney.

3. I signed the Settlement Agreement on behalf of EC on or about October 28, 2016. Clifford signed the Settlement Agreement on or about the same date. Thereafter, EC paid Clifford, and she accepted $130,000 pursuant to the Settlement Agreement. At no time between Clifford's execution of the Settlement Agreement, and the filing of this lawsuit, did Clifford or her attorney ever communicate any assertion to me that the Settlement Agreement was invalid or unenforceable for any reason, including because it was not signed by "David Dennison" or Defendant Donald Trump, or make any attempt to return the $130,000 that EC paid to Clifford.

4. To the best on my knowledge, Clifford performed all of her obligations under the Settlement Agreement for approximately sixteen months following its execution, and made no public statements disclosing Confidential Information (as defined in the Settlement Agreement) during that time. Prior to February 2018, Clifford's only complaint relating to the Settlement Agreement was in October 2016, prior to her execution of the Settlement Agreement, when she complained through her attorney that she was not receiving the $130,000 payment quickly enough.

5. On or about February 22, 2018, EC filed an arbitration proceeding at ADR Services, Inc. ("ADRS") in Los Angeles (the "Arbitration"), pursuant to the arbitration provision in the Settlement Agreement.

6. In the Arbitration, EC brought an emergency application for a Temporary Restraining Order (the Settlement Agreement expressly empowered the arbitrator to award immediate and *ex parte* injunctive relief); ADRS appointed an emergency arbitrator (a retired California Superior Court judge); and the arbitrator reviewed the papers, found that EC had met its initial burden and granted the application.

7. The arbitrator entered an order prohibiting Clifford from violating the Settlement Agreement by, among other things, disclosing any Confidential Information to the media or in court filings (the "TRO"). The TRO was subsequently published by the *New York Times*. I am informed and believe that a copy of the TRO was sent to the *New York Times* by counsel for Clifford, Michael Avenatti. A true and correct copy of the TRO is attached hereto as **Exhibit E**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 2, 2018, at New York, New York.

MICHAEL D. COHEN

Exhibit A

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE; ASSIGNMENT OF COPYRIGHT AND NON-DISPARAGMENT AGREEMENT

1.0 THE PARTIES

1.1 This Settlement Agreement and Mutual Release (hereinafter, this "Agreement") is made and deemed effective as of the 28 day of October, 2016, by and between "**EC, LLC**" and/or **DAVID DENNISON**, (DD), on the one part, and **PEGGY PETERSON**, (PP), on the other part. ("EC, LLC," "DD" and "PP" are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as "EXHIBIT A") This Agreement is entered into with reference to the facts and circumstances contained in the following recitals.

2.0 RECITALS

2.1 Prior to entering into this Agreement, PP came into possession of certain "Confidential Information" pertaining to DD, as more fully defined below, only some of which is in tangible form, which includes, but is not limited to information, certain still images and/or text messages which were authored by or relate to DD (collectively the "Property", each as more fully defined below but which all are included and attached hereto as Exhibit "1" to the Side Letter Agreement).

2.2 (a) PP claims that she has been damaged by DD's alleged actions against her, including but not limited to tort claims proximately causing injury to her person and other related claims. DD denies all such claims. (Hereinafter "PP Claims").

(b) DD claims that he has been damaged by PP's alleged actions against him, including but not limited to the alleged threatened selling, transferring, licensing, publicly disseminating and/or exploiting the Images and/or Property and/or other Confidential Information relating to DD, all without the knowledge, consent or authorization of DD. PP denies all such claims. (Hereinafter "DD Claims").

(c) The PP Claims and the DD Claims are hereinafter collectively referred to as "The Released Claims."

2.3 DD desires to acquire, and PP desires to sell, transfer and turn-over to DD, any and all tangible copies of the Property and any and all physical and intellectual property rights in and to all of the Property. As a condition of DD releasing any claims against PP related to this matter, PP agrees to sell and transfer to DD all and each of her rights in and to such Property. PP agrees to deliver each and every existing copy of all tangible Property to DD (and permanently delete any electronic copies that can not be transferred), and agrees that she shall not possess, nor directly nor indirectly disclose convey, transfer or assign Property or any Confidential Information to any Third Party, as more fully provided herein.

2.4 It is the intention of the Parties that Confidential Information, as defined herein, shall remain confidential as expressly provided hereinbelow. The Parties expressly acknowledge, agree and understand that the Confidentiality provisions herein and the

representations and warranties made by PP herein and the execution by her of the Assignment & Transfer of Copyright are at the essence of this Settlement Agreement and are a material inducement to DD's entry into this Agreement, absent which DD would not enter into this Agreement. DD expects and requires that PP never communicate with him or his family for any reason whatsoever.

2.5 The Parties wish to avoid the time, expense, and inconvenience of potential litigation, and to resolve any and all disputes and potential legal claims which exist or may exist between them, as of the date of this Agreement including but not limited to the PP Claims and/or the DD Claims. The Parties agree that the claims released include but are not limited to DD's Claims against PP as relates to PP having allowed, whether intentionally, unintentionally or negligently, anyone else other than those listed in section 4.2 herein below to become aware of the existence of and content of the Property, to have gained possession of the Property, and to PP's having allegedly engaged in efforts to disclose, disseminate and/or commercially exploit the Images and/or Property and/or Confidential Information, and any harm suffered by DD therefrom. The Parties agree that the claims released include but are not limited to PP's Claims against DD as relates to DD having allowed, whether intentionally, unintentionally or negligently, anyone else to have interfered with PP's right to privacy or any other right that PP may possess.

2.6 These Recitals are essential, integral and material terms of this Agreement, and this Agreement shall be construed with respect thereto. The Parties enter into this Agreement in consideration of the promises, covenants and conditions set forth herein, and for good and valuable consideration, the receipt of which is hereby acknowledged. It is an essential element of this Settlement Agreement that the Parties shall never directly or indirectly communicate with each other or attempt to contact their respective families. This matter, the existence of this Settlement Agreement and its terms are strictly confidential.

NOW, THEREFORE, the Parties adopt the foregoing recitals as a statement of their intent and in consideration of the promises and covenants contained herein, and further agree as follows:

///

///

///

PP

DD

3.0 SETTLEMENT TERMS

3.0.1.1 EC, LLC SHALL PAY TO PP $130,000.00 U.S.D. AS FOLLOWS:

3.0.1.1.1 $130,000.00 USD shall be wired into PP's Attorney's Attorney Client Trust Account on or before 1600 hrs. PST on 10/27/16.(Hereinafter "Gross Settlement Amount"). PP's Attorney's Wiring Instructions are:

Bank Name:	City National Bank
Bank Address:	8641 Wilshire Blvd. Beverly Hills, CA 90211
ABA Routing No:	122016066
Beneficiary Account Name:	Keith M. Davidson & Associates, PLC, Attorney Client Trust Account
Beneficiary Account No:	600106201
Beneficiary Address:	8383 Wilshire Blvd. Suite 510 Beverly Hills, CA 90211
SWIFT Code:	CINA US6L

3.0.1.1.2 Keith M. Davidson, Esq. shall receive the Gross Settlement Amount in Trust. No portion of the Gross Settlement Amount shall be disbursed by Attorney for PP unless and until PP executes all required Settlement Documents.

3.1 Undertakings & Obligations by PP. PP will do each of the following by 11/01/16:

(a) PP shall execute this Agreement and return a signed copy to DD:

(b) PP shall transfer and/or assign any and all rights in and to the Property to DD (as set forth hereinbelow), and execute an Assignment & Transfer of Copyright, in the form attached hereto, and return a signed copy of same to DD's counsel;

(c) PP shall deliver to DD every existing copy of all tangible Property. PP shall completely divest herself of any and all artistic media, impressions, paintings, video images, still images, e-mail messages, text messages, Instagram message, facebook posting or any other type of creation by DD. PP shall transfer all physical, ownership and intellectual property rights to DD;

(1) PP shall deliver to DD any and all non-privileged correspondence concerning or related to DD between PP and any 3rd party.

(d) PP shall not, at any time from the date of this Agreement forward, directly or indirectly disclose or disseminate any of the Property or any Confidential Information (including confirmation of the fact that it exists or ever existed, and/or confirming any rumors as to any such existence) to any third party, as more fully provided herein.

(e) PP shall provide to DD (to the extent not already done so and set forth in paragraph 4.2 hereinbelow), summary details disclosing to whom PP (or anyone else on PP's behalf) disclosed, displayed to, disseminated, transferred to, provided a copy to, and/or

PP

DD

distributed, sold, licensed or otherwise sought to have commercially exploit, the Images and/or Property and/or any Confidential Information.

(f) PP shall provide to DD's counsel the names and contact information of each and any persons or entities who: (1) PP has provided to or who otherwise obtained possession of the original and/or any copies of any of the Images and/or any Property, if any, (ii) to whom PP has scanned the Images and/or any Property at any time, and (iii) to whom PP knows had, has or may potentially have possession of a copy of the Images and/or any Property at any time, including but not limited to the present time (and specify with detail to which of the referenced categories (i.e., possession, shown, past, present, etc.) any name corresponds, the name so relates).

(g) PP shall provide to DD's counsel copies of any agreements and/or other documentation in PP's possession, custody or control, if any, regarding (e) and/or (f) above, that evidences who has or may have been provided a copy of any of the Property.

3.2 Transfer of Property Rights to DD. In further consideration for the promises, covenants and consideration herein, PP hereby transfers and conveys to DD all of PP's respective rights, title and interest in and to the Property, and any and all physical and intellectual property rights related thereto. Without limiting the generality of the foregoing, PP does hereby sell, assign, and transfer to DD, his successors and assigns, throughout the universe in perpetuity, all of PP's entire right, title, and interest (including, without limitation, all copyrights and all extensions and renewals of copyrights), of whatever kind or nature in and to the Property, without reservation, condition or limitation, whether or not such rights are now known, recognized or contemplated, and the complete, unconditional and unencumbered ownership and all possessory interest and rights in and to the Property, which includes, but is not limited to the originals, copies, negatives, prints, positive, proof sheets, CD-roms, DVD-roms, duplicates, outtake and the results of any other means of exhibiting, reproducing, storing, recording and/or archiving any of the Property or related material, together with all rights of action and claims for damages and benefits arising because of any infringement of the copyright to the Property, and assigns and releases to DD any and all other proprietary rights and usage rights PP may own or hold in the copyright and/or Property, or any other right in or to the Property. PP assigns and transfers to DD all of the rights herein granted, without reservation, condition or limitation, and agrees that PP reserves no right of any kind, nature or description related to the Property and contents therein. Notwithstanding the foregoing, if any of the rights herein granted are subject to termination under section 203 of the Copyright Act, or any similar provisions of the Act or subsequent amendments thereof, PP hereby agrees to re-grant such rights to DD immediately upon such termination. All rights granted herein or agreed to be granted hereunder shall vest in DD immediately and shall remain vested in perpetuity. DD shall have the right to freely assign, sell, transfer or destroy the Property as he desires. DD shall have the right to register sole copyright in and to any of the Property with the US Copyright Office. DD shall also have the right, in respect to the Property, to add to, subtract from, change, arrange, revise, adapt, into any and all form of expression or tangible communication, and the right to combine any of the Property with any other works of any kind and/or to create derivative works with any of the Property, and to do with it as she so deems. To the fullest extent allowable under the applicable law, PP shall irrevocably waive and assign to DD any of PP's so-called "moral rights" or "droit moral" (laws for the protection of copyrights outside of the United States), if any, or any similar rights under any principles of law which PP may now have or later have in the Property. With respect to and in furtherance of the above, PP agrees to and shall execute and deliver to DD an

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"Assignment & Transfer of Copyright", in the form attached hereto as Exhibit "B". For greater certainty the foregoing assignment shall be applicable worldwide.

3.2.1 Notwithstanding the foregoing paragraph 3.2, and without in anyway limiting or diminishing from the full transfer and assignment of rights therein without reservation, the Parties understand the purpose of the transfer of rights is to provide DD the fullest possible ability and remedies to prevent and protect against any publication and/or dissemination of the Property.

3.3 Delivery of the Property to DD. Concurrently upon execution of this Agreement, PP, as applicable, shall deliver to DD, by delivery to his counsel herein, all of the Property which is embodied in tangible form (all originals and duplicates), whether documents, canvasses, paper art, digital copies, letters, prints, electronic data, films, tapes, CD-Roms, DVD-Roms, Images recording tapes, photographs, negatives, originals, duplicates, contact sheets, audio recordings, Images recordings, magnetic data, computerized data, digital recordings, or other recorded medium or any other format of embodying information or data. Without limiting the generality of the foregoing, such tangible Property shall include all documents as defined by California Evidence Code §250 which contain any of the Property. PP represents and warrants that the materials delivered pursuant to the terms of this Paragraph 3.3 comprise the totality of all existing originals and duplicates of all Property in any tangible form, whether within their possession, custody or control, and including otherwise (and that PP knows of no other copies or possible or potential copies not in PP's possession and control and delivered pursuant to this paragraph), and that upon such delivery to DD, PP shall not maintain possession, custody or control of any copy of all or any portion of any tangible Property. The Property Delivered under this Paragraph shall become Exhibit 1 to the Side Letter Agreement. For avoidance of any doubt, PP, nor her attorney are entitled to retain possession of said Property after execution of this Agreement. The retention of said Property by PP is a material breach of this agreement.

3.3.1 This Agreement is conditioned on PP's compliance with each and every term of the Settlement Agreement including Paragraph 3.3 and the personal verification by DD or his attorney of the Images and that the Images are comprised of and captures the content previously represented to his counsel to exist and be captured therein (i.e., text messages between PP and DD)), all of which terms are essential and material.

4.0 CONFIDENTIALITY & REPRESENTATIONS & WARRANTIES.

4.1 Definition of Confidential Information. "Confidential Information" means and includes each and all of the following:

(a) All *intangible* information pertaining to DD and/or his family, (including but not limited to his children or any alleged children or any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct or related matters),and/or friends learned, obtained, or acquired by PP, including without limitation information contained in letters, e-mails, text messages, agreements, documents, audio or Images recordings, electronic data, and photographs;

(b) All *intangible* information pertaining to the existence and content of the Property;

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(c) All *intangible* private information (*i.e.*, information not generally available to and/or known by the general public) relating and/or pertaining to DD, including without limitation DD's business information, familial information, any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct, related matters or paternity information, legal matters, contractual information, personal information, private social life, lifestyle, private conduct, (all information/items in 4.1 "(a)", "(b)" and "(c)" are sometimes collectively referred to as, "Intangible Confidential Information");

(d) All *tangible* materials of any kind containing information pertaining to DD learned, obtained, participated or acquired by PP, including without limitation letters, agreements, documents, audio or Images recordings, electronic data, and photographs, canvas art, paper art, or art in any other form on any media. The Images and Photos and all information/items in 4.1(d) are collectively referred to as, the "Property" and/or the "Tangible Confidential Information");

4.2 PP's Representations & Warranties Regarding Prior Disclosures of Tangible Confidential Information. PP represents and warrants that prior to entry into this Agreement, PP has directly or indirectly disclosed any *Tangible* an/or Intangible Confidential Information (i.e., any of the Property), to any Third Party, including without limitation disclosure or indirect disclosure of the content of such Confidential Information in tangible form, other than the following persons or entities to whom PP has made such prior disclosures (herein "PP Disclosed Individuals/Entities"):

a) Mike Mosney
b) Angel Ryan
c) Gina Rodriguez
d) Keith Munyan
e) _____
f) _____
g) _____
h) _____
i) _____

PP shall not be responsible for any subsequent public disclosure of any of the Confidential Information (a) attributable directly to each of them; and/or (b) not disclosed hereinabove as a previously disclosed PP Disclosed Individuals/Entities, and any such disclosure shall be deemed a breach of this Agreement by PP. For greater clarity, PP must not induce, promote or actively inspire anyone to disclose Confidential Information.

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4.3 Representations & Warranties and Agreements.

(a) Representations & Warranties and Agreements By DD. The following agreements, warranties and representations are made by DD as material inducements to PP to enter into this Agreement, and each Party acknowledges that she/he is executing this Agreement in reliance thereon:

(b) DD warrants and represents that, as relates to or in connection with any of PP's attempts to sell, exploit and/or disseminate the Property prior to the date of this Agreement, DD and his counsel will refrain (i) from pursuing any civil action against PP, and/or (ii) absent a direct inquiry from law enforcement, from disclosing PP's name to the authorities. Notwithstanding the foregoing, if DD is informed that or should or if it is believed that either of PP has possession, custody and/or control of any of the Property after the date of this Agreement and/or transferred any copies to any Third Party, and/or it is believed that any of PP, whether directly or indirectly, intends the release, use, display, dissemination, disclosure or exploitation, whether actual, threatened or rumored, of any for the Property, then DD and his counsel shall be entitled to, at DD's sole discretion, (i) contact the respective member of PP, including with legal demands and related statements of liability and legal action, and/or (ii) advance a civil action against the respective member of PP, and/or (iii) disclose any of PP's name to the authorities.

4.3.2 Representations & Warranties and Agreements By PP. The following agreements, warranties and representations are made by PP as material inducements to DD to enter into this Agreement, without which DD would not enter into this Agreement and without which DD would not agree to pay any monies whatsoever hereunder, and with the express acknowledgment that DD is executing this Agreement in reliance on the agreements, warranties, and representations herein which are at the essence of this Agreement, including, the following:

(a) PP agrees and warrants and represents that PP will permanently cease and desist from any efforts to and/or attempting to and/or engaging in and/or arranging the use, License, distribution, dissemination or sale of any of the Confidential Information and/or Property, including any Tangible and/or Intangible Confidential information created by or relating to DD;

(b) PP agrees and warrants and represents that PP will permanently cease and desist from any posting or dissemination or display of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including the Images (including, but not limited to, to any form media outlet, on any blog or posting board, on the Internet, or otherwise);

(c) PP agrees and warrants and represents that PP will permanently cease and desist from using or disseminating or disclosing any information to any Third Persons (including, but not limited to, to any media outlet, on any blog or posting board, on the Internet, or otherwise) about any details of or as to the contents of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including any Text Messages, and/or as to any other personal details of or about or pertaining to DD and/or his family and/or friends and/or social interactions;

(d) PP agrees and warrants and represents that PP will permanently cease and desist from and will not, at any time, make any use of or reference to the name, image or likeness

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of DD in any manner whatsoever, including without limitation, through any print or electronic media of any kind or nature for any purpose, including, but not limited to, on any websites;

(e) PP agrees and warrants and represents that any and all existing copies of the Images, Text Messages and any Property (other than as expressly specified in paragraphs 3.2 and 3.3 herein) have been turned over and provided to counsel; and PP further warrants and represents that the only copy of the Images and Property that has ever existed, at any time, has been turned over to DD's counsel pursuant to this Agreement, and the Images and any Property has never been transferred to or existed in any other form, including not in electronic form, nor on any computer, or electronic device and other storage media;

(f) PP warrants and represents that PP has not provided any copies, whether hard-copy or electronic copies, of the Property to anyone other than as specified in paragraph 4.2 herein);

(g) PP warrants and represents that the information PP is obligated to provide pursuant to the terms herein will be complete and truthful;

(h) PP warrants and represents that PP has not omitted or withheld any information that PP is obligated to provide pursuant to the terms herein;

(i) PP warrants and represents that PP has not contracted to earn and/or collect any monies as compensation from the sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD nor any monies as compensation or an advance for any efforts to sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information or any Tangible and/or Intangible Confidential information created by or relating to DD;

(j) PP warrants and represents that PP has not assigned nor transferred, either in whole or in part, any purported rights in or to the Images and/or any Property to any other person or entity, other than to DD pursuant to this Agreement.

4.3.3 Agreement By PP Not to Disclose/Use Confidential Information. Tangible and/or Intangible Confidential information created by or relating to DD. As further material inducements for DD to enter into this Agreement, PP agrees, represents and warrants that she shall not directly or indirectly, verbally or otherwise, publish, disseminate, disclose, post or cause to be published, disseminated, disclosed, or posted (herein "disclose"), any Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any person, group, firm or entity whatsoever, including, but not limited to, family members, friends, associates, journalists, media organizations, newspapers, magazines, publications, television or radio stations, publishers, databases, blogs, websites, posting boards, and any other enterprise involved in the print, wire or electronic media, including individuals working directly or indirectly for, or on behalf of, any of said persons or entities ("Third Parties" and/or Third Party"). In no event shall PP be relieved of such party's confidentiality obligations herein by virtue of any breach or alleged breach of this Agreement. In no event shall any dispute in connection with this Agreement relieve PP of her confidentiality obligations arising pursuant to this Agreement, and any disclosure of Confidential Information and/or Tangible and/or Intangible Confidential information created by or relating to DD in connection with any such

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proceeding or dispute shall constitute a breach of this Agreement. PP shall use their best efforts to prevent the unauthorized disclosure of Confidential Information in connection with any such proceeding or dispute.

4.3.4 Any direct or indirect disclosure of Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any Third Party by PP and/or any of her representatives, heirs, agents, children, family members, relatives , confidents, advisors, employees, attorneys, transferors, transferees, successors or assigns, and/or any friend of any of PP (collectively "PP Group"), after the date of this Agreement, shall be deemed a disclosure by PP in breach of the terms of this Agreement, entitling the non-breaching Party to all rights and remedies set forth herein.

4.3.5 PP separately and further warrants and represent that, prior to entering into this Agreement, that she has not written, published, caused to be published, or authorized the writing, publication, broadcast, transmission or public dissemination of any interview, article, essay, book, memoir, story, photograph, film, script, Images tape, biography, documentary, whether written, oral, digital or visual, whether fictionalized or not, about the opposing Party to this Agreement or their family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral, which discloses any Confidential Information and/or which includes any description or depiction of any kind whatsoever whether fictionalized or not, about any Party to this agreement or their respective family, other than as expressly disclosed by PP hereto in writing and as set forth herein in paragraph 4.2 above.

4.3.6 Agreement By PP Not to Disparage DD. PP hereby irrevocably agrees and covenants that she shall not, directly or indirectly, publicly disparage DD, nor write, publish, cause to be published, or authorize, consult about or with or otherwise be involved in the writing, publication, broadcast, transmission or dissemination of any book, memoir, letter, story, photograph, film, script, Images, interview, article, essay, biography, diary, journal, documentary, or other written, oral, digital or visual account or description or depiction of any kind whatsoever whether fictionalized or not, about DD or his family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral. PP further warrants and represents that PP has not and will not enter into any written or oral agreement with any third party purportedly requiring or obligating PP to do so. Fore greater clarity PP will never discuss with anyone the contents of this Settlement Agreement, nor will she voluntarily confirm the existence of this Settlement Agreement.

4.4 Disclosure Of Confidential Information Is Prohibited: The Parties to this Agreement hereby recognize and agree that substantial effort and expense have been dedicated to limit the efforts of the press, other media, and the public to learn of personal and business affairs involving DD. PP further acknowledges that any future disclosure of Confidential Information to any Third Party would constitute a serious and material breach of the terms of this Agreement, and shall constitute a breach of trust and confidence, invasion of privacy, and a misappropriation of exclusive property rights, and may also constitute fraud and deceit. Some of the Confidential Information may also constitute and include proprietary business information and trade secrets which have independent economic value. The Parties hereto acknowledge that any unauthorized use, dissemination or disclosure of Confidential Information, or the fabrication and dissemination of false and/or misleading information, about DD would result in irreparable injury to him, and would be injurious to a reasonable person, and/or would constitute an injurious violation of the right of privacy or publicity, and/or would be injurious to his business,

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profession, person, family and/or career. The Parties acknowledge that substantial and valuable property rights and other proprietary interests in the exclusive possession, ownership and use of Confidential Information, and recognizes and acknowledges that such Confidential Information is a proprietary, valuable, special and unique asset which belongs to DD and to which the PP has no claim of ownership or other interest.

4.4.1 Disclosures Permitted By PP. Notwithstanding the foregoing, PP shall only be permitted to disclose Confidential Information to another person or entity only if compelled to do so by valid legal process, including without limitation a subpoena duces tecum or similar legal compulsion, provided that PP shall not make any such disclosure unless PP has first provided DD with notice of such order or legal process not less than ten (10) days in advance of the required date of disclosure pursuant to the Written Notice provisions set forth hereinbelow, providing DD with an opportunity to intervene and with full and complete cooperation should she choose to oppose such disclosure. PP agrees that if the valid legal process can be stopped by her consent or at her behest then PP shall agree to use best efforts to avoid the disclosure of the Confidential Information.

5.0 REMEDIES

5.1 DD's Remedies for Breach of Agreement. Each breach or threatened breach (*e.g.*, conduct by PP reflecting that said person intends to breach the Agreement), including without limitation by breach of any representation or warranty, by failing to deliver to DD all tangible Property as required, by the disclosure or threatened disclosure of any Confidential Information to any Third Party by PP (herein "Prohibited Communication"), or otherwise, shall render PP liable to DD for any and all damages and injuries incurred as a result thereof, including but not limited to the following, all of which rights and remedies shall be cumulative:

5.1.1 Disgorgement of Monies: In the event an Arbitrator determines there has been a breach or threatened breach of this Agreement by PP, PP shall be obligated to account to, and to disgorge and turn over to DD any and all monies, profits, or other consideration, or benefits, which PP, or anyone on PP's behalf or at PP's direction, directly or indirectly derive from any disclosure or exploitation of any of the Confidential Information; and

5.1.2 Liquidated Damages: PP agrees that any breach or violation of this Settlement Agreement by either of PP individually or the PP Group by his/her/their unauthorized disclosure of any of the Confidential Information (as defined in paragraphs 4.1(a), (b), (c), and (d)) to any Third Party, and/or any unauthorized exploitation or prohibited use of the same, and/or by the breach of and/or by any false representations and warranties set forth in this Agreement, and/or any public disparagement of DD by PP (collectively, the "LD Breach Terms"), shall result in substantial damages and injury to DD, the precise amount of which would be extremely difficult or impracticable to determine, even after the Parties have made a reasonable endeavor to estimate fair compensation for such potential losses and damages to DD. Therefore, in addition to disgorgement of the full amount of all monies or other consideration pursuant to paragraph 5.1.2, in the event an Arbitrator determines there has been a breach of the LD Breach Terms of this Agreement by PP individually or the PP Group, PP shall also be obligated to pay, and agree to pay to DD the sum of One-Million Dollars ($1,000,000.00 as a reasonable and fair amount of liquidated damages to compensate DD for any loss or damage

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resulting from each breach, it being understood that the Liquidated damages calculation is on a per item basis. The Parties agree that such sum bears a reasonable and proximate relationship to the actual damages which DD will or might suffer from each breach of the terms of this Agreement and that this amount is not a penalty. Alternatively, at DD's sole discretion, DD may seek to recover actual damages proximately caused by each such breach, according to proof. Any other breaches not a LD Breach Terms shall be subject to a claim for actual damages according to proof; furthermore, any monies held in Trust by PP's Attorney shall be frozen and shall not be disbursed to PP until the Arbitrator finally resolves the allegation of Breach.

5.1.3 Injunctive Relief. PP acknowledges and agrees that any unauthorized disclosure to Third Parties of any Confidential Information will cause irreparable harm to DD, which damages and injuries will most likely not be measurable or susceptible to calculation. PP further acknowledges and agrees that any breach or threatened breach of this Agreement due to the unauthorized disclosure or threatened disclosure by PP to Third Parties, of any Confidential Information shall entitle DD to immediately obtain, either from the Arbitrator and/ or from any other court of competent jurisdiction, an *ex parte* issuance of a restraining order and preliminary injunction or other similar relief (herein "Injunctive Relief") without advance notice to any of PP, preventing the disclosure or any further disclosure of Confidential Information protected by the terms hereof, pending the decision of the Arbitrator or Court. The Parties further acknowledge and agree that in connection with any such proceeding, any Party may obtain from the Court or Arbitrator on an ex parte application or noticed motion without opposition, an order sealing the file in any such proceeding, and the Parties stipulate to the factual and legal basis for issuance of an order sealing the file in any such proceedings. The rights and remedies set forth in this Injunctive Relief Section are without prejudice to any other rights or remedies, legal or equitable, that the Parties may have as a result of any breach of this Agreement.

5.2 Dispute Resolution. In recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes which may arise between them, it is their intention and agreement that any and all claims or controversies arising between DD on the one hand, and PP on the other hand, shall be resolved by binding confidential Arbitration to the greatest extent permitted by law. Arbitration shall take place before JAMS ENDISPUTE ("JAMS") pursuant to JAMS Comprehensive Arbitration Rules and Procedures (including Interim Measures) ("JAMS Rules") and the law selected by DD, (such selection shall be limited to either, California, Nevada or Arizona), or before ACTION DISPUTE RESOLUTION SERVICES ("ADRS") pursuant to the ADRS Rules (including Interim Measures) and the law selected by DD (whichever the claimant elects upon filing an arbitration), in a the location selected by DD, and will be heard and decided by a sole, neutral arbitrator ("Arbitrator") selected either by agreement of the Parties, or if the Parties are unable to agree, then selected under the Rules of the selected arbitration service. The costs and fees associated with any Arbitrator and/or Arbitration service shall be split equally among the parties to any such dispute. The Parties shall have the right to conduct discovery in accordance with the California Code of Civil Procedure Section 1283.05 *et. seq.* or any similar provision existing in the jurisdiction selected by DD and the written discovery requests and results of discovery shall be deemed to constitute Confidential Information. The Arbitrator shall have the right to impose all legal and equitable remedies that would be available to any Party before any governmental dispute resolution forum or court of competent jurisdiction, including without limitation temporary, preliminary and permanent injunctive relief, compensatory damages, liquidated damages, accounting, disgorgement, specific performance, attorneys fees and costs,

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and punitive damages. It is understood and agreed that each of the Parties shall bear his/its own attorneys' fees, expert fees, consulting fees, and other litigation costs (if any) ordinarily associated with legal proceedings taking place in a judicial forum, subject to the Arbitrator's reassessment in favor of the prevailing party to the extent permitted by law. **Each of the Parties understands, acknowledges and agrees that by agreeing to arbitration as provided herein, each of the Parties is giving up any right that he/she/it may have to a trial by judge or jury with regard to the matters which are required to be submitted to mandatory and binding Arbitration pursuant to the terms hereof. Each of the Parties further understands, acknowledges and agrees that there is no right to an appeal or a review of an Arbitrator's award as there would be a right of appeal or review of a judge or jury's decision.**

6.0 MUTUAL RELEASES

6.1 Except for the rights and obligations of the Parties set forth in this Agreement, DD, for himself, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever releases and discharges PP, individually, and all of PP's heirs, and PP's attorneys, and each of them ("PP Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the effective date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Matter, or which could have been asserted in any other legal action or proceeding, except as may be provided herein (the "DD Released Claims").

6.2 Except for the rights and obligations of the Parties set forth in this Agreement, PP, for herself, and her representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever release and discharge DD, individually, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them ("DD Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Action, or which could have been asserted in any other legal action or proceeding (the "PP Released Claims").

6.3 The subject matter referred to in paragraphs 6.1 and 6.2, above (i.e., the DD Released Claims and PP Released Claims), are collectively referred to as the "Released Matters."

6.4 The Parties hereto, and each of them, hereby warrant, represent and agree that each of them is fully aware of §1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

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The Parties, and each of them, voluntarily waive the provisions of California Civil Code § 1542, and any other similar federal and state law as to any and all claims, demands, causes of action, or charges of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected.

6.4.1 For avoidance of any doubt, by virtue of this Settlement and this Settlement Agreement, the parties hereby waive any unknown claims against each other individually, and each of their representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them.

6.5 Each of the Parties hereto acknowledges and agrees that this Agreement constitutes a settlement and compromise of claims and defenses in dispute, and shall not be construed in any fashion as an admission of liability by any party hereto.

7.0 CONFIDENTIALITY OF THIS AGREEMENT

7.1 The Parties, respectively, shall not to disclose the terms of this Agreement, either directly or indirectly, to the media or to anyone else other than their respective attorneys and representatives and/or as may be required by law. PP may not comment or make any press releases or otherwise discuss the resolution of the subject of this Agreement.

8.0 MISCELLANEOUS TERMS

8.1 Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the Released Matters hereof between the Parties hereto and supersedes any and all prior negotiations and proposed agreement and/or agreements, written and/or oral, between the Parties. Each of the Parties hereto acknowledges that neither they, nor any other party, nor any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, expressed or implied, written or oral, which is not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement, and each of the Parties hereto acknowledges that she/he has not executed this Agreement in reliance on any promise, representation, and/or warranty not contained herein. This Agreement shall be binding on and inure to the benefit of the Parties, the Releasees, and each of their respective successors and assigns and designees.

8.2 DD's Election of either California, Nevada or Arizona Law & Venue. This Agreement and any dispute or controversy relating to this Agreement, shall in all respects be construed, interpreted, enforced and governed by the laws of the State of California, Arizona or Nevada at DD's election. Attorneys' Fees in the case of a Dispute. In the event of any dispute, action, proceeding or controversy regarding the existence, validity, interpretation, performance, enforcement, claimed breach or threatened breach of this Agreement, the prevailing party in any resulting arbitration proceeding and/or court proceeding shall be entitled to recover as an element of such Party's costs of suit, and not as damages, all attorneys' fees, costs and expenses incurred or sustained by such prevailing Party in connection with such action, including, without limitation, legal fees and costs.

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8.3 Attorney Fees and Costs in Formation of this Agreement. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with the creation this Settlement Agreement.

8.4 Waivers; Modification. This Agreement cannot be modified or changed except by written instrument signed by all of the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.5 Scope of Provisions/Severability/Headings. None of the Parties hereto shall be deemed to be the drafter of this Agreement, but it shall be deemed that this Agreement was jointly drafted by each of the Parties hereto. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party herein, but rather construing the terms of this Agreement as a whole according to their fair meaning. In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity or enforceability of the remaining provisions thereof, all of which shall remain in full force and effect. Notwithstanding the foregoing, if a provision is deemed to be illegal the Parties agree to waive any defense on said grounds. In the event that such any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. The captions appearing at the commencement of certain paragraphs herein are descriptive only and for convenience of reference. Should there be any conflict between any such caption or heading and the paragraph at the caption of which it appears, the paragraph, and not such caption, shall control and govern.

8.6 Advice of Counsel and Understanding of this Binding Agreement. Each of the Parties represents, acknowledges, and declares that she/he has received the advice of legal counsel of his/her own choosing regarding the form, substance, and effect of this Agreement. Each of the Parties represents, acknowledges, and declares that she/he has carefully read this Agreement, knows and understands this Agreement's contents, and signs this Agreement freely, voluntarily, and without either coercion or duress. Each of the Parties represents and warrants that she/he is fully competent to manage his/her business affairs, and that she/he has full power and authority to execute this Agreement, and to do any and all of the things reasonably required hereunder; and that this Agreement, when signed by all Parties, is a valid and binding agreement, enforceable in accordance with its terms.

8.7 Further Execution. In order to carry out the terms and conditions of this Agreement, PP agrees to promptly execute, upon reasonable request, any and all documents and instruments necessary to effectuate the terms of this Agreement.

8.8 Notice Provisions. Any notice, demand or request that one Party desires, or is required to give (including service of any subpoena, court pleadings, summons and/or complaint), to the other Party must be promptly communicated to the other Party by using their respective contact information below, by both (i) e-mail or facsimile; *and* (ii) telephone. Either Party may change his or her contact information by notifying the other Party of said change(s) pursuant to the applicable terms herein.

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8.8.1 To DD as follows:

ESSENTIAL CONSULTANTS, LLC
C/O: MICHAEL COHEN, ESQ.
500 PARK AVENUE 4TH A
NEW YORK, NY 10022

8.8.2 To PP, as follows:

C/O KEITH M. DAVIDSON, ESQ.
8383 Wilshire Boulevard, Suite 510
Beverly Hills, CA 90211
tel. 323.658.5444
fax. 323-658-5444
e-mail: keith@KmdLaw.com

8.9 . This Agreement may be executed with one or more separate counterparts, each of which, when so executed shall be deemed to be an original and, together shall constitute and be one and the same instrument. Any executed copies or signed counterparts of this Agreement, the Declaration, and any other documentation may be executed by scanned/printed pdf copies of signatures and/or facsimile signatures, which shall be deemed to have the same force and effect as if they were original signatures.

IN WITNESS WHEREOF, by their signatures below, the Parties each have approved and executed this Agreement as of the effective date first set forth above.

DATED: _____, 2016

DD

DATED: Oct 28, 2016

PP

ERICA JACKSON
Notary Public, State of Texas
Comm. Expires 01-04-2020
Notary ID 130483626

DATED: 10/28, 2016

EC

PP

EC
DD

DATED: 10/3/16, 2016

As to Form:

Keith M. Davidson, Esq., Attorney for PP

DATED: _____, 2016

As to Form:

Attorney for DD

DATED: 10/28, 2016

As to Form:

MICHAEL D. COHEN, ESQ.
Attorney for [redacted]
ESSENTIAL CONSULTANTS, LLC

PP

DD

Exhibit E

CONFIDENTIAL PROCEEDING

Honorable Jacqueline A. Connor (Ret.)
ADR SERVICES, INC.
1900 Avenue of the Stars, Suite 250
Los Angeles, California 90067
(310) 201-0010 PH
(310) 201-0016 FAX
Emergency Arbitrator

ADR SERVICES, INC.

IN RE THE MATTER OF THE ARBITRATION BETWEEN

EC, LLC, Claimant, v. PEGGY PETERSON, Respondent.	ADRS Case No. 18-1118-JAC **TEMPORARY RESTRAINING ORDER**

By written emergency application with exhibits pursuant to Rule 24 of the ADR Services, Inc. Arbitration Rules, Claimant EC, LLC has requested an emergency order precluding Respondent Peggy Peterson ("Ms. Peterson") from (i) disclosing or inducing, promoting or actively inspiring anyone to disclose Confidential Information, as defined in the "Confidential Settlement Agreement and Mutual Release: Assignment of Copyright and Non-Disparagement Agreement," effective October 28, 2016 (the "Settlement Agreement") whether in the media, court filings, or otherwise, (ii) disclosing or inducing, promoting, or actively inspiring anyone to disclose the fact of the commencement and pendency of this Arbitration and any details relating thereto, including, but not limited, to the existence of this Emergency Application and any emergency order issued in response to that application (the "Emergency Application").

ADR Services, Inc., has appointed the undersigned, Honorable Jacqueline A. Connor (Ret.), as the Emergency Arbitrator to hear the emergency application. Having reviewed the emergency application, including the parties' Settlement Agreement and other exhibits, the

Emergency Arbitrator finds that the Settlement Agreement expressly authorizes issuance of an *ex parte* restraining order without the requirement of advance notice to Ms. Peterson in the event she has breached or threatened to breach the confidentiality obligations expressly agreed upon in the Settlement Agreement.

Upon due consideration, the Emergency Arbitrator issued a tentative ruling and order, which was accepted on submission without oral argument by Claimant and Claimant's counsel.

NOW, THEREFORE, upon Claimant's application, it is hereby ORDERED that the Emergency Application is GRANTED, in part, as follows:

1. Pending further determination by the selected or appointed Arbitrator(s), Ms. Peterson is precluded from disclosing or disclosing or inducing, promoting or actively inspiring anyone to disclose Confidential Information, as defined in the "Confidential Settlement Agreement and Mutual Release: Assignment of Copyright and Non-Disparagement Agreement," effective October 28, 2016 (the "Settlement Agreement") whether in the media, court filings, or otherwise; and

2. Pending further determination by the selected or appointed Arbitrator(s), Ms. Peterson is precluded from disclosing or inducing, promoting, or actively inspiring anyone to disclose the fact of the commencement and pendency of this Arbitration and any details relating thereto, together with all proceedings and papers filed herein including, but not limited, to EC's Emergency Application and this Order; and

3. The foregoing shall not apply if, in accordance with Paragraph 4.4.1 of the Settlement Agreement, Ms. Peterson is compelled to disclose Confidential Information to another person or entity by valid legal process, including without limitation, a subpoena duces tecum or similar legal compulsion. Ms. Peterson shall not make any such disclosure unless she has first provided DD with notice of such order or legal process not less than ten (10) days in advance of the required date of disclosure pursuant to the Written Notice provisions set forth in the parties' Settlement Agreement, providing DD with an opportunity to intervene and with full and complete cooperation should such disclosure be opposed. If the valid legal process can be stopped by Ms. Peterson's consent or at her behest, Ms. Peterson shall use best efforts to avoid the disclosure of the Confidential Information.

The Emergency Arbitrator retains the power to modify or reconsider this interim order until the appointment of an arbitrator or arbitration panel for consideration of the entire matter. (ADRS Rule 24.)

IT IS SO ORDERED.

DATED: February 27, 2018

/s/
Hon. Jacqueline A. Connor (Ret.)
Emergency Arbitrator

General Information

Court	United States District Court for the Central District of California; United States District Court for the Central District of California
Federal Nature of Suit	Contract - Other[190]
Docket Number	2:18-cv-02217

Stormy Daniels: Opposition to Motion to Compel Aribtration

Multiple Documents

Part	Description
1	28 pages
2	Declaration of Stephanie Clifford
3	Declaration of Michael J. Avenatti
4	Declaration of Lawrence Solan

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Attorneys for Plaintiff Stephanie Clifford
a.k.a. Stormy Daniels a.k.a. Peggy Peterson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

vs.

DONALD J. TRUMP a.k.a. DAVID DENNISON, and individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 2:18-cv-02217-SJO-FFM

PLAINTIFF'S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANT, LLC'S MOTION TO COMPEL ARBITRATION

Hearing Date: April 30, 2018
Hearing Time: 10:00 a.m.
Location: 350 West 1st Street
Courtroom 10C
Los Angeles, CA 90012

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I. INTRODUCTION

Plaintiff Stephanie Clifford (aka Stormy Daniels) ("Plaintiff") filed this action seeking declaratory relief confirming she is not bound by any of the terms and conditions of a settlement agreement containing a mutual release and terms of non-disclosure, including the provision of the agreement providing for arbitration (the "Settlement Agreement" or "Agreement"). Defendant Essential Consultants, LLC's ("EC") current motion to compel arbitration, to which defendant Donald Trump ("Mr. Trump") "consents," is without merit for several reasons.

First, EC has no standing to bring this motion because the arbitration clause is between Plaintiff and "DD." Further, DD (presumably Mr. Trump) has not met any threshold burden of demonstrating he is an actual party to the Agreement, or to the arbitration clause.

Second, paragraph 8.6 of the Settlement Agreement states that "this Agreement, **when signed by all Parties**, is a valid and binding agreement, enforceable in accordance with its terms" (emphasis added). Mr. Trump, however, never signed the Agreement. The agreement was, therefore, never formed as a matter of law. See Roth v. Garcia Marquez, 942 F.2d 617, 626 (9th Cir. 1991); Banner Entertainment, Inc. v. Superior Court, 62 Cal. App. 4th 348, 358 (1998). Thus, there never was an agreement to arbitrate.

Third, the contract was a "Settlement Agreement" to resolve potential litigation between Mr. Trump and Plaintiff that required Mr. Trump to personally provide consideration to Plaintiff in the form of releases, and representations and warranties described as a "material inducement" to Plaintiff to enter into the Agreement. As a result, Plaintiff's signature and her receipt of funds from EC are insufficient to form a contract. Without the essential consideration from Mr. Trump to Plaintiff, and further, without Mr. Trump's signature on the Agreement or any form of communicated assent to accept the obligations he owed to Plaintiff, no contract could have been created.

Fourth, EC's dubious attempt to argue that the use of the term "and/or" saves the agreement is devoid of merit. To the contrary, courts have repudiated the use of the term

as creating rampant ambiguity. Plaintiff also submits the declaration of Professor Lawrence Solan, a leading expert in the field of linguistic analysis and the law, including in the use of the terms "and" and "or" in legal writings. Professor Solan concurs that the term "and/or" as used in the Agreement leaves it unclear as to who the parties actually are and causes too much uncertainty. Moreover, as shown below, reading the Settlement Agreement in its entirety leads to the inescapable conclusion that there can be no serious dispute that Mr. Trump was a contemplated party to the Agreement.

Finally, Plaintiff demands a jury trial pursuant to 9 U.S.C. § 4 for a determination of whether the Settlement Agreement (which contains the arbitration clause EC seeks to enforce) was ever formed. In addition, to meaningfully oppose this motion, Plaintiff requires limited discovery, as set forth in Plaintiff's concurrently filed Renewed Motion for Expedited Discovery. Accordingly, before the Court issues a ruling on the motion, the Court must first allow Plaintiff to conduct discovery and must conduct the trial.

For these reasons and the reasons stated below, Plaintiff respectfully requests that the Court stay consideration of the motion to compel arbitration until after discovery is complete and the completion of trial. In the alternative, Plaintiff requests the Court deny the motion to compel arbitration in its entirety.

II. STATEMENT OF FACTS

A. The Settlement Agreement

The Settlement Agreement is attached to the Declaration of Stephanie Clifford as Exhibit 1.

B. Mr. Cohen Claims Mr. Trump Had Nothing to Do With the Agreement.

As alleged in the FAC, Mr. Cohen is an attorney licensed in the State of New York. [FAC, ¶16.] Mr. Cohen worked as the "top attorney" at the Trump Organization from 2007 until after the election and presently serves as Mr. Trump's personal attorney. [Id.] He is also generally referred to as Mr. Trump's "fixer." [Id.] Mr. Cohen is also alleged to have formed EC on October 17, 2016, just weeks before the 2016 presidential election and 11 days before he signed the Agreement. [Id., ¶18; Cohen Decl., ¶3.]

On February 13, 2018, Mr. Cohen issued a statement that said in part: "In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly." [FAC, ¶27.]

On March 9, 2018, regarding the $130,000 payment, Mr. Cohen said "[t]he funds were taken from my home equity line and transferred internally to my LLC account in the same bank." [Declaration of Michael Avenatti ("Avenatti Decl."), Ex. 3.]

In a March 19, 2018 *Vanity Fair* article, Mr. Cohen again suggested Mr. Trump had no knowledge of the Settlement Agreement or payment. [Avenatti Decl., Ex. 4.] In it, he is quoted as saying: "What I did defensively for my personal client, and my friend, is what attorneys do for their high-profile clients." [Id.] The article also states that Mr. Cohen "claims that Trump did not know that he had paid Clifford the $130,000." [Id.]

C. Mr. Trump and the White House Deny Any Involvement With the Settlement Agreement.

White House and campaign representatives purportedly speaking on Mr. Trump's behalf, have denied that Mr. Trump had any knowledge of, or involvement with, the Settlement Agreement. [See Avenatti Decl., Ex. 5.]

On April 5, 2018, Mr. Trump, making his first public comments regarding this dispute, denied having knowledge of the $130,000 payment to Plaintiff under the Settlement Agreement. [Avenatti Decl., Ex. 6.] Mr. Trump stated he did not know where the money came from, denied setting up a fund from which Mr. Cohen could draw from to make the payment, and directed reporters' questions to Mr. Cohen. [Id.]

III. ARGUMENT

A. Plaintiff's Assertion that No Agreement Was Formed Is an Issue For the Court to Decide.

EC argues that the initial question of whether an agreement exists at all is one for the Court to decide, not an arbitrator. This position is devoid of merit.

"It is axiomatic that '[a]rbitration is a matter of contract and a party cannot be required to submit any dispute which he has not agreed so to submit.'" Sanford v. MemberWorks, Inc., 483 F.3d 956, 962 (9th Cir. 2007) (quoting AT & T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648 (1986)). Thus, "[t]he strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement." Comedy Club, Inc. v. Improv W. Assocs., 553 F.3d 1277, 1287 (9th Cir. 2009) (citation omitted). For this reason, although it is true that questions "regarding the *validity* or *enforcement* of a putative contract mandating arbitration should be referred to an arbitrator," this is not true for "challenges to the *existence* of a contract as a whole" - which "must be determined ***by the court prior to ordering arbitration***." Sanford, 483 F.3d at 962 (emphasis added); see also Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1140–41 (9th Cir. 1991).[1]

Accordingly, challenges to the making of the arbitration agreement encompass "*not only challenges to the arbitration clause itself, but also challenges to the making of the contract containing the arbitration clause*." Sanford, 483 F.3d at 962 (emphasis added). Here, Plaintiff asserts the purported Settlement Agreement was never formed. Under Sanford and the case law cited above, this is an issue that must be decided in this Court.

The Ninth Circuit's recent decision in Casa del Caffe Vergnano S.P.A. v. ItalFlavors, LLC, 816 F.3d 1208 (9th Cir. 2016) is instructive. There, as here, the contract at issue contained an arbitration clause. Id. at 1211. The Court explained that "the threshold issue" for the Court "is whether that document constituted a binding agreement at all." Id. "If it did not" then "it follows that the arbitration provision is not enforceable." Id. The Court concluded that because the asserted agreement "was a mere

[1] District Courts in this Circuit are in accord. See, e.g., Doherty v. Barclays Bank Delaware, No. 16-CV-01131-AJB-NLS, 2017 WL 588446, at *3 (S.D. Cal. Feb. 14, 2017); Barraza v. Cricket Wireless LLC, No. C 15-02471 WHA, 2015 WL 6689396, at *3 (N.D. Cal. Nov. 3, 2015); Switch, LLC v. ixmation, Inc., No. 15-CV-01637-MEJ, 2015 WL 4463672, at *3 (N.D. Cal. July 21, 2015) (same).

sham" and not enforceable, there was no agreement to arbitrate. Id. at 1214.

Importantly, even though EC contends there is a presumption in favor of arbitration, where as here, "the parties contest the *existence* of an arbitration agreement, the presumption in favor of arbitrability does not apply." Goldman, Sachs & Co. v. City of Reno, 747 F.3d 733, 742 (9th Cir. 2014) (emphasis in original).

EC misapplies the "crux of the complaint" rule, arguing that Plaintiff's challenges to the Settlement Agreement must be decided by the arbitrator. In doing so, EC strategically conflates Plaintiff's challenge to the *formation* of the Settlement Agreement with a challenge to the *validity* of the Settlement Agreement.[2] The Supreme Court in Buckeye Check Cashing, Inc. v. Cardegna, recognized that "[t]he issue of the contract's *validity* is different from the issue of whether any agreement between the alleged obligor and obligee *was ever concluded*. Our opinion today addresses only the former, and does not speak to the issue decided in the cases . . . ***which hold that it is for courts to decide whether the alleged obligor ever signed the contract***." 546 U.S. 440, 444 n. 1 (2006) (emphasis added). Indeed, the Supreme Court reaffirmed four years later that "where the dispute at issue concerns contract formation, the dispute is generally for courts to decide." Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 296 (2010).

B. EC Does Not Have Standing to Compel Arbitration.

As a threshold matter, EC's motion should be denied because EC has no standing to compel Plaintiff to arbitrate. Simply put, the plain language of the arbitration clause demonstrates there is no agreement to arbitrate between EC and Plaintiff.

Paragraph 5.2 of the Settlement Agreement, entitled "Dispute Resolution," contains the arbitration clause. It states, in relevant part:

[2] For this reason, this Court's opinion in Guadagno v. E*Trade Bank, 592 F. Supp. 2d 1263 (C.D. Cal. 2008), is quoted out of context. The Court indicated that challenges to the "validity" of the entire contract would be for the arbitrator, but made no ruling suggesting that challenges to the "formation" or "existence" of a contract containing an arbitration clause are for the arbitrator. Id. at 1271.

> In recognition of the mutual benefits to ***DD and PP*** of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes ***which may arise between them***, it is their intention and agreement that any and all claims or controversies ***arising between DD on the one hand, and PP on the other hand***, shall be resolved by binding confidential Arbitration to the greatest extent permitted by law.

[Agreement, ¶5.2 (emphasis added).]

Here, EC is not a party to the arbitration agreement nor is it even mentioned in the arbitration clause. "Generally, the contractual right to compel arbitration 'may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration.'" Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1126 (9th Cir. 2013)) (quoting Britton v. Co-op Banking Grp., 4 F.3d 742, 744 (9th Cir. 1993)); see also Britton, 4 F.3d at 748 (non-party "lacked standing to enforce the arbitration clause."); Mundi v. Union Sec. Life Ins. Co., 555 F.3d 1042, 1045 (9th Cir. 2009). As a result, EC's motion must be denied.

C. Mr. Trump Does Not Petition to Compel Arbitration and Has Not Met His Burden.

Because EC is the only moving party, Plaintiff cannot be compelled to arbitrate. This is especially true because Mr. Trump has not filed *his own* motion to compel arbitration. Rather, Mr. Trump, through his counsel, merely filed a "joinder" in support of EC's motion whereby he "consents." [Dkt No. 21.] This "joinder," however, does not suffice under the record presently before the Court.

"A defendant seeking to compel arbitration has the burden of showing that an agreement to arbitrate exists." Guadagno v. E*Trade Bank, 592 F. Supp. 2d 1263, 1270 (C.D. Cal. 2008). But Mr. Trump has failed to meet this burden. The arbitration agreement is between "DD" and "PP," but Mr. Trump has not submitted ***any*** evidence demonstrating he is DD. In addition, EC's motion argues that Mr. Trump is not a party to Settlement Agreement. [Dkt No. 20-1 at 7.] In fact, Mr. Trump's counsel during meet and confer discussions relating to this Motion refused to tell Plaintiff's counsel whether Mr. Trump is a party. [Avenatti Decl., ¶5.] This alone is dubious and remarkable.

Further, by failing to sign the Agreement or otherwise communicate his consent to the Agreement, Mr. Trump failed to make himself a party to the Agreement—precluding the very existence of the Agreement to begin with. [See Agreement, ¶8.6; section III(D), infra.] Nor do EC or Mr. Trump contend that Mr. Trump should be deemed a third-party beneficiary of the Settlement Agreement. Mr. Trump, therefore, has not met his burden.

Moreover, as noted, Mr. Trump did not file his own motion to compel arbitration. In fact, he merely "joins" in EC's motion, and, far from actually "*seeking*" to compel arbitration, he states passively that he "consents" to arbitration (whatever that means). The Federal Arbitration Act, however, requires more than merely "consenting" to arbitration; a party aggrieved by another's failure to arbitrate under a written agreement must "**petition** . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4 (emphasis added); Duferco Steel Inc. v. M/V Kalisti, 121 F.3d 321, 326 (7th Cir. 1997) ("[B]ecause neither party petitioned the district court for an order compelling arbitration, Duferco's contention that § 4 required the district court to compel arbitration has no force."); cf. S.E.C. v. Daifotis, No. C 11-00137 WHA, 2011 WL 3295139, at *6–7 (N.D. Cal. Aug. 1, 2011) (disallowing defendant's "me too" joining in, and incorporation of, other defendant's brief). Under the facts of this case, this distinction carries substantive import.

Mr. Trump, therefore, should not be permitted to engage in a "shell game" before this Court. He should not be allowed to, on the one hand, invoke "plausible deniability" by distancing himself from the Agreement and thereby avoid the myriad of consequences of associating himself with the Agreement, while at the same time he attempts to enjoy the possible benefits of that very Agreement he claims to have nothing to do with.

D. No Agreement Was Formed Because Mr. Trump Failed to Sign the Agreement and Deliver the Promised Consideration to Plaintiff.

1. No Agreement Exists Because Mr. Trump's Signature Was an Express Condition to the Formation of the Agreement.

The well-settled rule in California is that "'[i]f the evidence shows that the

signatures of other parties were required as one of the conditions of the completed agreement, it is incomplete and not binding upon those who sign until the others sign.'" Roth v. Garcia Marquez, 942 F.2d 617, 626 (9th Cir. 1991) (quoting 1 Witkin, Summary of Cal. Law, Contracts § 143 (9th ed. 1987))). Stated differently, "[w]hen it is clear, both from a provision that the proposed written contract would become operative *only* when signed by the parties as well as from any other evidence presented by the parties that both parties contemplated that acceptance of the contract's terms would be signified by signing it, the failure to sign the agreement means no binding contract was created." Banner Entertainment, Inc. v. Superior Court, 62 Cal. App. 4th 348, 358 (1998). This rule is repeatedly, and routinely, applied by the Ninth Circuit,[3] District Courts in California,[4] and California appellate courts.[5]

[3] Roth, 942 F.2d at 626–27 (agreement not binding where author's signature was a condition precedent); PSM Holding Corp. v. Nat'l Farm Fin. Corp., 339 F. App'x 693, 695 (9th Cir. 2009) (where "plain terms of the agreement dictate that no contract was formed because the signature lines for" various parties "were left blank[,]" holding that "none of the parties could be liable under its terms.").

[4] Ortiz v. America's Servicing Co., No. EDCV 12-191 CAS SPX, 2012 WL 2160953, at *3 (C.D. Cal. June 11, 2012) ("[W]hen it is clear that the proposed written contract would become operative only when signed by the parties, the failure to sign the agreement means no binding contract was created.") (quoting Grill v. BAC Home Loans Servicing LP., No. 10-CV-03057-FCD/GGH, 2011 WL 127891, at *3 (E.D. Cal. Jan. 14, 2011)); J.B. Enterprises Int'l, L.L.C. v. Sid & Marty Krofft Pictures Corp., No. CV 02-7779 CBM (SHX), 2003 WL 21037837, at *2 (C.D. Cal. Mar. 3, 2003) ("When the parties contemplate that acceptance of a contract's terms would be signified in writing, no binding contract is created when the parties fail to sign the agreement."); Los Angeles Rams Football Club v. Cannon, 185 F. Supp. 717, 721-22 (S.D. Cal. 1960) (no contract based on express condition requiring Commissioner approval where he did not sign).

[5] Rebolledo v. Tilly's, Inc., 228 Cal. App. 4th 900, 923 (2014) (modification to original employment agreement signed by employee was unenforceable because it did not, as required, contain the signatures of three of the employer's executives); Romo v. Y–3 Holdings, Inc., 87 Cal. App. 4th 1153, 1159–60 (2001) (affirming denial of motion to compel arbitration where employee handbook containing the arbitration agreement contemplated signature from the employee and employee did not sign); Khajavi v. Feather River Anesthesia Med. Grp., 84 Cal. App. 4th 32, 61–62 (2000) ("[W]here the parties

Here, the Settlement Agreement is unequivocal: "**Each of the Parties represents and warrants . . . that this Agreement, when signed by all Parties, is a valid and binding agreement, enforceable in accordance with its terms.**" [Agreement, ¶8.6 (emphasis added).] Despite this clear requirement, neither the Settlement Agreement nor the Side Letter Agreement were signed by Mr. Trump.

In fact, execution of the Settlement Agreement and Side Letter Agreement was deemed so important, it is repeatedly mentioned throughout both documents, including in paragraph 4.3.2 which contains an "express acknowledgment that DD is ***executing*** this Agreement in reliance on" certain agreements, warranties and representations. [See also Agreement, ¶¶3.3 (requiring delivery of property "[c]oncurrently upon **execution** of this Agreement . . ."), 4.3(a) ("[E]ach Party acknowledges that she/he is **executing** this Agreement" in reliance on certain "agreements, warranties, and representations . . . made by DD . . ."), p. 14 ("IN WITNESS WHEREOF, by *their signatures* below, the Parties

understood that the proposed agreement is not complete until reduced to formal writing and signed, no binding contract results until this is done."); Beck v. American Health, 211 Cal. App. 3d 1555, 1562 (1989) ("[W]here it is part of the understanding between the parties that the terms of their contract are to be reduced to writing and signed by the parties, the assent to its terms must be evidenced in the manner agreed on or it does not become a binding or a completed contract."); Duran v. Duran, 150 Cal. App. 3d 176, 180 (1983) (same); De Mott v. Amalgamated Meat Cutters & Butcher Workmen of N. Am., 157 Cal. App. 2d 13, 25 (1958) ("When an agreement is signed and handed over with the understanding that it will not be used or become operative until it is signed by another who is expected to join therein, it does not become a contract until the additional signature has been obtained."); Am. Aeronautics Corp. v. Grand Cent. Aircraft Co., 155 Cal. App. 2d 69, 80 (1957) ("[W]hen it is a part of the understanding between the parties that the terms of their contract are to be reduced to writing and signed by the parties, the assent to its terms must be evidenced in the manner agreed upon, or it does not become a binding or completed contract."); Lyne v. Bonner, 129 Cal. App. 2d 743, 746 (1954) (contract signed by three of four owners not binding on any of the owners); Helperin v. Guzzardi, 108 Cal. App. 2d 125, 128 (1951) ("When an agreement is signed and handed over with the understanding that it will not be used or become operative until it is signed by another who is expected to join therein, it does not become a contract until the additional signature is obtained.")

each have approved and executed this Agreement as of the effective date first set forth above."); Side Letter Agreement, p. 2 ("By *signing* below, *each* of the Parties signifies their agreement to the terms hereof and each of their respective counsel signify their approval as to the form of this letter agreement.").]

The circumstances here are thus strikingly similar to Banner and Roth, and are indistinguishable from the litany of cases cited above. In short, Mr. Trump's failure to sign the Settlement Agreement is fatal and ends the Court's inquiry. No contract was ever formed, and hence, there is no agreement to arbitrate.

EC's reliance on Kaneko v. Okuda, 195 Cal. App. 2d 217 (1961), is unavailing. Indeed, the very excerpt quoted by EC states "*[i]n the absence of a showing that a contract is not to be deemed complete unless signed by all parties*, the parties signing may be bound though others have not signed." Id. (emphasis added). Here, unlike the defendants in Kaneko, Plaintiff *has* made such a showing - Paragraph 8.6 of the Agreement clearly provides that no agreement is formed unless signed by all parties.

2. Mr. Trump Was Incapable of Consenting to a Contract Which Imposed Duties on Him That He Was Supposedly Unaware Of.

"[T]here is no contract until there has been a meeting of the minds on all material points." Banner, 62 Cal. App. 4th at 357–58. Consent is an essential element of a contract. Cal. Civ. Code § 1550. The "failure to reach a meeting of the minds on all material points prevents the formation of a contract *even though the parties have orally agreed upon some of the terms, or have taken some action related to the contract.*" Bustamante v. Intuit, Inc., 141 Cal. App. 4th 199, 215 (2006) (emphasis in original). "Further, the consent of the parties to a contract must be communicated by each party to the other." Esparza v. Sand & Sea, Inc., 2 Cal. App. 5th 781, 788 (2016) (citing Cal. Civ. Code §1565(3)). Consequently, "where the parties to a 'contract' have not mutually consented to be bound by their agreement, they have not formed a true contract." Casa del Caffe, 816 F.3d at 1212.

Here, the fundamental element of consent cannot exist. If Mr. Trump and Mr.

Cohen are to be believed (a matter that will have to be tested in discovery), Mr. Trump never consented to the Settlement Agreement because he never even knew about it. And further, without knowledge of the Agreement and his obligations under the Agreement, he could not have possibly communicated his consent. See Esparza, 2 Cal. App. 5th at 788. Indeed, if he knew nothing about the Agreement, Mr. Trump could not have possibly consented to provide the consideration he owed to Plaintiff.

EC's signature on the Settlement Agreement is insufficient to create a contract for several reasons. *First*, as argued above, the signature of all parties was an express condition of the contract. *Second*, nothing in the contract indicates that EC was acting as Mr. Trump's agent (nor do EC or Mr. Cohen argue that they were acting as such). EC is described as a separate party to the Agreement and, more to the point, if Mr. Trump did not even know about the Agreement or the payment, then no such agency could have been created. *Third*, and perhaps most important, Mr. Trump is not a passive third-party beneficiary of the Settlement Agreement.[6] To the contrary, Mr. Trump *is a party* who was required to deliver material consideration to Plaintiff. Specifically:

- As the title indicates, the contract is a "Settlement Agreement and Mutual Release" which recognizes the parties' desire to avoid "potential litigation" and defines potential claims of Plaintiff *and* of Mr. Trump as the "PP Claims" and the "DD Claims," respectively. [Agreement, ¶¶2.2(a), 2.2(b), 2.5.]

- Mr. Trump was required to release Plaintiff of liability for the "DD Claims." Specifically, paragraph 6.1 of the Agreement states in part that: "DD . . . discharges PP . . . from any and all claims, . . . actions and causes of actions of every kind and

[6] EC does not argue it was Mr. Trump's agent, or that Mr. Trump is a third-party beneficiary, and Plaintiff would object to any such argument being introduced for the first time on Reply. Indeed, any arguments Defendants have failed to raise in their moving papers must be deemed waived. Estakhrian v. Obenstine, 320 F.R.D. 63, 91 (C.D. Cal. 2017) (argument not raised in opening brief was waived). Further, a "third-party *beneficiary* is not a third-party *obligor*." Comer v. Micor, Inc., 278 F.Supp.2d 1030, 1041 (N.D. Cal. 2003) (emphasis in original) (citing Abraham Zion Corp. v. Lebow, 761 F.2d 93, 103 (2d Cir.1985) (holding agreement could not be enforced against alleged third-party beneficiary of agreement); Motorsport Eng'g, Inc. v. Maserati SPA, 316 F.3d 26, 29 (1st Cir. 2002) ("But the third-party beneficiary, who did not sign the contract, is not liable for either signatory's performance and has no contractual obligations to either.") Here, Mr. Trump owed affirmative obligations to Plaintiff and thus was an intended *party*, and not a third-party beneficiary.

nature whatsoever, . . . from the beginning of time to the effective date of this Agreement . . ."

- Mr. Trump's release obligations are reinforced earlier in the Agreement: "[t]he Parties agree that the claims released include but are not limited to DD's claims against PP" relating to disclosure of certain property to others and includes a release from "any harm suffered by DD therefrom." [Agreement, ¶2.5.] This provision, along with others, is described as "essential, integral, and material terms of this Agreement." [Agreement, ¶2.6.]

- Mr. Trump was also obligated to provide certain representations and warranties to Plaintiff, along with a covenant not to sue. Paragraph 4.3(a) of the Agreement is titled "Representations & Warranties & Agreements By DD" and acknowledges "agreements, warranties and representations made by DD[.]"

- Specifically, pursuant to paragraph 4.3(b) of the Agreement:

> DD warrants and represents that, as relates to or in connection with any of PP's attempts to sell, exploit and/or disseminate the Property prior to the date of this Agreement, DD and his counsel will refrain (i) from pursuing any civil action against PP, and/or (ii) absent a direct inquiry from law enforcement, from disclosing PP's name to the authorities.

- Paragraph 4.3(a) states that the paragraph 4.3(b) "agreements, warranties and representations **are made by DD as material inducements to PP** to enter into this Agreement, and each Party acknowledges that she/he **is executing this Agreement in reliance thereon**[.]" [Agreement, ¶4.3(a) (emphasis added).]

In sum, the necessity of Mr. Trump's consent to the Settlement Agreement, and his express agreement to accept the obligations imposed on him, are self-evident.[7] No agreement, therefore, was ever formed. EC's motion must be denied.

3. EC's Argument Regarding Adequacy of Consideration Is Irrelevant to this Motion.

EC contends that Plaintiff received adequate consideration under the Settlement Agreement by her receipt of $130,000 for EC. EC's argument is a red herring. The relevant issue is not whether $130,000 is sufficient consideration to support a *hypothetical*

[7] Nor can Mr. Trump argue that the $130,000 payment was a communication of his acceptance of his obligations under the Agreement. *According to Mr. Trump, the payment was made by EC,* not Mr. Trump. [Agreement, ¶3.0.1.1.]

contract between Plaintiff and EC. That is not the contract Plaintiff understood she was entering into when she signed the Settlement Agreement. [Clifford Decl., ¶5.] Rather, the real question is whether Plaintiff received the consideration she actually bargained for under the Settlement Agreement—namely, the releases, representations and warranties, and covenant not to sue, from Mr. Trump. Recognizing she did not, EC asks the Court to ignore the Settlement Agreement and rewrite it to create a new contract. But Clifford cannot be bound to an entirely different contract than the one she assented to simply because she received *something*.

E. The Presence of the Term "And/Or" in the Agreement in Connection With the Parties Does Not Save the Agreement.

Under California law, "[i]t is essential not only that the parties to [a] contract *exist*, but that it is possible to identify them." Jackson v. Grant, 890 F.2d 118, 121 (9th Cir. 1989) (citing Cal. Civ. Code § 1558). Here, the Settlement Agreement is unintelligible as to the intended parties to the Agreement. Thus, no valid contract was formed.

Paragraph 1.1 of the Settlement Agreement states, in part, the following:

> This Settlement Agreement and Mutual Release . . . is made . . . by and between "EC, LLC" and/or DAVID DENNISON, (DD), on the one part, and PEGGY PETERSON, (PP), on the other part. ("EC, LLC," "DD" and "PP" are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as "EXHIBIT A")

"The expression 'and/or' . . . has met with widespread condemnation." Ex parte Bell, 19 Cal. 2d 488, 499 (1942).[8] Accordingly, the use of "and/or" gives "rise to

[8] See also Herbert H. Post & Co. v. Sidney Bitterman, Inc., 219 A.D.2d 214, 223, 639 N.Y.S.2d 329 (1996) (the "use of 'and/or' has been roundly condemned as a 'deliberate amphibology, susceptible of more than one interpretation and . . . a purposefully ambiguous expression, useful in its self-evident equivocality.'") (citation and quotation omitted); Bank Bldg. & Equip. Corp. of Am. v. Georgia State Bank, 132 Ga. App. 762, 765, 209 S.E.2d 82, 84 (1974) (same); Ollilo v. Clatskanie Peoples' Util. Dist., 170 Or. 173, 180, 132 P.2d 416, 419 (1942) ("Courts struggle with 'and/or' to determine what it means and generally end in bewilderment.").

multiple meanings" and "it can mean either or it can mean both." Dinkins v. Am. Nat'l Ins. Co., 92 Cal. App. 3d 222, 232 (1979), disapproved of on other grounds by Moore v. Am. United Life Ins. Co., 150 Cal. App. 3d 610 (1984). In California Shipbuilding Corp. v. Indus. Acc. Comm'n, 85 Cal. App. 2d 435, 436 (1948), for example, the Court held that the use of the words "and/or" in an order of a public commission rendered the commission's finding and award in favor of the employee "indefinite, uncertain and unintelligible" because there was no way of determining if the finding was against the employer, the managing representative, or both. Similarly, in Main Line Pictures, Inc. v. Basinger, the Court held that a special verdict in favor of the plaintiff against "Basinger and/or Mighty Wind" are "prejudicially ambiguous and require reversal" because it was unclear whether the jury found that the contract at issue was breached by the actress Kim Basinger, her "loan-out" corporation Mighty Wind, or both. No. B077509, 1994 WL 814244, at *6 (Cal. Ct. App. Sept. 22, 1994).[9]

Plaintiff also proffers the declaration of Professor Lawrence Solan. [Declaration of Lawrence Solan ("Solan Decl."), ¶1.] Professor Solan is a leading expert in the field of linguistic analysis and the law and is the author of the book *The Language of Judges* in which he devotes a section discussing issues that arise concerning the interpretation of the words "and" and "or." [Id., ¶¶2-6.] According to Professor Solan, "and/or" leads to "interpretive problems" and, as used in the Agreement, "it is not clear who the parties actually are." [Id., ¶11.] He explains that "read alone," paragraph 1.1 "causes too much uncertainty and ambiguity" and makes it "necessary to examine other provisions in the Agreement." [Id., ¶13.] He concludes these provisions taken together "strongly imply that DD was intended to be understood to be a party to the Agreement." [Id., ¶15.]

Here, *read in isolation*, the plain language of paragraph 1.1 provides *no clarity* on who the parties are to the Settlement Agreement. By stating that the agreement is "by and

[9] District courts may rely on California unpublished decisions as "persuasive authority." See CPR for Skid Row v. City of Los Angeles, 779 F.3d 1098, 1117 (9th Cir. 2015).

between 'EC, LLC' and/or DAVID DENNISON, (DD), on the one part," the Agreement leaves open the question of whether (1) only EC, (2) only Mr. Trump, or (3) both EC *and* Mr. Trump are intended parties. Indeed, the Agreement does not specify that EC (or any individual party for that matter) holds the option of deciding who is a party, and who is not a party, to the Agreement. Significantly, DD and David Dennison's signature lines and identities are not crossed out on the Settlement Agreement or Side Letter Agreement. Moreover, although the Settlement Agreement states that the true identities of "EC, LLC," "DD," and "PP" are revealed in the Side Letter Agreement, the Side Letter Agreement itself compounds the hopeless ambiguity of the identity of the parties because there is no signature from Mr. Trump confirming that he is the "David Dennison" and "DD" identified in the Settlement Agreement. Nor does the Side Letter Agreement, which provides that it is "deemed part of" the Settlement Agreement by way of amendment, use the term "and/or" to describe the parties. Instead, it lists *all three parties* while repeatedly using the term "the Parties." Importantly, Plaintiff understood at all times that Mr. Trump was an intended party of the Settlement Agreement. [Clifford Decl., ¶6.]

In any event, paragraph 1.1 cannot be read in isolation. Rather, it is a well-settled rule of contract interpretation that the "whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Cal. Civ. Code § 1641; see also In re Captain Blythers, Inc., 311 B.R. 530, 536 (B.A.P. 9th Cir. 2004) ("[U]nder California law, 'one phrase of a contract should not be interpreted so as to render another phrase of the contract meaningless'"); Monterey Bay Unified Air Pollution Control Dist. for People of State of California v. U.S. Dep't of Army, 176 F. Supp. 2d 979, 988 (N.D. Cal. 2001) (settlement agreement like any contract "must be interpreted as a whole.").

Applying this rule of contract interpretation to the Settlement Agreement, EC's attempted construction to exclude Mr. Trump as a party negates large, essential portions of the Agreement and the consideration Plaintiff was to receive under the contemplated agreement had it been finalized. As noted above, Mr. Trump was required to provide to

Plaintiff releases, representations and warranties, and a covenant not to sue. [Agreement, ¶¶2.2, 2.5, 2.6, 4.3(a), 4.3(b), 6.1.] Mr. Trump's releases were among "essential, integral and material terms" of the Settlement Agreement [Agreement, ¶¶2.5-2.6], and the representations and warranties made by Mr. Trump were "*material inducements*" to Plaintiff to enter into the Settlement Agreement. [Agreement, ¶4.3(a) (emphasis added).] The presence of these provisions is inconsistent with the notion that Mr. Trump was not intended to be a party to the Settlement Agreement. Nothing in the Agreement suggests that this essential consideration could be supplied by EC rather than Mr. Trump.

As further evidence that Mr. Trump is an intended party of the Settlement Agreement, the Settlement Agreement also contemplates that Mr. Trump is a party by acknowledging throughout the Agreement that he is "entering" into the Agreement. [Agreement, ¶¶2.4, 4.3.2, 4.3.3.] The Agreement also grants remedies and enforcement rights *exclusively* to Mr. Trump, including the right to seek damages, obtain injunctive relief, and (as discussed above) to enforce the arbitration clause. [Id., ¶¶5.1-5.2.] *None of these rights are conferred upon EC.* Further, all duties Plaintiff is contemplated to owe under the Settlement Agreement extend only from Plaintiff to Mr. Trump. [See, e.g., Agreement, ¶¶3.1, 3.2, 3.3, 4.3.2, 4.3.6.] No obligations are owed to EC. Nor is EC granted any rights or authorities to take action, or receive consideration, on behalf of Mr. Trump. ***In fact, EC is mentioned by name only six (6) times in the Settlement Agreement, whereas Mr. Trump (i.e., "DD") is mentioned over 130 times.***

In sum, the only rational interpretation of the plain text of the Settlement Agreement is that the Agreement could not possibly exist without Mr. Trump and that he is therefore an intended party who was required to sign the Agreement for it to have been finalized. At the very minimum, the Agreement is vague as to the identity of the parties. For these additional reasons, no contract was formed in this case and thus, there is no agreement to arbitrate. EC's motion should be denied.

F. Plaintiff's Signature on the Settlement Agreement and Her Acceptance of Funds Did Not Create a Contract.

EC argues that Plaintiff's signature on the Settlement Agreement, her acceptance of the $130,000 payment, and her refraining from filing suit until March 2018 were sufficient to create a contract. EC's contentions are without merit for several reasons.

First, EC's argument ignores the indisputable fact that the Settlement Agreement called upon Mr. Trump himself to provide additional consideration to Plaintiff *above and beyond* the $130,000 payment from EC. [Agreement, ¶¶2.2, 2.5, 2.6, 4.3(a), 4.3(b), 6.1.] In other words, the purpose of the Settlement Agreement was to resolve potential litigation, not simply to pay money to Plaintiff. Because Mr. Trump never completed the Agreement by providing his signature on the Agreement, no contract came into existence.

Second, EC ignores the express condition of the Settlement Agreement requiring Mr. Trump to sign the Agreement. [See Agreement, ¶8.6.] This ends the inquiry. EC cannot point to mere conduct to circumvent the plain language of the Agreement, and further, cannot point to any case law where a court has cast aside an express condition requiring signature even where acts of performance or conduct are shown. In fact, the very same argument advanced by EC was rejected in J.B. Enterprises, 2003 WL 21037837. There, the letter of intent at issue explicitly stated that the obligation to complete a stock purchase would only arise upon the signing of a purchase agreement. The Court thus concluded that "[t]he parties never executed the Purchase Agreement and they are not bound by the terms of the draft agreement. *The Krofft Group may not look to the parties' conduct to imply that the Letter of Intent contains an obligation that contradicts the express language of the Letter of Intent.*" Id. at *3 (emphasis added); see also PSM Holding, 339 F. App'x at 694 ("The extrinsic evidence regarding the parties' behavior . . . cannot substitute for the parties' signatures on the agreement."); Davison v. Stephens Inst., No. A138953, 2014 WL 6654690, at *5 (Cal. Ct. App. Nov. 24, 2014) (the defendant's "mere acts of performance" of "allowing [the plaintiff] to teach and paying him—cannot validate the agreements without the required signature.")

Third, EC's reliance on California Civil Code section 1589 is misplaced. Section 1589 states that "[a] voluntary acceptance of the benefit of a transaction is equivalent to a

consent to all the obligations arising from it, *so far as the facts are known, or ought to be known, to the person accepting."* Cal. Civ. Code § 1589 (emphasis added). EC conveniently ignores the italicized portion of the statute. Here, Plaintiff understood that she was entering into a contract with Mr. Trump, was unaware that Mr. Trump did not sign the agreement, and had no idea that Mr. Trump would later claim that he was not a party. [Clifford Decl., ¶¶5-6.] Thus, it was not "known" to Plaintiff that Mr. Trump would take the position that he is not a party to the Settlement Agreement. That he now so claims *after the fact* is no different from EC and Mr. Trump attempting to introduce *new* terms of the Agreement that Plaintiff never consented to. See, e.g., Robinson v. OnStar, LLC, No. 16-56412, 2018 WL 1323630, at *1 (9th Cir. Mar. 15, 2018) (applying section 1589 and reversing district court decision dismissing complaint pursuant to arbitration clause because the plaintiff cannot be deemed to have accepted additional terms and conditions after activation of subscription); Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 566 (9th Cir. 2014); Perez v. DirecTV Grp. Holdings, LLC, 251 F. Supp. 3d 1328, 1340 (C.D. Cal. 2017).

Fourth, EC's reliance on Plaintiff's "subsequent conduct" is also unavailing. Plaintiff's conduct was based on the understanding that Mr. Trump was a party to the Settlement Agreement, which included his obligations to provide consideration to Plaintiff. Reliance on conduct to interpret a contract requires that "such acts must be direct, positive, and deliberate, and must show that the acts so done were done in an attempted compliance with the terms of the contract or agreement." Barnhart Aircraft v. Preston, 212 Cal. 19, 24–25 (1931). Relying on this principle, the Ninth Circuit rejected the argument that conduct supported the defendant's interpretation of a contract involving music royalties where the plaintiff received statements for years, but only became aware the parties were not interpreting the contract in the same manner after the statements were audited. See F.B.T. Prods., LLC v. Aftermath Records, 621 F.3d 958, 966-67 (9th Cir. 2010); see also Evox Prods. LLC v. Kayak Software Corp., No. CV15-5053 PSG (AGRX), 2017 WL 5634858, at *7 (C.D. Cal. Apr. 4, 2017) (post-contract conduct did not

support defendant's interpretation when plaintiff was unaware of defendant's breach).

Finally, EC's proposed handling of the Settlement Agreement is ill equipped to address a very important problem: If Plaintiff's acceptance of the $130,000 and her signature created a binding settlement agreement exclusively between Plaintiff and EC (and not Mr. Trump or DD), what exactly are the terms of *that* agreement? In other words, if Mr. Trump is not a party to the agreement, then which parts, if any, of the Settlement Agreement survive? As noted above, EC's only role in the Settlement Agreement was payment of the $130,000. EC has no rights of enforcement. EC is not entitled to seek remedies. EC is not a party to the arbitration clause. Further, the "Settlement Agreement" is to resolve potential litigation between Plaintiff and Mr. Trump, *not* between Plaintiff and EC. Moreover, EC does not claim (nor can it claim) that it was Mr. Trump's agent, that it was authorized to provide releases, and representations and warranties, on behalf of Mr. Trump, or that the Agreement was structured to make Mr. Trump a beneficiary as opposed to a contracting party.[10]

G. Defendants' Position that Mr. Trump Was Not a Contemplated Party Constitutes Fraud in the Execution Rendering the Agreement Void.

"California law distinguishes between fraud in the 'execution' or 'inception' of a contract and fraud in the 'inducement' of a contract." Duick v. Toyota Motor Sales, U.S.A., Inc., 198 Cal. App. 4th 1316, 1320 (2011). "Fraud in the inception" as opposed to fraud in the inducement, "will render a contract 'wholly void, despite the parties' apparent assent to it, when, '*without negligence on his part*, a signer attaches his signature to a paper assuming it to be a paper of a different character.'" Id. at 1321 (emphasis in original). "[C]laims of fraud in the execution of the entire agreement are not arbitrable

[10] To the extent the Court finds it relevant to its analysis, Plaintiff notes that although not ripe for the Court on the present motion (and not raised by the pleadings in the case), Plaintiff makes no argument that she is entitled to *both* a judgment declaring the Settlement Agreement void *and* retention of the $130,000 payment. Plaintiff is thus prepared to return the money if so ordered by the Court.

under either state or federal law" because if "the entire contract is void *ab initio* because of fraud, the parties have not agreed to arbitrate any controversy." Rosenthal v. Great W. Fin. Sec. Corp., 14 Cal. 4th 394, 416 (1996); see also DKS, Inc. v. Corp. Bus. Sols., Inc., 675 F. App'x 738, 739 (9th Cir. 2017) (affirming denial of motion to compel arbitration based on allegation that the contract was void due to fraud in the execution.).

Here, Plaintiff believed, and was led to believe, that the contemplated Agreement was between herself and Mr. Trump to settle possible claims between the two of them. [Clifford Decl., ¶¶5-6.] This understanding was, as discussed above, reasonable based on the language of the document itself and the promises and consideration offered therein. Indeed, the Agreement itself specifically represents that Mr. Trump makes certain warranties and promises, and provides releases to Plaintiff, which would necessarily imply that he is a party to the Agreement.

To the extent that EC now seeks to seize upon the ambiguity of the use of "and/or" to allow Mr. Trump to evade association with the contemplated Settlement Agreement, the Agreement was plainly drafted "in such a way as to conceal from [Plaintiff] the true nature" of the document and the fact that EC either had no authority to bind Mr. Trump or that Mr. Trump was not in fact releasing any potential claims against Plaintiff. Duick, 198 Cal. App. 4th at 1322. Consequently, a fraud was committed against Plaintiff and the alleged agreement is void along with any arbitration clause contained therein. Id.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court stay consideration of EC's Motion to Compel Arbitration (to which Mr. Trump "consents") to allow the completion of discovery and the FAA section 4 jury trial. In the alternative, Plaintiff requests the Court deny EC's motion (in which Mr. Trump joins) in its entirety.

Dated: April 9, 2018

AVENATTI & ASSOCIATES, APC
By: /s/ Michael J. Avenatti
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Ahmed Ibrahim
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a.k.a. Stormy Daniels a.k.a. Peggy Peterson

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a.k.a. Stormy Daniels a.k.a. Peggy Peterson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

vs.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive

Defendants.

CASE NO.: 2:18-cv-02217-SJO-FFM

DECLARATION OF STEPHANIE CLIFFORD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANTS, LLC'S MOTION TO COMPEL ARBITRATION

Hearing Date: April 30, 2018
Hearing Time: 10:00 a.m.
Location: 350 West 1st Street
Courtroom 10C
Los Angeles, CA 90012

DECLARATION OF STEPHANIE CLIFFORD

I, STEPHANIE CLIFFORD (aka Stormy Daniels), declare as follows:

1. I am the plaintiff in this action. I am over the age of 18 years. I am submitting this declaration in support of Plaintiff's Opposition to Defendant Essential Consultants, LLC's Motion to Compel Arbitration. I have personal knowledge of the information stated herein and if called to testify to the same would and could do so.

2. On or about October 28, 2016 I signed the "Confidential Settlement Agreement and Mutual Release" and "Side Letter Agreement."

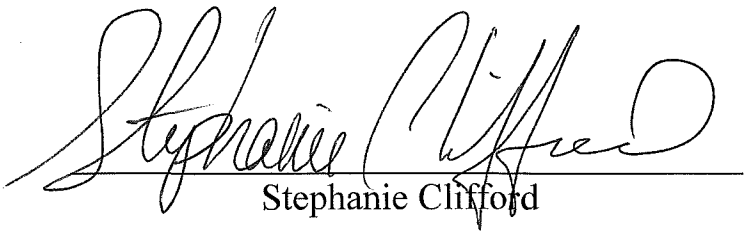
3. Attached hereto as Exhibit 1 is a true and correct copy of the document titled "Confidential Settlement Agreement and Mutual Release," which I will refer to as the "Settlement Agreement."

4. Attached hereto as Exhibit 2 is a true and correct copy of the document titled "Side Letter Agreement," which was Exhibit A to the Settlement Agreement.

5. When I signed the Settlement Agreement and Side Letter Agreement, it was my understanding that Donald Trump was a party to the Settlement Agreement and that he was going to sign both documents. In fact, that understanding continued even after I signed the documents. Until approximately February of this year, I was unaware that Mr. Trump did not sign the Settlement Agreement, and I had no idea that Mr. Trump would later claim that he was not a party to the Settlement Agreement. Had I known that Mr. Trump was not going to sign both documents or that he was going to later claim that he was not a party to the Settlement Agreement, I would have never signed either document nor would I have accepted the $130,000 payment.

6. It was never my understanding that I was entering into a contract solely with Essential Consultants, LLC and not with Mr. Trump. Such an agreement would not have made any sense for many reasons, including, the fact that the Settlement Agreement was supposed to deal with the settlement of possible claims and litigation between me and Mr. Trump (not between me and Essential Consultants).

I declare, under penalty of perjury and under the laws of the United States of America, that the foregoing is true and correct. I have executed this declaration at Los Angeles, California on April 8, 2018.



Stephanie Clifford

EXHIBIT 1

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE; ASSIGNMENT OF COPYRIGHT AND NON-DISPARAGMENT AGREEMENT

1.0 THE PARTIES

1.1 This Settlement Agreement and Mutual Release (hereinafter, this "Agreement") is made and deemed effective as of the 26 day of October, 2016, by and between "**EC, LLC**" and/or **DAVID DENNISON**, (DD), on the one part, and **PEGGY PETERSON**, (PP), on the other part. ("EC, LLC," "DD" and "PP" are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as "EXHIBIT A") This Agreement is entered into with reference to the facts and circumstances contained in the following recitals.

2.0 RECITALS

2.1 Prior to entering into this Agreement, PP came into possession of certain "Confidential Information" pertaining to DD, as more fully defined below, only some of which is in tangible form, which includes, but is not limited to information, certain still images and/or text messages which were authored by or relate to DD (collectively the "Property", each as more fully defined below but which all are included and attached hereto as Exhibit "1" to the Side Letter Agreement).

2.2 (a) PP claims that she has been damaged by DD's alleged actions against her, including but not limited to tort claims proximately causing injury to her person and other related claims. DD denies all such claims. (Hereinafter "PP Claims").

(b) DD claims that he has been damaged by PP's alleged actions against him, including but not limited to the alleged threatened selling, transferring, licensing, publicly disseminating and/or exploiting the Images and/or Property and/or other Confidential Information relating to DD, all without the knowledge, consent or authorization of DD. PP denies all such claims. (Hereinafter "DD Claims").

(c) The PP Claims and the DD Claims are hereinafter collectively referred to as "The Released Claims."

2.3 DD desires to acquire, and PP desires to sell, transfer and turn-over to DD, any and all tangible copies of the Property and any and all physical and intellectual property rights in and to all of the Property. As a condition of DD releasing any claims against PP related to this matter, PP agrees to sell and transfer to DD all and each of her rights in and to such Property. PP agrees to deliver each and every existing copy of all tangible Property to DD (and permanently delete any electronic copies that can not be transferred), and agrees that she shall not possess, nor directly nor indirectly disclose convey, transfer or assign Property or any Confidential Information to any Third Party, as more fully provided herein.

2.4 It is the intention of the Parties that Confidential Information, as defined herein, shall remain confidential as expressly provided hereinbelow. The Parties expressly acknowledge, agree and understand that the Confidentiality provisions herein and the

PP

EC
DD

representations and warranties made by PP herein and the execution by her of the Assignment & Transfer of Copyright are at the essence of this Settlement Agreement and are a material inducement to DD's entry into this Agreement, absent which DD would not enter into this Agreement. DD expects and requires that PP never communicate with him or his family for any reason whatsoever.

2.5 The Parties wish to avoid the time, expense, and inconvenience of potential litigation, and to resolve any and all disputes and potential legal claims which exist or may exist between them, as of the date of this Agreement including but not limited to the PP Claims and/or the DD Claims. The Parties agree that the claims released include but are not limited to DD's Claims against PP as relates to PP having allowed, whether intentionally, unintentionally or negligently, anyone else other than those listed in section 4.2 herein below to become aware of the existence of and content of the Property, to have gained possession of the Property, and to PP's having allegedly engaged in efforts to disclose, disseminate and/or commercially exploit the Images and/or Property and/or Confidential Information, and any harm suffered by DD therefrom. The Parties agree that the claims released include but are not limited to PP's Claims against DD as relates to DD having allowed, whether intentionally, unintentionally or negligently, anyone else to have interfered with PP's right to privacy or any other right that PP may possess.

2.6 These Recitals are essential, integral and material terms of this Agreement, and this Agreement shall be construed with respect thereto. The Parties enter into this Agreement in consideration of the promises, covenants and conditions set forth herein, and for good and valuable consideration, the receipt of which is hereby acknowledged. It is an essential element of this Settlement Agreement that the Parties shall never directly or indirectly communicate with each other or attempt to contact their respective families. This matter, the existence of this Settlement Agreement and its terms are strictly confidential.

NOW, THEREFORE, the Parties adopt the foregoing recitals as a statement of their intent and in consideration of the promises and covenants contained herein, and further agree as follows:

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PP

DD

3.0 SETTLEMENT TERMS

3.0.1.1 EC, LLC SHALL PAY TO PP $130,000.00 U.S.D. AS FOLLOWS:

3.0.1.1.1 $130,000.00 USD shall be wired into PP's Attorney's Attorney Client Trust Account on or before 1600 hrs. PST on 10/27/16.(Hereinafter "Gross Settlement Amount"). PP's Attorney's Wiring Instructions are:

Bank Name:	City National Bank
Bank Address:	8641 Wilshire Blvd. Beverly Hills, CA 90211
ABA Routing No:	122016066
Beneficiary Account Name:	Keith M. Davidson & Associates, PLC, Attorney Client Trust Account
Beneficiary Account No:	600106201
Beneficiary Address:	8383 Wilshire Blvd. Suite 510 Beverly Hills, CA 90211
SWIFT Code:	CINA US6L

3.0.1.1.2 Keith M. Davidson, Esq. shall receive the Gross Settlement Amount in Trust. No portion of the Gross Settlement Amount shall be disbursed by Attorney for PP unless and until PP executes all required Settlement Documents.

3.1 Undertakings & Obligations by PP. PP will do each of the following by 11/01/16:

(a) PP shall execute this Agreement and return a signed copy to DD:

(b) PP shall transfer and/or assign any and all rights in and to the Property to DD (as set forth hereinbelow), and execute an Assignment & Transfer of Copyright, in the form attached hereto, and return a signed copy of same to DD's counsel;

(c) PP shall deliver to DD every existing copy of all tangible Property. PP shall completely divest herself of any and all artistic media, impressions, paintings, video images, still images, e-mail messages, text messages, Instagram message, facebook posting or any other type of creation by DD. PP shall transfer all physical, ownership and intellectual property rights to DD;

(1) PP shall deliver to DD any and all non-privileged correspondence concerning or related to DD between PP and any 3rd party.

(d) PP shall not, at any time from the date of this Agreement forward, directly or indirectly disclose or disseminate any of the Property or any Confidential Information (including confirmation of the fact that it exists or ever existed, and/or confirming any rumors as to any such existence) to any third party, as more fully provided herein.

(e) PP shall provide to DD (to the extent not already done so and set forth in paragraph 4.2 hereinbelow), summary details disclosing to whom PP (or anyone else on PP's behalf) disclosed, displayed to, disseminated, transferred to, provided a copy to, and/or

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distributed, sold, licensed or otherwise sought to have commercially exploit, the Images and/or Property and/or any Confidential Information.

(f) PP shall provide to DD's counsel the names and contact information of each and any persons or entities who: (1) PP has provided to or who otherwise obtained possession of the original and/or any copies of any of the Images and/or any Property, if any, (ii) to whom PP has scanned the Images and/or any Property at any time, and (iii) to whom PP knows had, has or may potentially have possession of a copy of the Images and/or any Property at any time, including but not limited to the present time (and specify with detail to which of the referenced categories (i.e., possession, shown, past, present, etc.) any name corresponds, the name so relates).

(g) PP shall provide to DD's counsel copies of any agreements and/or other documentation in PP's possession, custody or control, if any, regarding (e) and/or (f) above, that evidences who has or may have been provided a copy of any of the Property.

3.2 Transfer of Property Rights to DD. In further consideration for the promises, covenants and consideration herein, PP hereby transfers and conveys to DD all of PP's respective rights, title and interest in and to the Property, and any and all physical and intellectual property rights related thereto. Without limiting the generality of the foregoing, PP does hereby sell, assign, and transfer to DD, his successors and assigns, throughout the universe in perpetuity, all of PP's entire right, title, and interest (including, without limitation, all copyrights and all extensions and renewals of copyrights), of whatever kind or nature in and to the Property, without reservation, condition or limitation, whether or not such rights are now known, recognized or contemplated, and the complete, unconditional and unencumbered ownership and all possessory interest and rights in and to the Property, which includes, but is not limited to the originals, copies, negatives, prints, positive, proof sheets, CD-roms, DVD-roms, duplicates, outtake and the results of any other means of exhibiting, reproducing, storing, recording and/or archiving any of the Property or related material, together with all rights of action and claims for damages and benefits arising because of any infringement of the copyright to the Property, and assigns and releases to DD any and all other proprietary rights and usage rights PP may own or hold in the copyright and/or Property, or any other right in or to the Property. PP assigns and transfers to DD all of the rights herein granted, without reservation, condition or limitation, and agrees that PP reserves no right of any kind, nature or description related to the Property and contents therein. Notwithstanding the foregoing, if any of the rights herein granted are subject to termination under section 203 of the Copyright Act, or any similar provisions of the Act or subsequent amendments thereof, PP hereby agrees to re-grant such rights to DD immediately upon such termination. All rights granted herein or agreed to be granted hereunder shall vest in DD immediately and shall remain vested in perpetuity. DD shall have the right to freely assign, sell, transfer or destroy the Property as he desires. DD shall have the right to register sole copyright in and to any of the Property with the US Copyright Office. DD shall also have the right, in respect to the Property, to add to, subtract from, change, arrange, revise, adapt, into any and all form of expression or tangible communication, and the right to combine any of the Property with any other works of any kind and/or to create derivative works with any of the Property, and to do with it as she so deems. To the fullest extent allowable under the applicable law, PP shall irrevocably waive and assign to DD any of PP's so-called "moral rights" or "droit moral" (laws for the protection of copyrights outside of the United States), if any, or any similar rights under any principles of law which PP may now have or later have in the Property. With respect to and in furtherance of the above, PP agrees to and shall execute and deliver to DD an

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"Assignment & Transfer of Copyright", in the form attached hereto as Exhibit "B". For greater certainty the foregoing assignment shall be applicable worldwide.

3.2.1 Notwithstanding the foregoing paragraph 3.2, and without in anyway limiting or diminishing from the full transfer and assignment of rights therein without reservation, the Parties understand the purpose of the transfer of rights is to provide DD the fullest possible ability and remedies to prevent and protect against any publication and/or dissemination of the Property.

3.3 Delivery of the Property to DD. Concurrently upon execution of this Agreement, PP, as applicable, shall deliver to DD, by delivery to his counsel herein, all of the Property which is embodied in tangible form (all originals and duplicates), whether documents, canvasses, paper art, digital copies, letters, prints, electronic data, films, tapes, CD-Roms, DVD-Roms, Images recording tapes, photographs, negatives, originals, duplicates, contact sheets, audio recordings, Images recordings, magnetic data, computerized data, digital recordings, or other recorded medium or any other format of embodying information or data. Without limiting the generality of the foregoing, such tangible Property shall include all documents as defined by California Evidence Code §250 which contain any of the Property. PP represents and warrants that the materials delivered pursuant to the terms of this Paragraph 3.3 comprise the totality of all existing originals and duplicates of all Property in any tangible form, whether within their possession, custody or control, and including otherwise (and that PP knows of no other copies or possible or potential copies not in PP's possession and control and delivered pursuant to this paragraph), and that upon such delivery to DD, PP shall not maintain possession, custody or control of any copy of all or any portion of any tangible Property. The Property Delivered under this Paragraph shall become Exhibit 1 to the Side Letter Agreement. For avoidance of any doubt, PP, nor her attorney are entitled to retain possession of said Property after execution of this Agreement. The retention of said Property by PP is a material breach of this agreement.

3.3.1 This Agreement is conditioned on PP's compliance with each and every term of the Settlement Agreement including Paragraph 3.3 and the personal verification by DD or his attorney of the Images and that the Images are comprised of and captures the content previously represented to his counsel to exist and be captured therein (i.e., text messages between PP and DD)), all of which terms are essential and material.

4.0 CONFIDENTIALITY & REPRESENTATIONS & WARRANTIES.

4.1 Definition of Confidential Information. "Confidential Information" means and includes each and all of the following:

(a) All *intangible* information pertaining to DD and/or his family, (including but not limited to his children or any alleged children or any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct or related matters),and/or friends learned, obtained, or acquired by PP, including without limitation information contained in letters, e-mails, text messages, agreements, documents, audio or Images recordings, electronic data, and photographs;

(b) All *intangible* information pertaining to the existence and content of the Property;

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(c) All *intangible* private information (*i.e.*, information not generally available to and/or known by the general public) relating and/or pertaining to DD, including without limitation DD's business information, familial information, any of his alleged sexual partners, alleged sexual actions or alleged sexual conduct, related matters or paternity information, legal matters, contractual information, personal information, private social life, lifestyle, private conduct, (all information/items in 4.1 "(a)", "(b)" and "(c)" are sometimes collectively referred to as, "Intangible Confidential Information");

(d) All *tangible* materials of any kind containing information pertaining to DD learned, obtained, participated or acquired by PP, including without limitation letters, agreements, documents, audio or Images recordings, electronic data, and photographs, canvas art, paper art, or art in any other form on any media. The Images and Photos and all information/items in 4.1(d) are collectively referred to as, the "Property" and/or the "Tangible Confidential Information");

4.2 PP's Representations & Warranties Regarding Prior Disclosures of Tangible Confidential Information. PP represents and warrants that prior to entry into this Agreement, PP has directly or indirectly disclosed any *Tangible* an/or Intangible Confidential Information (i.e., any of the Property), to any Third Party, including without limitation disclosure or indirect disclosure of the content of such Confidential Information in tangible form, other than the following persons or entities to whom PP has made such prior disclosures (herein "PP Disclosed Individuals/Entities"):

a) Mike Mosney
b) Angel Ryan
c) Gina Rodriguez
d) Keith Munyan
e) _____
f) _____
g) _____
h) _____
i) _____

PP shall not be responsible for any subsequent public disclosure of any of the Confidential Information (a) attributable directly to each of them; and/or (b) not disclosed hereinabove as a previously disclosed PP Disclosed Individuals/Entities, and any such disclosure shall be deemed a breach of this Agreement by PP. For greater clarity, PP must not induce, promote or actively inspire anyone to disclose Confidential Information.

PP _____ Page 5 DD

4.3 Representations & Warranties and Agreements.

(a) Representations & Warranties and Agreements By DD. The following agreements, warranties and representations are made by DD as material inducements to PP to enter into this Agreement, and each Party acknowledges that she/he is executing this Agreement in reliance thereon:

(b) DD warrants and represents that, as relates to or in connection with any of PP's attempts to sell, exploit and/or disseminate the Property prior to the date of this Agreement, DD and his counsel will refrain (i) from pursuing any civil action against PP, and/or (ii) absent a direct inquiry from law enforcement, from disclosing PP's name to the authorities. Notwithstanding the foregoing, if DD is informed that or should or if it is believed that either of PP has possession, custody and/or control of any of the Property after the date of this Agreement and/or transferred any copies to any Third Party, and/or it is believed that any of PP, whether directly or indirectly, intends the release, use, display, dissemination, disclosure or exploitation, whether actual, threatened or rumored, of any for the Property, then DD and his counsel shall be entitled to, at DD's sole discretion, (i) contact the respective member of PP, including with legal demands and related statements of liability and legal action, and/or (ii) advance a civil action against the respective member of PP, and/or (iii) disclose any of PP's name to the authorities.

4.3.2 Representations & Warranties and Agreements By PP. The following agreements, warranties and representations are made by PP as material inducements to DD to enter into this Agreement, without which DD would not enter into this Agreement and without which DD would not agree to pay any monies whatsoever hereunder, and with the express acknowledgment that DD is executing this Agreement in reliance on the agreements, warranties, and representations herein which are at the essence of this Agreement, including, the following:

(a) PP agrees and warrants and represents that PP will permanently cease and desist from any efforts to and/or attempting to and/or engaging in and/or arranging the use, License, distribution, dissemination or sale of any of the Confidential Information and/or Property, including any Tangible and/or Intangible Confidential information created by or relating to DD;

(b) PP agrees and warrants and represents that PP will permanently cease and desist from any posting or dissemination or display of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including the Images (including, but not limited to, to any form media outlet, on any blog or posting board, on the Internet, or otherwise);

(c) PP agrees and warrants and represents that PP will permanently cease and desist from using or disseminating or disclosing any information to any Third Persons (including, but not limited to, to any media outlet, on any blog or posting board, on the Internet, or otherwise) about any details of or as to the contents of the Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD and/or Property, including any Text Messages, and/or as to any other personal details of or about or pertaining to DD and/or his family and/or friends and/or social interactions;

(d) PP agrees and warrants and represents that PP will permanently cease and desist from and will not, at any time, make any use of or reference to the name, image or likeness

of DD in any manner whatsoever, including without limitation, through any print or electronic media of any kind or nature for any purpose, including, but not limited to, on any websites;

(e) PP agrees and warrants and represents that any and all existing copies of the Images, Text Messages and any Property (other than as expressly specified in paragraphs 3.2 and 3.3 herein) have been turned over and provided to counsel; and PP further warrants and represents that the only copy of the Images and Property that has ever existed, at any time, has been turned over to DD's counsel pursuant to this Agreement, and the Images and any Property has never been transferred to or existed in any other form, including not in electronic form, nor on any computer, or electronic device and other storage media;

(f) PP warrants and represents that PP has not provided any copies, whether hard-copy or electronic copies, of the Property to anyone other than as specified in paragraph 4.2 herein);

(g) PP warrants and represents that the information PP is obligated to provide pursuant to the terms herein will be complete and truthful;

(h) PP warrants and represents that PP has not omitted or withheld any information that PP is obligated to provide pursuant to the terms herein;

(i) PP warrants and represents that PP has not contracted to earn and/or collect any monies as compensation from the sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information, Tangible and/or Intangible Confidential information created by or relating to DD nor any monies as compensation or an advance for any efforts to sell, license and/or any other exploitation of the Images and/or any Property and/or any Confidential Information or any Tangible and/or Intangible Confidential information created by or relating to DD;

(j) PP warrants and represents that PP has not assigned nor transferred, either in whole or in part, any purported rights in or to the Images and/or any Property to any other person or entity, other than to DD pursuant to this Agreement.

4.3.3 Agreement By PP Not to Disclose/Use Confidential Information. Tangible and/or Intangible Confidential information created by or relating to DD. As further material inducements for DD to enter into this Agreement, PP agrees, represents and warrants that she shall not directly or indirectly, verbally or otherwise, publish, disseminate, disclose, post or cause to be published, disseminated, disclosed, or posted (herein "disclose"), any Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any person, group, firm or entity whatsoever, including, but not limited to, family members, friends, associates, journalists, media organizations, newspapers, magazines, publications, television or radio stations, publishers, databases, blogs, websites, posting boards, and any other enterprise involved in the print, wire or electronic media, including individuals working directly or indirectly for, or on behalf of, any of said persons or entities ("Third Parties" and/or Third Party"). In no event shall PP be relieved of such party's confidentiality obligations herein by virtue of any breach or alleged breach of this Agreement. In no event shall any dispute in connection with this Agreement relieve PP of her confidentiality obligations arising pursuant to this Agreement, and any disclosure of Confidential Information and/or Tangible and/or Intangible Confidential information created by or relating to DD in connection with any such

proceeding or dispute shall constitute a breach of this Agreement. PP shall use their best efforts to prevent the unauthorized disclosure of Confidential Information in connection with any such proceeding or dispute.

4.3.4 Any direct or indirect disclosure of Confidential Information or Tangible and/or Intangible Confidential information created by or relating to DD to any Third Party by PP and/or any of her representatives, heirs, agents, children, family members, relatives , confidents, advisors, employees, attorneys, transferors, transferees, successors or assigns, and/or any friend of any of PP (collectively "PP Group"), after the date of this Agreement, shall be deemed a disclosure by PP in breach of the terms of this Agreement, entitling the non-breaching Party to all rights and remedies set forth herein.

4.3.5 PP separately and further warrants and represent that, prior to entering into this Agreement, that she has not written, published, caused to be published, or authorized the writing, publication, broadcast, transmission or public dissemination of any interview, article, essay, book, memoir, story, photograph, film, script, Images tape, biography, documentary, whether written, oral, digital or visual, whether fictionalized or not, about the opposing Party to this Agreement or their family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral, which discloses any Confidential Information and/or which includes any description or depiction of any kind whatsoever whether fictionalized or not, about any Party to this agreement or their respective family, other than as expressly disclosed by PP hereto in writing and as set forth herein in paragraph 4.2 above.

4.3.6 Agreement By PP Not to Disparage DD. PP hereby irrevocably agrees and covenants that she shall not, directly or indirectly, publicly disparage DD, nor write, publish, cause to be published, or authorize, consult about or with or otherwise be involved in the writing, publication, broadcast, transmission or dissemination of any book, memoir, letter, story, photograph, film, script, Images, interview, article, essay, biography, diary, journal, documentary, or other written, oral, digital or visual account or description or depiction of any kind whatsoever whether fictionalized or not, about DD or his family, whether truthful, laudatory, defamatory, disparaging, deprecating or neutral. PP further warrants and represents that PP has not and will not enter into any written or oral agreement with any third party purportedly requiring or obligating PP to do so. Fore greater clarity PP will never discuss with anyone the contents of this Settlement Agreement, nor will she voluntarily confirm the existence of this Settlement Agreement.

4.4 Disclosure Of Confidential Information Is Prohibited: The Parties to this Agreement hereby recognize and agree that substantial effort and expense have been dedicated to limit the efforts of the press, other media, and the public to learn of personal and business affairs involving DD. PP further acknowledges that any future disclosure of Confidential Information to any Third Party would constitute a serious and material breach of the terms of this Agreement, and shall constitute a breach of trust and confidence, invasion of privacy, and a misappropriation of exclusive property rights, and may also constitute fraud and deceit. Some of the Confidential Information may also constitute and include proprietary business information and trade secrets which have independent economic value. The Parties hereto acknowledge that any unauthorized use, dissemination or disclosure of Confidential Information, or the fabrication and dissemination of false and/or misleading information, about DD would result in irreparable injury to him, and would be injurious to a reasonable person, and/or would constitute an injurious violation of the right of privacy or publicity, and/or would be injurious to his business,

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profession, person, family and/or career. The Parties acknowledge that substantial and valuable property rights and other proprietary interests in the exclusive possession, ownership and use of Confidential Information, and recognizes and acknowledges that such Confidential Information is a proprietary, valuable, special and unique asset which belongs to DD and to which the PP has no claim of ownership or other interest.

4.4.1 Disclosures Permitted By PP. Notwithstanding the foregoing, PP shall only be permitted to disclose Confidential Information to another person or entity only if compelled to do so by valid legal process, including without limitation a subpoena duces tecum or similar legal compulsion, provided that PP shall not make any such disclosure unless PP has first provided DD with notice of such order or legal process not less than ten (10) days in advance of the required date of disclosure pursuant to the Written Notice provisions set forth hereinbelow, providing DD with an opportunity to intervene and with full and complete cooperation should she choose to oppose such disclosure. PP agrees that if the valid legal process can be stopped by her consent or at her behest then PP shall agree to use best efforts to avoid the disclosure of the Confidential Information.

5.0 REMEDIES

5.1 DD's Remedies for Breach of Agreement. Each breach or threatened breach (*e.g.*, conduct by PP reflecting that said person intends to breach the Agreement), including without limitation by breach of any representation or warranty, by failing to deliver to DD all tangible Property as required, by the disclosure or threatened disclosure of any Confidential Information to any Third Party by PP (herein "Prohibited Communication"), or otherwise, shall render PP liable to DD for any and all damages and injuries incurred as a result thereof, including but not limited to the following, all of which rights and remedies shall be cumulative:

5.1.1 Disgorgement of Monies: In the event an Arbitrator determines there has been a breach or threatened breach of this Agreement by PP, PP shall be obligated to account to, and to disgorge and turn over to DD any and all monies, profits, or other consideration, or benefits, which PP, or anyone on PP's behalf or at PP's direction, directly or indirectly derive from any disclosure or exploitation of any of the Confidential Information; and

5.1.2 Liquidated Damages: PP agrees that any breach or violation of this Settlement Agreement by either of PP individually or the PP Group by his/her/their unauthorized disclosure of any of the Confidential Information (as defined in paragraphs 4.1(a), (b), (c), and (d)) to any Third Party, and/or any unauthorized exploitation or prohibited use of the same, and/or by the breach of and/or by any false representations and warranties set forth in this Agreement, and/or any public disparagement of DD by PP (collectively, the "LD Breach Terms"), shall result in substantial damages and injury to DD, the precise amount of which would be extremely difficult or impracticable to determine, even after the Parties have made a reasonable endeavor to estimate fair compensation for such potential losses and damages to DD. Therefore, in addition to disgorgement of the full amount of all monies or other consideration pursuant to paragraph 5.1.2, in the event an Arbitrator determines there has been a breach of the LD Breach Terms of this Agreement by PP individually or the PP Group, PP shall also be obligated to pay, and agree to pay to DD the sum of One-Million Dollars ($1,000,000.00 as a reasonable and fair amount of liquidated damages to compensate DD for any loss or damage

resulting from each breach, it being understood that the Liquidated damages calculation is on a per item basis. The Parties agree that such sum bears a reasonable and proximate relationship to the actual damages which DD will or might suffer from each breach of the terms of this Agreement and that this amount is not a penalty. Alternatively, at DD's sole discretion, DD may seek to recover actual damages proximately caused by each such breach, according to proof. Any other breaches not a LD Breach Terms shall be subject to a claim for actual damages according to proof; furthermore, any monies held in Trust by PP's Attorney shall be frozen and shall not be disbursed to PP until the Arbitrator finally resolves the allegation of Breach.

5.1.3 Injunctive Relief. PP acknowledges and agrees that any unauthorized disclosure to Third Parties of any Confidential Information will cause irreparable harm to DD, which damages and injuries will most likely not be measurable or susceptible to calculation. PP further acknowledges and agrees that any breach or threatened breach of this Agreement due to the unauthorized disclosure or threatened disclosure by PP to Third Parties, of any Confidential Information shall entitle DD to immediately obtain, either from the Arbitrator and/ or from any other court of competent jurisdiction, an *ex parte* issuance of a restraining order and preliminary injunction or other similar relief (herein "Injunctive Relief") without advance notice to any of PP, preventing the disclosure or any further disclosure of Confidential Information protected by the terms hereof, pending the decision of the Arbitrator or Court. The Parties further acknowledge and agree that in connection with any such proceeding, any Party may obtain from the Court or Arbitrator on an ex parte application or noticed motion without opposition, an order sealing the file in any such proceeding, and the Parties stipulate to the factual and legal basis for issuance of an order sealing the file in any such proceedings. The rights and remedies set forth in this Injunctive Relief Section are without prejudice to any other rights or remedies, legal or equitable, that the Parties may have as a result of any breach of this Agreement.

5.2 Dispute Resolution. In recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution which involves binding confidential arbitration of all disputes which may arise between them, it is their intention and agreement that any and all claims or controversies arising between DD on the one hand, and PP on the other hand, shall be resolved by binding confidential Arbitration to the greatest extent permitted by law. Arbitration shall take place before JAMS ENDISPUTE ("JAMS") pursuant to JAMS Comprehensive Arbitration Rules and Procedures (including Interim Measures) ("JAMS Rules") and the law selected by DD, (such selection shall be limited to either, California, Nevada or Arizona), or before ACTION DISPUTE RESOLUTION SERVICES ("ADRS") pursuant to the ADRS Rules (including Interim Measures) and the law selected by DD (whichever the claimant elects upon filing an arbitration), in a the location selected by DD, and will be heard and decided by a sole, neutral arbitrator ("Arbitrator") selected either by agreement of the Parties, or if the Parties are unable to agree, then selected under the Rules of the selected arbitration service. The costs and fees associated with any Arbitrator and/or Arbitration service shall be split equally among the parties to any such dispute. The Parties shall have the right to conduct discovery in accordance with the California Code of Civil Procedure Section 1283.05 *et. seq.* or any similar provision existing in the jurisdiction selected by DD and the written discovery requests and results of discovery shall be deemed to constitute Confidential Information. The Arbitrator shall have the right to impose all legal and equitable remedies that would be available to any Party before any governmental dispute resolution forum or court of competent jurisdiction, including without limitation temporary, preliminary and permanent injunctive relief, compensatory damages, liquidated damages, accounting, disgorgement, specific performance, attorneys fees and costs,

and punitive damages. It is understood and agreed that each of the Parties shall bear his/its own attorneys' fees, expert fees, consulting fees, and other litigation costs (if any) ordinarily associated with legal proceedings taking place in a judicial forum, subject to the Arbitrator's reassessment in favor of the prevailing party to the extent permitted by law. **Each of the Parties understands, acknowledges and agrees that by agreeing to arbitration as provided herein, each of the Parties is giving up any right that he/she/it may have to a trial by judge or jury with regard to the matters which are required to be submitted to mandatory and binding Arbitration pursuant to the terms hereof. Each of the Parties further understands, acknowledges and agrees that there is no right to an appeal or a review of an Arbitrator's award as there would be a right of appeal or review of a judge or jury's decision.**

6.0 MUTUAL RELEASES

6.1 Except for the rights and obligations of the Parties set forth in this Agreement, DD, for himself, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever releases and discharges PP, individually, and all of PP's heirs, and PP's attorneys, and each of them ("PP Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the effective date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Matter, or which could have been asserted in any other legal action or proceeding, except as may be provided herein (the "DD Released Claims").

6.2 Except for the rights and obligations of the Parties set forth in this Agreement, PP, for herself, and her representatives, agents, assigns, heirs, partners, companies, affiliated companies, employees, insurers and attorneys, absolutely and forever release and discharge DD, individually, and each of his representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them ("DD Releasees"), of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs (including attorney's fees), expenses, liens, actions and causes of actions of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the date of this Agreement, including without limitation any and all matters, facts, claims and/or defenses asserted or which could have been asserted in the Action, or which could have been asserted in any other legal action or proceeding (the "PP Released Claims").

6.3 The subject matter referred to in paragraphs 6.1 and 6.2, above (i.e., the DD Released Claims and PP Released Claims), are collectively referred to as the "Released Matters."

6.4 The Parties hereto, and each of them, hereby warrant, represent and agree that each of them is fully aware of §1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

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The Parties, and each of them, voluntarily waive the provisions of California Civil Code § 1542, and any other similar federal and state law as to any and all claims, demands, causes of action, or charges of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected.

6.4.1 For avoidance of any doubt, by virtue of this Settlement and this Settlement Agreement, the parties hereby waive any unknown claims against each other individually, and each of their representatives, agents, assigns, heirs, partners, companies, affiliated companies, subsidiaries, employees, attorneys, successors, insurers, and each of them.

6.5 Each of the Parties hereto acknowledges and agrees that this Agreement constitutes a settlement and compromise of claims and defenses in dispute, and shall not be construed in any fashion as an admission of liability by any party hereto.

7.0 CONFIDENTIALITY OF THIS AGREEMENT

7.1 The Parties, respectively, shall not to disclose the terms of this Agreement, either directly or indirectly, to the media or to anyone else other than their respective attorneys and representatives and/or as may be required by law. PP may not comment or make any press releases or otherwise discuss the resolution of the subject of this Agreement.

8.0 MISCELLANEOUS TERMS

8.1 Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the Released Matters hereof between the Parties hereto and supersedes any and all prior negotiations and proposed agreement and/or agreements, written and/or oral, between the Parties. Each of the Parties hereto acknowledges that neither they, nor any other party, nor any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, expressed or implied, written or oral, which is not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement, and each of the Parties hereto acknowledges that she/he has not executed this Agreement in reliance on any promise, representation, and/or warranty not contained herein. This Agreement shall be binding on and inure to the benefit of the Parties, the Releasees, and each of their respective successors and assigns and designees.

8.2 DD's Election of either California, Nevada or Arizona Law & Venue. This Agreement and any dispute or controversy relating to this Agreement, shall in all respects be construed, interpreted, enforced and governed by the laws of the State of California, Arizona or Nevada at DD's election. Attorneys' Fees in the case of a Dispute. In the event of any dispute, action, proceeding or controversy regarding the existence, validity, interpretation, performance, enforcement, claimed breach or threatened breach of this Agreement, the prevailing party in any resulting arbitration proceeding and/or court proceeding shall be entitled to recover as an element of such Party's costs of suit, and not as damages, all attorneys' fees, costs and expenses incurred or sustained by such prevailing Party in connection with such action, including, without limitation, legal fees and costs.

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8.3 Attorney Fees and Costs in Formation of this Agreement. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with the creation this Settlement Agreement.

8.4 Waivers; Modification. This Agreement cannot be modified or changed except by written instrument signed by all of the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.5 Scope of Provisions/Severability/Headings. None of the Parties hereto shall be deemed to be the drafter of this Agreement, but it shall be deemed that this Agreement was jointly drafted by each of the Parties hereto. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party herein, but rather construing the terms of this Agreement as a whole according to their fair meaning. In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity or enforceability of the remaining provisions thereof, all of which shall remain in full force and effect. Notwithstanding the foregoing, if a provision is deemed to be illegal the Parties agree to waive any defense on said grounds. In the event that such any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. The captions appearing at the commencement of certain paragraphs herein are descriptive only and for convenience of reference. Should there be any conflict between any such caption or heading and the paragraph at the caption of which it appears, the paragraph, and not such caption, shall control and govern.

8.6 Advice of Counsel and Understanding of this Binding Agreement. Each of the Parties represents, acknowledges, and declares that she/he has received the advice of legal counsel of his/her own choosing regarding the form, substance, and effect of this Agreement. Each of the Parties represents, acknowledges, and declares that she/he has carefully read this Agreement, knows and understands this Agreement's contents, and signs this Agreement freely, voluntarily, and without either coercion or duress. Each of the Parties represents and warrants that she/he is fully competent to manage his/her business affairs, and that she/he has full power and authority to execute this Agreement, and to do any and all of the things reasonably required hereunder; and that this Agreement, when signed by all Parties, is a valid and binding agreement, enforceable in accordance with its terms.

8.7 Further Execution. In order to carry out the terms and conditions of this Agreement, PP agrees to promptly execute, upon reasonable request, any and all documents and instruments necessary to effectuate the terms of this Agreement.

8.8 Notice Provisions. Any notice, demand or request that one Party desires, or is required to give (including service of any subpoena, court pleadings, summons and/or complaint), to the other Party must be promptly communicated to the other Party by using their respective contact information below, by both (i) e-mail or facsimile; *and* (ii) telephone. Either Party may change his or her contact information by notifying the other Party of said change(s) pursuant to the applicable terms herein.

PP

DD

8.8.1 To DD as follows:

ESSENTIAL CONSULTANTS, LLC
C/O: MICHAEL COHEN, ESQ.
502 PARK AVENUE 4TH A
NEW YORK, NY 10022

8.8.2 To PP, as follows:

C/O KEITH M. DAVIDSON, ESQ.
8383 Wilshire Boulevard, Suite 510
Beverly Hills, CA 90211
tel. 323.658.5444
fax. 323-658-5444
e-mail: keith@KmdLaw.com

8.9 This Agreement may be executed with one or more separate counterparts, each of which, when so executed shall be deemed to be an original and, together shall constitute and be one and the same instrument. Any executed copies or signed counterparts of this Agreement, the Declaration, and any other documentation may be executed by scanned/printed pdf copies of signatures and/or facsimile signatures, which shall be deemed to have the same force and effect as if they were original signatures.

IN WITNESS WHEREOF, by their signatures below, the Parties each have approved and executed this Agreement as of the effective date first set forth above.

DATED: _____, 2016

DD

DATED: Oct 28, 2016

PP

ERICA JACKSON
Notary Public, State of Texas
Comm. Expires 01-04-2020
Notary ID 130483626

DATED: 10/28, 2016

EC, LLC

PP

EC
DD

DATED: 10/31/16, 2016

As to Form:

Keith M. Davidson, Esq., Attorney for PP

DATED: _____, 2016

As to Form:

Attorney for DD

DATED: 10/28, 2016

As to Form:

Michael D. Cohen, Esq.
Attorney for [redacted]
ESSENTIAL CONSULTANTS, LLC

PP

DD

EXHIBIT 2

EXHIBIT "A" TO THE CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE; ASSIGNMENT OF COPYRIGHT AND NON-DISPARAGMENT AGREEMENT

SIDE LETTER AGREEMENT

DATED 10 / 28 / 2016.

To Whom It May Concern:

This Side Letter agreement is entered into by and on behalf of the Parties with respect to the Confidential Settlement Agreement and Mutual Release entered into by and between them on or about Oct 28, 2016 ("Settlement Agreement"), in which Stephanie Gregory Clifford a.k.a. Stormy Daniels, is referred to by the pseudonym, "PEGGY PETERSON," and [redacted] is referred to by the pseudonym "DAVID DENNISON."

It is understood and agreed that the true name and identity of the person referred to as " PEGGY PETERSON " in the Settlement Agreement is Stephanie Gregory Clifford a.k.a. Stormy Daniels and that any reference or designation to PEGGY PETERSON shall be deemed the same thing as referring to Stephanie Gregory Clifford a.k.a. Stormy Daniels by her true name as identified herein.

It is understood and agreed that the true name and identity of the person referred to as "DAVID DENNISON" in the Settlement Agreement is [redacted], and that any reference or designation to DAVID DENNISON shall be deemed the same thing as referring to [redacted], by his true name as identified herein.

It is understood and agreed that the true name and identity of the entity referred to as "EC, LLC" in the Settlement Agreement is [redacted] LLC and that any reference or designation to EC, LLC shall be deemed the same thing as referring to [redacted] LLC, by his true name as identified herein.

It is further acknowledged and agreed by the parties that notwithstanding the provisions of Paragraph 7.1 of the Settlement Agreement (which provides that the Settlement Agreement constitutes the entire agreement between the Parties with respect to the matters herein and in supersedes all prior and contemporaneous oral and written agreements and discussions pertaining to the matters herein), this Side Letter agreement shall be deemed part of the agreement between the Parties. Accordingly, Paragraph 7.1 of the Settlement Agreement is hereby amended via supplanting to provide as follows:

> "**7.1.1 Integration.** The Side Letter agreement entered into by the Parties concurrently with their entry into this Agreement shall be deemed part of this Agreement, and this Agreement and the Side Letter agreement together constitute the entire agreement between the Parties with

respect to the matters herein and supersedes all prior and contemporaneous oral and written agreements and discussions pertaining to the matters herein."

For avoidance of doubt, it is further agreed that this Side Letter agreement shall constitute Confidential Information as defined in the Settlement Agreement, that neither this Side Letter agreement nor any portion hereof may be disclosed to anyone except as and to the extent expressly provided in the Settlement Agreement, and that any unauthorized disclosure or use of this Side Letter agreement or any portion hereof shall constitute a material breach of the confidentiality provisions of the Settlement Agreement.

It is further agreed that neither party shall keep a copy of this document, and that only Keith M. Davidson, Esq. AND [redacted] counsel for the parties herein), shall maintain possession of it or access to this Side Letter agreement. FOR AVOIDANCE OF DOUBT, THE PARTIES HERETO AGREE AND CONFIRM THAT THIS SIDE LETTER AGREEMENT IS DEEMED "ATTORNEY'S EYES ONLY."

This Side Letter agreement may be executed in counterparts and when each Party has signed and delivered one such counterpart to the other Party, each counterpart shall be deemed an original, and all counterparts taken together shall constitute one and the same Agreement, which shall be binding and effective as to the Parties. The Agreement may be executed by facsimile or electronic PDF signatures, which shall have the same force and effect as if they were originals.

By signing below, each of the Parties signifies their agreement to the terms hereof and each of their respective counsel signify their approval as to the form of this letter agreement.

PEGGY PETERSON a.k.a. Stephanie Gregory Clifford a.k.a. Stormy Daniels

10/28/16
date

ERICA JACKSON
Notary Public, State of Texas
Comm. Expires 01-04-2020
Notary ID 130483626

DAVID DENNISON a.k.a. _____

date

Keith M. Davidson, Esq.

10/31/16
date

[redacted], Esq.

10/28/16
date

AVENATTI & ASSOCIATES, APC
Michael J. Avenatti, State Bar No. 206929
Ahmed Ibrahim, State Bar No. 238739
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Tel: (949) 706-7000
Fax: (949) 706-7050

Attorneys for Plaintiff Stephanie Clifford
a.k.a. Stormy Daniels a.k.a. Peggy Peterson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

vs.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive

Defendants.

CASE NO.: 2:18-cv-02217-SJO-FFM

DECLARATION OF MICHAEL J. AVENATTI IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANTS, LLC'S MOTION TO COMPEL ARBITRATION

Hearing Date: April 30, 2018
Hearing Time: 10:00 a.m.
Location: 350 West 1st Street
Courtroom 10C
Los Angeles, CA 90012

DECLARATION OF MICHAEL J. AVENATTI

I, MICHAEL J. AVENATTI, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with the law firm of Avenatti & Associates, APC, counsel of record for Plaintiff Stephanie Clifford. I am submitting this declaration in support of Plaintiff's Opposition to Defendant Essential Consultants, LLC's Motion to Compel Arbitration. I have personal knowledge of the information stated herein and if called to testify to the same would and could do so.

2. On March 21, 2018, during the Local Rule 7-3 meet and confer conference regarding the Motion to Compel Arbitration, I asked Defendant Donald Trump's counsel, Mr. Charles Harder, point blank whether Mr. Trump was a party to the purported settlement agreement with my client, Ms. Clifford. Mr. Harder evaded my question and would not provide a straight answer. He then responded "We don't know." When I pressed him further and stated that it was incredulous that such a basic question could not be answered, and inquired as to why he didn't simply ask his client Mr. Trump, Mr. Harder further responded with "We haven't done the research yet."

3. On March 30, I again followed up, this time in an e-mail directed at Mr. Harder and Mr. Brent Blakely, counsel for Mr. Michael Cohen. I wrote as follows: "I inquired 10 days ago and have yet to receive an answer to the following question - Was Donald Trump ever a party to the agreement? If so, how and when? Presumably, your side has determined the answers to these questions as they are not complicated questions." *Inexplicably, neither Mr. Harder nor Mr. Brent Blakely have responded to these basic questions despite the passage of nearly 10 days or 240 hours since my e-mail.* In sum, for nearly 19 days since the meet and confer of March 21, we have been trying to get a straight answer as to a simple factual issue that is at the center of the case and have been stonewalled at every attempt.

4. Attached hereto as Exhibit 3 is true and correct copy of the *CNN* article titled "Michael Cohen Says He Used His Own Home Equity Line for Stormy Daniels Payment," obtained from the internet.

5. Attached hereto as Exhibit 4 is true and correct copy of the March 19, 2018 *Vanity Fair* article titled "'I Have Never Threatened Her in Any Way': Michael Cohen Offers His Side of the Stormy Daniels Saga," obtained from the internet.

6. Attached hereto as Exhibit 5 is true and correct copy of a transcript of the March 26, 2018 press briefing by White House Deputy Press Secretary Raj Shah, obtained from the internet.

7. Attached hereto as Exhibit 6 is true and correct copy of a transcript of the April 5, 2018 remarks by Donald Trump, obtained from the internet.

I declare, under penalty of perjury and under the laws of the United States of America, that the foregoing is true and correct. Executed this 9th day of April, 2018.

/s/ Michael J. Avenatti
Michael J. Avenatti

EXHIBIT 3

Michael Cohen says he used his own home equity line for Stormy Daniels payment

By Veronica Stracqualursi, CNN
Updated 7:59 PM ET, Fri March 9, 2018

Cohen: I used home equity line to pay Daniels


Polygraph: Stormy Daniels truthful about Trump


Stormy Daniels' friend: She fears for her life


Stormy's lawyer: Some incidents took place during Trump presidency


Lawy was threa

Washington (CNN) — President Donald Trump's personal lawyer used funds from his own home equity line to make a $130,000 payment to porn star Stormy Daniels on Trump's behalf, he told CNN.

"The funds were taken from my home equity line and transferred internally to my LLC account in the same bank," Michael Cohen said in a statement.

Cohen also confirmed that he used his Trump Organization email account to communicate details of a payment transfer to Stephanie Clifford, the adult film star known as Stormy Daniels, who allegedly had an affair with the President before his time in office.

Earlier Friday, Clifford's lawyer, Michael Avenatti, provided an email to CNN in which Cohen confirmed the transfer to Daniels' former attorney, Keith Davidson. In the email, both Cohen's personal email account and trumporg.com email account were used. The deposit was confirmed to Cohen by a First Republic Bank employee.

From: Michael Cohen
To: Keith Davidson
Subject: Fwd: FW: First Republic Bank Transfer
Date: October 26, 2016 1:51:11 PM

---------- Forwarded message ----------
From: Michael Cohen <mcohen@trumporg.com>
Date: Wed, Oct 26, 2016 at 4:49 PM
Subject: FW: First Republic Bank Transfer
To: "mdcohen[redacted]@gmail.com" <mdcohen[redacted]@gmail.com>

From: [redacted] [mailto:[redacted]
Sent: Wednesday, October 26, 2016 4:15 PM
To: Michael Cohen <mcohen@trumporg.com>
Subject: RE: First Republic Bank Transfer

Good Afternoon Mr. Cohen,

The funds have been deposited into your checking account ending in x1897.

Best,
[redacted]

[redacted]
First Republic Bank
1230 Ave of the Americas, 3rd Floor | New York, NY 10020

BS Pg 46

Cohen responded later Friday, saying that he regularly used his business email account for personal matters.

"I sent emails from the Trump Org email address to my family, friends as well as Trump business emails. I basically used it for everything. I am certain most people can relate," he said.

Avenatti, speaking on MSNBC, said Cohen's use of his business email to conduct this transaction could be an indication that he was acting in an official capacity as a legal counsel to Trump when he transferred the money to Clifford.

While this development brings the payment to Clifford closer to Trump himself, it is not proof that he knew about it. Any involvement by Trump would indicate the payment was an in-kind campaign contribution which was not disclosed to the Federal Election Commission, which would be a violation of federal law, according to Paul S. Ryan, a campaign finance attorney who works for Common Cause.

The email does not say where the funds originated from.

Related Article: Law firm handling Stormy Daniels case for Cohen also did legal work with Trump campaign

NBC News first reported Cohen's use of the email account.

The day after the email, Cohen wired money from First Republic Bank to Davidson's bank account, according to NBC News.

Davidson did not respond to a request for comment from CNN. First Republic Bank declined to comment to the network.

Trump's 2017 financial disclosures listed an account at First Republic Bank, valued between $15,001 and $50,000.

Cohen also regularly used that same email account to negotiate with Clifford last year before she signed a nondisclosure agreement, NBC News reported.

Last month, Cohen said he wired Clifford $130,000 of his own money right before the 2016 election in exchange for her silence about the alleged affair.

Cohen said Friday that he is in the midst of a "witch hunt," saying, "These incessant attacks against me are meritless and are concocted by the liberal mainstream media to continue to malign our President and distract the country from his historic achievements over the past year. This witch hunt has now gone from ludicrous to insane."

He has denied the Trump Organization's involvement in the payment, and both Cohen and the White House have denied any sexual encounter between the President and Clifford.

Related Article: Stormy Daniels' attorney argues 'cover-ups matter'

"In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford," Cohen said in a statement in February. "Neither the Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed me for the payment, either directly or indirectly."

favor" regarding the case. The statement is an admission that the nondisclosure agreement exists and that it directly involves Trump. It was the first time the White House had admitted the President was involved in any way with Clifford.

Clifford filed suit against Trump on Tuesday, alleging that he never signed a hush agreement regarding the alleged affair and therefore the agreement is void.

CNN's Wolf Blitzer contributed to this report.

Now Playing Cohen: I used home...

EXHIBIT 4

HIVE

Stormy Daniels

"I HAVE NEVER THREATENED HER IN ANY WAY": MICHAEL COHEN OFFERS HIS SIDE OF THE STORMY DANIELS SAGA

A week before Stephanie Clifford's widely anticipated interview with Anderson Cooper, Trump's longtime personal lawyer proclaims his innocence—and his unbreakable bond with his old boss.

BY EMILY JANE FOX
MARCH 19, 2018 4:17 PM

Michael Cohen speaks to reporters after a closed-door meeting with the Senate Intelligence Committee on Capitol Hill in Washington, Sept. 19, 2017.
By Al Drago/The New York Times/Redux.

"Remember something," **Michael Cohen** told me, unbuttoning his navy cashmere double-breasted Moncler coat and unrumpling his gray turtleneck. "If she would have come to me a month before, or three months before, I would have done the same thing." It was a Wednesday afternoon and Cohen, President **Donald Trump's** longtime personal attorney and loyal fixer, was sitting on a desk chair in the office of a friend's townhouse on the Upper East Side. He was referring, of course, to **Stephanie Clifford,** the adult-film actress also known as Stormy Daniels, who has alleged that she and Trump had a consensual affair in 2006. As Cohen spoke, his combativeness and notoriously deep fealty to Trump were indeed evident. "People are mistaking this for a thing about the campaign," he continued. "What I did defensively for my personal client, and my friend, is what attorneys do for their high-profile clients. I would have done it in 2006. I would have done it in 2011. I truly care about him and the family—more than just as an employee and an attorney."

Stormygate has, in many ways, become a quintessential political saga for the Trump Age. And Cohen is a fitting star. Once a bit player inside Trump's New York inner sanctum, he has gained his own twisted notoriety during his boss's ascent. Last year, Cohen sued BuzzFeed for libel after the news organization published the infamous dossier alleging that he met with Russian officials in Prague during the summer of 2016. (Cohen said he has never been to Prague and was visiting the University of Southern California with his son at the time that the dossier had him taking the meetings.) But that crisis has hardly compared to the scrutiny Cohen has received since January, when *The Wall Street Journal* first reported that he facilitated a $130,000 payment to Clifford weeks before the 2016 presidential election. Cohen has

reiterated, as he noted in his friend's sunlit office, that the six-figure payout came out of his own pocket, and that he was not reimbursed by the Trump Organization or the Trump campaign. It was not an election issue, in other words. In fact, it seemed that Cohen, like the rest of the world, was surprised by his boss's win. At the time, Cohen said, he was "hopeful and optimistic" about Trump's chance in the election, but "everyone said that you can't beat the Clinton machine. The election would be over in a few weeks."

Yet Trump did win, and in the two months since the *Journal* story, there have been numerous questions surrounding whether Cohen's payment violated federal-election law; what the president knew; why Cohen had paid Clifford out of his own pocket, particularly after she had already shared her story with *In Touch Weekly* (which reportedly shelved the story for over six years, after Cohen threatened Trump would sue their parent company); and if the contract could actually be enforced. In order to answer some of these questions, a government watchdog group has filed a complaint with the Federal Election Commission. (There are laws and ethics and rules that require the reporting of any outlay that could influence one candidate's standing. Trump had not reported Cohen's settlement. Cohen has claimed that his client didn't know about the payment at the time, and told me that it was not a campaign donation. "There is clear case law that negates the F.E.C. complaint raised against me.") Meanwhile, Cohen, who was compelled to respond to the complaint, issued a statement describing his actions to *The New York Times* in mid-February—a move that Clifford's manager subsequently claimed violated the terms of her non-disclosure agreement, thus allowing her to tell her version of the story. (Both Cohen and the White House have denied Clifford's accusations.)

At the end of February, Cohen obtained a temporary restraining order through an arbitrator in California to prevent Daniels from speaking about the alleged sexual encounters. Clifford's new attorney, **Michael Avenatti,** followed up with a lawsuit of his own at the beginning of March, contending that the non-disclosure agreement was void because Trump did not personally sign it. (Avenatti filed a civil suit in Los Angeles claiming that the agreement was signed by both his client and Cohen, but

Trump himself did not sign the agreement, which he argues makes it invalid, unenforceable, and void.) Then, a couple weeks back, Clifford taped an interview with **Anderson Cooper,** which is set to air on CBS's *60 Minutes* on March 25. And if the interview hadn't already become a Super Bowl-sized media supernova, Avenatti went on a morning-show blitz, on Friday, to promote what has essentially become possibly the most anticipated political interview since **Larry King** sat down with **Bill Clinton** in January 2000. When Avenatti appeared on MSNBC's *Morning Joe,* co-host **Mika Brzezinski** asked him if his client had been threatened in any way. "Yes," Avenatti responded. "Was she threatened with physical harm?" she followed up. "Yes."

Afterward, Cohen tried to dismiss his counterpart's tactics. "Unlike Mr. Avenatti, we are not handling this matter through the court of public opinion," he told me. "We are handling it through a court of competent jurisdiction." As Cohen presumably knew, however, the court of public opinion was already inching toward a verdict. Later that afternoon, Cohen filed papers to move Clifford's lawsuit to federal court, and claimed that she could owe upwards of $20 million for violating the terms of the agreement. In another Trumpian twist, **Charles Harder**—the attorney best known for representing **Hulk Hogan** in his lawsuit against Gawker—is handling the case on behalf of Trump.

Cohen and I spoke a number of times last week, as events transpired rapidly. As Avenatti appeared with CNN's **Chris Cuomo,** after the MSNBC hit on Friday, social media swelled with guesswork regarding who he was referring to when he intimated that Clifford had been physically threatened. While Cuomo conducted his interview, I conducted another with Cohen by phone, as we both watched Avenatti on television. Cohen told me that he had never threatened Clifford. "In fact, I have never spoken to her. I have never e-mailed her. I have never met her. I have never texted her," he told me. "Every interaction with Ms. Clifford was always through her previous attorney." I asked if he knew whether she was threatened by anyone with any connection to Donald Trump. "I can only speak for myself," he said. "I reiterate: I have never threatened her in any way and I am unaware of anyone else doing so."

Cohen denied reports from earlier in the week claiming that he was considering legal actions in an attempt to stop CBS from airing Clifford's sit-down. "I have not spoken to CBS, and I'm not aware that my counsel has spoken to CBS." And if her sit-down should air as scheduled, Cohen said "it's just another breach by Ms. Clifford and will only further increase the damages I will be seeking pursuant to the agreement." Those damages could very quickly turn crippling. According to the agreement, Clifford is required to pay $1 million for each breach of her non-disclosure deal. The court documents filed on Friday made it clear that Cohen and Trump plan to collect.

Avenatti has continued to counter that the agreement was void because Trump never signed it. Cohen told me, however, that he disagreed. "The only person who decrees it such is Mr. Avenatti," he said in his signature bluster. "His decrees carry no weight, as this issue will be decided not by him, but by the court." Cohen contends that the agreement is a two-party contract between the L.L.C. he set up to pay Clifford and the actress herself, which would deem a signature from anyone else unnecessary to execute the agreement.

We also spoke about the chatter on cable news and social media over whether or not he could make an agreement on behalf of his client without his client knowing, as he

claims that Trump did not know that he had paid Clifford the $130,000. Cohen told me that he has recently conferred with counsel, and their determination was that there is no bar-association violation for his action. As to confusion regarding why he would pay six-figures of his own money without expecting to get paid back, he told me that he did it for his own reasons and it's irrelevant if people believe him or not. When I asked if he bullied Clifford or if she signed the agreement under duress, he responded, "Absolutely not."

Cohen is a loyal fixer by trade and street fighter by nature, often earning him comparisons in the media to the character Ray Donovan. "I only take offense to CNN's depiction of me as a less sexy version of him," he told me. His handling of the Clifford payment is, to a degree, merely an extension of the job he'd been undertaking for a decade. In explaining how the election-time payment came to fruition, he jumped back several years. He said that he didn't know that Clifford had even met his boss until her former attorney, **Keith Davidson,** called him in 2011. At that time, Clifford denied the affair and wanted an interview about their alleged encounter removed from a Web site that had published her account. (The *Washington Post* reported over the weekend that Cohen tried to bury the story then, too.)

Cohen said that he did not hear about the matter again until 2016, when he caught wind of media interest in Clifford's story. "I called Mr. Davidson and asked if this was true. He told me that he would find out." Cohen says Davidson called back and relayed that there was media interest. Cohen responded if there was a price to own the story. Cohen says that Davidson replied that her number was $130,000. It was a strange, not entirely rounded number, but Cohen accepted. He then recalled asking Davidson why she would tell her story when she had previously denied it. "He said that she needed the money. I didn't come up with this number." (Davidson told me on Friday that he could not comment on these matters.)

Even if Cohen did not bully or intimidate Clifford into signing an agreement, a restraining order binding Clifford from speaking appeared as a different kind of intimidation, particularly because it involved such a great power divide—with the

president of the United States on one side and a porn star on the other. These types of agreements are often inherently based on this sort of imbalance, only now, with one party in the White House, the disparity is cartoonish. Cohen, who's spent years figuring out how to defend and downplay and get rid of these things, had a response at the ready. "It is irrelevant who the client is," Cohen told me. "These types of arbitration clauses exist and are used frequently. The agreement specifically called for obtaining the injunction based upon a breach or threat of a breach. We followed the executed agreement as written."

Did he use these types of agreements frequently for this particular client, I asked? "I don't discuss things I've done for my clients," he responded. "There are thousands of lawyers who, in order to protect their high-profile clients, draft these sorts of documents daily."

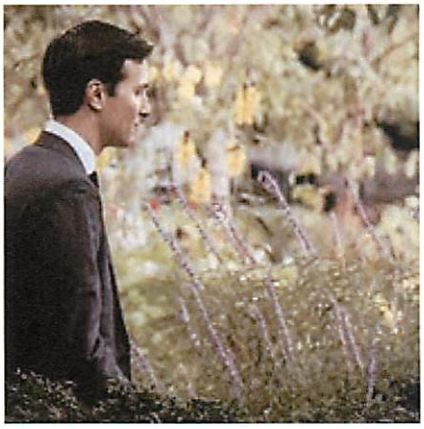
Because this small little world has turned into a long-running episode of The Trump Show, Cohen left our interview for his son's baseball game before going to dinner with his wife and some friends at Avra, a scene-y Greek restaurant on Madison Avenue. His wife elbowed him when she saw Avenatti walk in and sit down a few tables away. Cohen got out of his chair and tapped him on the shoulder. "I just wanted to introduce myself," he says he told Avenatti. "It was totally cordial."

It is impossible to know what Michael Cohen was thinking in October of 2016, when he made the payment—whether it was the muscle memory of a lifetime defending Trump, or something perhaps more calculated. What is clear now is that he is up against a worthy adversary. Avenatti has, in fact, pulled a remarkably Trumpian move, in raising the specter of a bombshell revelation to come in an interview then more than a week away, dropping little hints about what it could be, and urging audiences to tune in live and judge for themselves. As the guessing game builds about what Clifford actually said, what she actually knows, and what actually happened to her, the questions will keep coming, the speculation will keep building.

Cohen, for his part, said that for as many questions as can be asked, "the only issue that will ultimately be decided is the amount of damages Ms. Clifford will owe." If a judge does ultimately order Clifford to pay damages, Cohen said that any money he receives will go to pay lawyers first. After that, he said, the balance will be donated to various charities. "You know what?" he added. "The more I'm thinking about it, I might even take an extended vacation on her dime."

EMILY JANE FOX

Emily Jane Fox is a reporter for the Hive covering Wall Street, Silicon Valley, and the .001 percent everywhere.



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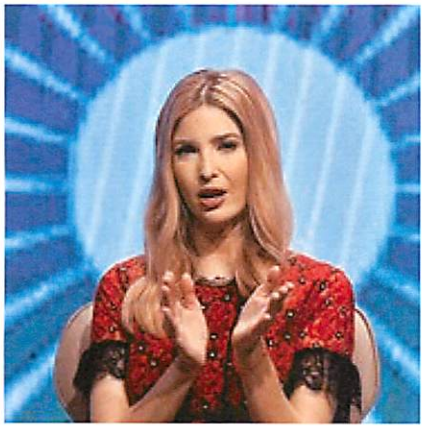

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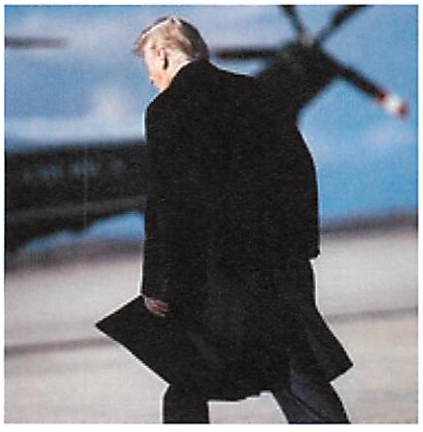

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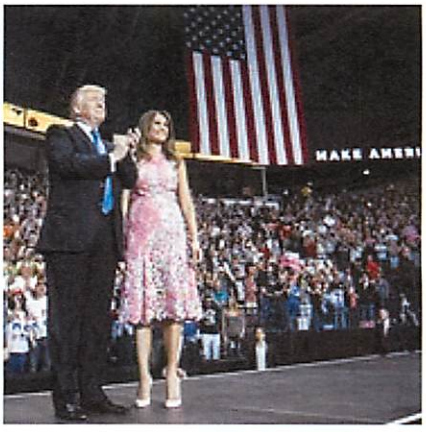

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Vanity Fair

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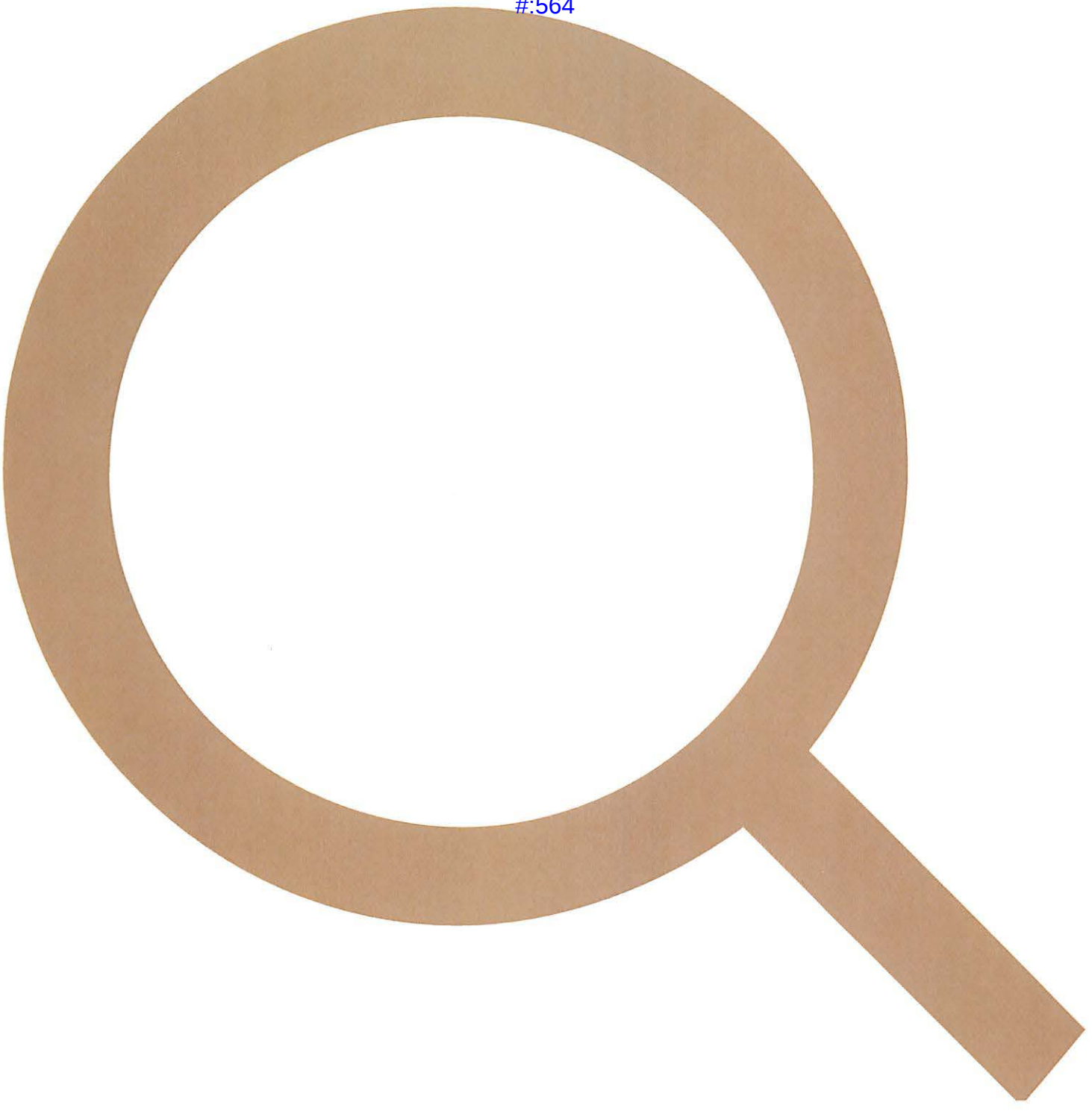

Press Briefings

Press Briefing by Principal Deputy Press Secretary Raj Shah

Issued on: March 26, 2018

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James S. Brady Press Briefing Room

2:09 P.M. EDT

MR. SHAH: Good afternoon, everyone. Let me start by saying that the United States is deeply saddened by the news of yesterday's tragic fire at a shopping mall in Siberia. The American people extend our deepest sympathies to the Russian people and the families of those who lost their lives and were injured in the fire.

Separately, as many of you saw, the President ordered the expulsion of dozens of Russian intelligence officers, and the closure of the Russian consulate in Seattle.

This action is a response to Russia's use of a military-grade chemical weapon in the United Kingdom, and was taken in conjunction with our allies and partners around the world, including more than a dozen countries in the EU and NATO, and others around the world.

Today's actions make the United States safer by reducing Russia's ability to spy on Americans and to conduct covert operations and threaten America's national security. With these steps, the U.S. and our allies and partners around the world make clear to Russia that actions have consequences.

We stand ready to cooperate to build a better relationship with Russia, but this can only happen with a change in the Russian government's behavior.

Looking ahead to next week, the President will welcome the leaders of Estonia, Latvia, and Lithuania to the White House on April 3rd.

President Trump and the three Baltic heads of state will celebrate the 100th anniversary of Estonia, Latvia, and Lithuania's independence and set the stage for another century of strong ties between our countries.

The U.S.-Baltic Summit will focus on how best to strengthen our security, business, trade, energy, and cultural partnerships. The visit will also highlight Baltic States' achievements since their independence, including their economic growth, recent success in meeting NATO's defense and spending pledges.

A quick reminder for everyone here, the annual White House Easter Egg Roll will take place on the South Lawn a week from today. We are inviting members of the White House Press Corps to bring your kids to the event. So please work with the Press Office to secure tickets, if you haven't already.

And with that, I'll take your questions.

Zeke.

Q Thanks, Raj. Thanks for doing this. First, on Thursday, White House officials were up on the stage and they said the President would sign the omnibus legislation. On Friday morning, he threatened to veto it. Ultimately, he signed it. Ten days ago, Sarah said that H.R. McMaster had the President's confidence and support and wouldn't be leaving. Last Thursday, it was announced that he would be leaving the White House. And about two and a half weeks ago, the President expressed confidence in his attorneys. And then there was a bit of shake-up there last week. So can you talk — speak to the White House's credibility, why should we, in this room, and more importantly, the American people, trust anything that this administration is telling them?

MR. SHAH: Well, our job, as a press office and as an administration, is to give you the best information that we have available to us, the most accurate information in a timely fashion. Sometimes the dynamics are fluid in any given situation. You mentioned some personnel matters; facts and circumstances change. We continue to give you guys the best information that we can as quickly as possible.

Q Thanks, Raj. One more for you just on the Stormy Daniels incident. I'm sure my colleagues have more questions on that. Could you state, categorically, that the President, his campaign, and the Trump Organization did not violate federal law — specifically, election law — regarding that payment?

MR. SHAH: Well, I can speak for only the White House, and I can say, categorically, and obviously, the White House didn't engage in any wrongdoing. The campaign or Mr. Cohen —

Q (Inaudible.)

MR. SHAH: Yeah. The campaign or Mr. Cohen can address anything with respect to their actions. With respect to that interview, I will say the President strongly, clearly, and has consistently denied these underlying claims. And the only person who's been inconsistent is the one making the claims.

Phil.

Q Yeah, Raj. Regarding the Russia actions that were announced earlier today, the President has not personally said anything about the expulsion of these 60 diplomats. And in his phone call last week with President Putin, he decided not to confront Putin on the attack despite the advice he was given from his national security advisors. And he went on to congratulate Putin on that phone call. So how do you square the aggressive actions that the administration is taking with an entirely different approach from the President?

MR. SHAH: Well, I think there was a statement coming out from the Press Secretary on this. And the last sentence basically outlined our approach to this, which is our relationship with Russia is, frankly, up to the Russian government and up to Vladimir Putin and others in senior leadership in Russia.

We want to have a cooperative relationship. The President wants to work with Russia, but their actions sometimes don't allow that to happen.

The poisoning in the UK that has kind of led to today's announcement was a very brazen action. It was a reckless action. It endangered not just two individuals who were poisoned, but many civilians — many innocent civilians. And this is not the type of conduct that the United States or allies can accept. But the President still remains open to working with the Russians on areas of mutual concern — counterterrorism, for example, and others. But, you know, that's really up to the Russians to decide.

Q But if the President believes it was a reckless and brazen action, why did he not say so to Putin, directly, when he spoke with him and had the opportunity to do that?

MR. SHAH: Well, he raised a number of issues and we did secure with Putin, on that call, some positive interaction when it comes to nuclear arms. So there were certainly positive developments on that call, and the President will continue diplomacy with Russia and with Putin. But, you know, this action by the President is very clear. We're very heartened that it comes in conjunction with over a dozen allies, both in NATO and EU.

Kevin.

Q Thank you, Raj. You mentioned that it was brazen and that it was reckless. Does that attack on the soil of a valued ally rise to the level of an act of war? Is that the administration's policy, here?

MR. SHAH: Well, we've been joined at the hip with the UK on this matter. We stand firmly with our ally. Again, I'll classify this action as both brazen and reckless. And I don't want to get ahead of anything the President may or may not announce or declare later on.

Q And if I could follow up very quickly —

MR. SHAH: Yeah.

Q You mentioned that the President continues to maintain his consistent story that he did not do what has been alleged by Ms. Daniels. Did he, by chance, watch the interview last night? Did you ask him about that?

MR. SHAH: You know, I'm not going to get into what the President may or may not have seen. I'll just say that he's consistently denied these allegations.

Kristen.

Q Thank you. Was the President aware of a physical threat made against Ms. Daniels when she was with her daughter back in 2011?

MR. SHAH: Well, the President doesn't believe that any of the claims that Ms. Daniels made last night in the interview are accurate.

Q He doesn't believe she was threatened?

MR. SHAH: No, he does not.

Q What's his basis for that, Raj?

MR. SHAH: Sorry?

Q What's his basis for that?

MR. SHAH: Well, he just doesn't believe that — you know, there's nothing to corroborate her claim.

Q And Raj, did he have dinner with Michael Cohen at Mar-a-Lago on Saturday?

MR. SHAH: Yeah, I believe he did.

Q Can you give us a readout of that? Did they discuss the interview with Stormy Daniels?

MR. SHAH: I don't have any additional information on it.

Cecilia.

Q So if he doesn't believe her claims made in that TV interview, we can deduce he saw it from that?

MR. SHAH: Well, I'm — again, I'm not going to get into what he saw. There are clips of it playing all over in the morning new shows. What I'll just say is that he's denied the accusations that she made last night and has been consistent in doing so. She has not.

Q So on the expulsions, three weeks passed between the attacks and the expulsions. What took so long?

MR. SHAH: Well, I mean, actions like this take time and we coordinated with, again, over a dozen allies. We wanted this to be a joint effort in which the United States is joining both the European Union and NATO Allies.

Q And a spokeswoman for the Russian Foreign Minister is now threatening retaliation against the U.S. and other countries involved in these expulsions. Your response to that?

MR. SHAH: Look, we want to work with Russia, but this type of an action cannot be tolerated. The United States is responding to Russia's action — as I called it, brazen and reckless. So this is a U.S. response. We want

to work with Russia. You know, the ball is in their court with respect to how they want to respond.

Jim.

Q If you listen to national security experts, diplomatic experts on what happened with Russia, they will say that you have to hit Russia where it hurts. You have to sanction them. Economically, you have to go after Putin's cronies. You have to go after Putin himself, potentially. Would this President consider sanctioning Vladimir Putin or his cronies to punish him and the Russian government for what happened in the UK and also for meddling in the 2016 election?

MR. SHAH: Well, the United States has issued sanctions on key Russian oligarchs in response to the meddling in the 2016 election.

Q What about Putin himself?

MR. SHAH: So, I wouldn't close any doors or I wouldn't preclude any potential action. But the President doesn't telegraph his moves.

Q And one other question about this weekend: There was this massive march here in Washington, led by the students from Parkland, Florida. The President did not tweet about it, he hasn't really said anything about this. What is the White House response to this? And are the actions of the President signed into law last week strengthening some of the, I guess, background check systems and whatnot we have in this country? Is that the end of it? Is the President going to do any more on the gun safety issue? And what about that question that he asked of the Republican lawmakers here — "Are you afraid of the NRA?"

MR. SHAH: Look, the President does respect everyone's First Amendment right and wants their voices to be heard. As you mentioned, there were actions that he signed into law on Friday in the omnibus bill. They included over $2 billion in new funding for school safety. He signed into law the STOP School Violence Act which was, actually, a priority of the Sandy Hook Promise Organization; and the Fix NICS bill, the background check portion that you mentioned.

Also on Friday, the Department of Justice announced a new rule which effectively banned the sale of bump stock devices. And the President is a strong believer in the Second Amendment, but he does believe other measures could potentially be taken both at the federal and also at the state level to improve school safety. He's mentioned hardening schools. He's talked about these extreme risk protective orders that states can engage in. So there's a whole lot of things that can be done.

This Wednesday, the School Safety Commission that is chaired by Secretary DeVos will be meeting for the first time, and we hope some fruitful ideas can come from that.

Mike.

Q Can you talk a little bit about David Shulkin? Is he going to be fired face-to-face or is it going to be through the media, on Twitter? Can you give us an update on that?

MR. SHAH: I have no personnel announcements to make at this time.

Steven.

Q Raj, just to follow up on Stormy Daniels. Can you explain, Raj, why it has been the President's practice, or the practice of those associated with the President, to offer compensation to people to keep them silent? Why would the President do that? And why has he done that or caused others to do that?

MR. SHAH: Well, I would have Michael — you can have Michael Cohen address any specifics regarding this agreement that you're referring to. But, look, false charges are settled out of court all the time, and this is nothing outside the ordinary.

Q But why would, in this case, $130,000 be paid to a woman in the days before the election? You're saying that she made false claims, but why, then, would $130,000 be paid to her?

MR. SHAH: Again, false charges are settled out of court all the time. You'd have to ask Michael Cohen about the specifics.

Q Does the President have any intention of responding directly himself? You've said that he denies the claims. Why haven't we heard from him?

MR. SHAH: Well, that will be up to the President.

Jen.

Q Thanks, Raj. On North Korea, Bloomberg has reported that Kim Jong-un is in China right now. Does the White House see that as a precursor to talks between President Trump and Kim Jong-un? And has China offered to host that summit?

MR. SHAH: Well, you know, we can't confirm those reports. We don't know if they're necessarily true. What I'll just state, though, is that, you know, where we are with North Korea is in a better place than we used to be because the President's maximum pressure campaign, in conjunction with dozens of countries around the world, has paid dividends and has brought the North Koreans to the table. So we're looking forward to a potential summit some months in advance.

Q On Shulkin, does the White House believe that the nation's veterans are best served by having David Shulkin serve as VA Secreatry?

MR. SHAH: Again, I have no personnel announcements to make at this time when it comes to —

Q How much longer should the Secretary expect to work in the administration?

MR. SHAH: Sorry, say that again.

Q How much longer should the Secretary expect to work in the administration?

MR. SHAH: Guys, I have no personnel announcements.

Yeah.

Q Thanks, Raj. The Israeli press is reporting that Prime Minister Netanyahu has begun informing French and German foreign ministers that the U.S. is very likely to pull out of the Iran deal in May. Can you confirm that?

MR. SHAH: Well, I can't confirm that. What I can tell you is that the President has been pretty clear since January, where he gave some remarks about this, what he thinks of the Iran deal. In fact, that goes back years. He thinks it's one of the worst agreements the United States has ever made internationally, and he is insistent on changes both at the congressional level working with Congress, and also with our European partners. If changes aren't made, the President is prepared to potentially withdraw from the agreement.

Jon.

Q Thanks a lot, Raj. In light of these announced expulsions of these 60 Russian intelligence agents, is the President still going full steam ahead in meeting with Russian President Vladimir Putin?

MR. SHAH: Again, we have no announcements on a potential meeting or any kind of summit.

Q But you still want to do it, right?

MR. SHAH: Yeah. Again, as I said, we want to work with Russia. We have areas of mutual concern where we can work with them. Again, I mentioned counterterrorism. There's general global stability and other matters where we can — we want to work with Russia. But that ball is in their court. It is up to them on whether we're going to have a fruitful and constructive relationship or an adversarial relationship.

Q But why give that gift of meeting with the President after they've done what the U.S. not just alleges — say they have done? They've poisoned a former Russian spy on British soil, and you've punished them for it. Why, at this point, also give them this gift of meeting with the President of the United States?

MR. SHAH: Well, again, there's no meeting to announce.

Jordan.

Q Thanks, Raj. Treasury Secretary Mnuchin said this weekend that there might be some kind of workaround for a Supreme Court ruling that said line-item vetoes are unconstitutional. What is that workaround, and is that something that the White House is aggressively pursuing and is going to propose that Congress take care of?

MR. SHAH: Well, the President outlined on Friday why he was very frustrated with the legislation that he was given. It was a massive spending bill handed to him at the eleventh hour. You know, spending by Congress hasn't really been executed properly since 1996. They haven't had individual spending bills for over two decades.

And so this omnibus process, the President wants to reform. He's talked about ending the filibuster. He's talked about a line-item veto. Obviously, it has to pass constitutional muster — anything that's passed. But he wants to fix the budget process. And, you know, his message to leaders in Congress of both parties is that if something similar happens again, he's much more inclined to veto it.

Q On the line-item veto in particular, though, have you been able to find a workaround to that Supreme Court ruling that says it's unconstitutional?

MR. SHAH: Well, there are certain things being discussed with respect to House and Senate rules. I don't want to get ahead of anything that we may come out in favor of.

John.

Q Yeah. Thank you, Raj. Two questions. First, last week Senator Barrasso, the Republican Whip, made a very strong speech in which he denounced, as Marc Short did, the necessity to use cloture on all appointments, and he called for a new agreement similar to the bipartisan agreement Senator Schumer had with Republicans in 2013, allowing several votes on a nomination to come up and not requiring the cloture so much. Have you talked to Senator Barrasso about this, or has the President talked to him? And is that something the administration endorses?

MR. SHAH: Well, I'm not aware of a White House conversation with Senator Barrasso. I haven't spoken to him. You know, I would generally agree with the concept. But having not seen all the details, I don't want to commit to it.

Q The other thing is that Egypt is having an election this week, and all signs are President Al Sisi will be reelected without much opposition. Does the President plan to call him?

MR. SHAH: I don't have any call plans to read out to you.

Trey.

Q Thanks, Raj. The President spoke with Russian President Vladimir Putin last week. Today, we saw this major action by the United States to expel these 60 diplomats and, additionally, close the consulate in Seattle.

Why did the President not bring up this poisoning of a former Russian spy with President Putin when he spoke with him on the phone?

MR. SHAH: Well, as I mentioned earlier, the President did discuss a range of issues with Vladimir Putin. But, you know, he's addressed this matter publicly and repeatedly addressed it. After he spoke with Prime Minister May, he addressed it in the quad statement, and, you know, with this action right now.

So the President has made his position and the country's position pretty clear.

Q And if I could ask you about Shulkin. I'm not looking for a personnel announcement here; I'd simply like to ask you, how would you describe the relationship between President Trump and VA Secretary Shulkin?

MR. SHAH: Well, I haven't asked the President about it directly, today. So I don't want to comment on it too specifically.

Q Thanks very much, Raj. You said earlier that the only person who's been inconsistent is the one making these claims, meaning Stormy Daniels. What has she said that's inconsistent?

MR. SHAH: Well, my understanding is that she signed some statements that conflict with what she said last night.

Last question.

Q Thanks, Raj. There have a been cascade of expulsion announcements from around the globe today. I think some 130 diplomats across 18 countries. What was the U.S. role in this? And can you tell us a little bit more about the President's role in what looks like a pretty coordinated effort?

MR. SHAH: Yeah. Well, this was a coordinated effort, and the President spoke with many foreign leaders — our European allies and others — and encouraged them to join the United States in this announcement.

We think that this is not just an important message to send to the Russian government, but it's also significant in degrading their intelligence capabilities around the world, not just in the United States.

Q Raj, the President has come out strongly about the importance that law enforcement plays in this country. Has he commented at all about the shooting death of Stephon Clark? He was unarmed, shot by a police officer. A lot of protests happening across the country as a result.

MR. SHAH: I'm not aware of any comments that he has. I haven't asked him about that directly. Obviously, the President cares about any individual who would be harmed through no fault of their own. I don't know the specifics in that case, and I don't want to comment any further.

All right. Thanks, folks.

END

2:29 P.M. EDT

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EXHIBIT 6

Remarks

Remarks by President Trump in Press Gaggle en route Washington, D.C.

Issued on: April 5, 2018

- Share:
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Aboard Air Force One

En Route Washington, D.C.

4:22 P.M. EDT

THE PRESIDENT: (In progress) — very happy. Thought it was really great.

Q How are you feeling about Scott Pruitt, Mr. President? Is he —

THE PRESIDENT: I think he's done a fantastic job at EPA. I think he's done an incredible job. He's been very courageous. Hasn't been easy, but I think he's done an absolutely fantastic job. I think he'll be fine.

Q (Inaudible.)

THE PRESIDENT: I think he'll be fine. Yeah, I want to look at it. I haven't seen the details, but I can tell you, at EPA he has done a fantastic job.

Q Are you bothered by the reports about him, sir?

THE PRESIDENT: On Scott?

Q Yeah.

THE PRESIDENT: Who's saying that? I have to look at it, and close. You know, I hear different versions of it. But I'll make that determination.

But he's a good man. He's done a terrific job. But I'll take a look at it very closely.

Q What did you think of his interview?

THE PRESIDENT: You know, I didn't — with Ed Henry?

Q Yes.

THE PRESIDENT: Which one? Ed Henry?

Q Yes. With Fox.

THE PRESIDENT: It's an interesting interview. (Laughs.)

Q Are you thinking about switching him out for Attorney General?

THE PRESIDENT: No, no. No, Scott is doing a great job where he is.

Q How many National Guard do you want to see at the border?

THE PRESIDENT: Anywhere from 2,000 to 4,000. We're looking at a combination of from 2,000 to 4,000. We're moving that along.

Q How much do you think that's going to cost?

THE PRESIDENT: We're looking at it, but, I mean, I have a pretty good idea. But it depends on what we do. But we're looking from 2,000 to 4,000. And we'll probably keep them, or a large portion of them, until such time as we get the wall.

Did you enjoy the roundtable? A little different, right?

Q (Inaudible) — about Amazon. You've been tweeting a lot about that. Are you going to actually take some action to change the law that would affect Amazon?

THE PRESIDENT: Well, Amazon is just not on an even playing field. You know, they have a tremendous lobbying effort, in addition to having The Washington Post, which is, as far as I'm concerned, another lobbyist. But they have a big lobbying effort. One of the biggest, frankly. One of the biggest. And it's — you know, what they have is a very uneven playing field. You look at the sales tax situation — which is going to be taken up, I guess, very soon — it's going to be a decision by the Supreme Court. So we'll see what happens.

The Post Office is not doing well with Amazon, that I can tell you. But we're going to see what happens. The playing field has to be level for everybody. That's very important.

Q Would you like to make changes to make that level playing field?

THE PRESIDENT: Well, I'm going to study it and we're going to take a look. We're going to take a very serious look at that. But I want, as long — hey, it's very important for me. It's got to be an even playing field for everybody.

Q Mr. President, did you know about the $130,000 payment to Stormy Daniels?

THE PRESIDENT: No. No. What else?

Q Then why did Michael Cohen make those if there was no truth to her allegations?

THE PRESIDENT: Well, you'll have to ask Michael Cohen. Michael is my attorney. And you'll have to ask Michael Cohen.

Q Do you know where he got the money to make that payment?

THE PRESIDENT: No, I don't know. No.

Q Did you ever set up a fund of money that he could draw from?

Q I'm sorry, I couldn't hear your response earlier about Scott Pruitt. Are you still —

THE PRESIDENT: About who?

Q About Pruitt. I was — I couldn't hear it.

THE PRESIDENT: I think that Scott has done a fantastic job. I think he's a fantastic person. I believe — you know, I just left — I just left coal and energy country. They love Scott Pruitt. They feel very strongly about Scott Pruitt, and they love Scott Pruitt.

Thank you very much everybody. I'll see you back in New York. Thank you.

END

4:26 P.M. EDT

The White House

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a.k.a. Stormy Daniels a.k.a. Peggy Peterson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

vs.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive

Defendants.

CASE NO.: 2:18-cv-02217-SJO-FFM

DECLARATION OF LAWRENCE SOLAN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANTS, LLC'S MOTION TO COMPEL ARBITRATION

Hearing Date: April 30, 2018
Hearing Time: 10:00 a.m.
Location: 350 West 1st Street
Courtroom 10C
Los Angeles, CA 90012

DECLARATION OF LAWRENCE SOLAN

I, LAWRENCE SOLAN, declare as follows:

1. I am over the age of 18 years. I am submitting this declaration in support of Plaintiff's Opposition to Defendant Essential Consultants, LLC's Motion to Compel Arbitration. I have been asked by counsel for Plaintiff to provide an opinion in connection with this matter as described below. I have personal knowledge of the information stated herein and if called to testify to the same would and could do so.

QUALIFICATIONS AND EXPERIENCE

2. I am the Don Forchelli Professor of Law at Brooklyn Law School, and am currently the Sidley Austin–Robert D. McLean Visiting Professor of Law at Yale Law School.

3. I hold a Ph.D. in Linguistics from the University of Massachusetts, and a J.D. from Harvard Law School.

4. I have devoted much of my academic career to studying and writing about ways in which linguistic analysis can inform the legal system. In this regard, I am the Director of Brooklyn Law School's Center for the Study of Law, Language and Cognition. I have taught a course called Law, Language and Cognition at Brooklyn Law School, as a visiting professor at Yale Law School, and as a visiting professor at Princeton University.

5. Throughout my academic career, I have published many articles and book chapters, and several books that address issues concerning the relationship between the academic study of language, and recurrent problems in the law. I also lecture on issues of language and law around the world. A copy of my CV is attached to this Declaration as Exhibit A.

6. In one of my books, *The Language of Judges* (University of Chicago Press 1993), I discuss legal issues concerning judicial interpretation of ordinary language in legal settings.

SCOPE OF ASSIGNMENT

7. I have been asked by counsel for Plaintiff Stephanie Clifford to comment on Paragraph 1.1 of the contract entitled, "Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagment (sic) Agreement." I have read the Agreement, the side agreement attached to it, and the First Amended Complaint in this action.

8. Paragraph 1.1 states:

> This Settlement Agreement and Mutual Release (hereinafter, this "Agreement") is made and deemed effective as of October, 2016, by and between "**EC, LLC**" and/or **DAVID DENNISON**, (DD), on the one part, and **PEGGY PETERSON**, (PP), on the other part. "EC, LLC," "DD" and "PP" are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as "EXHIBIT A") This Agreement is entered into with reference to the facts and circumstances contained in the following recitals.

9. The issue I have been asked to address is the identification of the parties: "EC, LLC, and/or David Dennison (DD), on the one part, and Peggy Peterson, (PP), on the other part."

ANALYSIS

10. In one section of *The Language of Judges,* I discuss issues that arise concerning the interpretation of the words "and" and "or." As a general matter, "and" indicates a conjunction of two elements. "Or" is ambiguous between exclusive and non-exclusive interpretations. In some texts of logic, "or" is understood as one, the other, or both ("and/or"), whereas in everyday speech, it is more frequently understood exclusively as "either/or." Moreover, in the context of negation, "and" and "or" often reverse meanings. "You may not go to the movies or to your friend's house tonight" is understood as prohibiting both activities, not allowing one or the other. As I point out in my book, this reversal sometimes causes problems in legal interpretation.

11. "And/or" leads to additional interpretive problems. Because of the use of "and/or" in the Agreement, it is not clear who the parties actually are. As a pure grammatical matter, they may be DD and PP; EC and PP; or EC, DD and PP. But that does not end the analysis.

12. I agree with those judges and scholars who have commented on the confusion that "and/or" brings to interpretation. David Mellinkoff's book, *The Language of the Law* (1963) contains several sections discussing the confusion the term has caused in legal contexts. As Mellinkoff puts it: "Ultimately the decision must be made, which is it – A or B or both? And this decision is not helped by *and/or*." (Id. at 309)

13. Because read alone, the Agreement's use of "and/or" in paragraph 1.1 causes too much uncertainty and ambiguity to determine who were actually the intended parties, it is necessary to examine other provisions in the Agreement.

14. The evidence from the Agreement itself, summarized below, shows the Agreement was drafted to express the intent that *all three parties listed in Paragraph 1.1* were the intended, actual parties to the Agreement. Especially relevant are the following facts about the Agreement:

A. In Paragraph 6.1, DD releases PP from all claims up to the date of the Agreement.

B. In Paragraph 6.4, "the parties" waive statutory rights to limitations in the releases. Since the releases are from DD and PP in favor of each other, this provision makes sense only if DD is a party to the agreement.

C. The choice of law provision in Paragraph 8.2 is left to DD's discretion.

D. In Paragraph 4.3, DD makes "agreements, warranties and representations" as "material inducements to PP to enter into this Agreement" and the parties state their reliance thereon.

E. In Paragraph 5.2, the parties agree to "binding confidential arbitration" of "any and all claims or controversies arising between DD on the one

hand, and PP on the other hand." This agreement is made "in recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution."

F. Each page of the Agreement has lines for both PP and DD to initial, but not EC.

G. There is a line for DD's signature.

SUMMARY

15. In summary, DD releases PP from pre-contractual claims; waives rights to statutory limitations; has the right to choose the state whose law will govern; waives the right to resolve disputes in court, agreeing instead to arbitration; is given a place on each page to initial that page; and has a signature line. Taken together, these facts strongly imply that DD was intended to be understood to be a party to the Agreement.

I declare, under penalty of perjury and under the laws of the United States of America, that the foregoing is true and correct. Executed this 9th day of April, 2018.

Lawrence Solan

Exhibit A

LAWRENCE M. SOLAN

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EDUCATION:

J.D. Harvard Law School, June, 1982.

Ph.D. University of Massachusetts, Amherst,
Department of Linguistics, September, 1978.

B.A. Brandeis University, June, 1974. Summa Cum Laude, Phi Beta Kappa, Honors in English, Honors in Linguistics.

TEACHING EXPERIENCE:

1996- Brooklyn Law School, Don Forchelli Professor of Law (2004-), Director of Graduate Education (2012-), Associate Dean for Academic Affairs (2006-10), Director, Center for the Study of Law, Language and Cognition (2002-). Professor (2000-), Associate Professor (1996-2000). Courses include Legislation and Statutory Interpretation, Comparative Legislation, Torts, Contracts, Remedies, Law, Language and Cognition, Insurance Law, and the Law Firm.

Visits and Honors

2018 Yale Law School, Sidley Austin-Robert D. McLean Visiting Professor of Law (spring semester).

2017 University of Bonn, Käte Hamburger Institute for Advanced Study in the Humanities "Law as Culture," Visiting Fellow (fall semester)

2016 Yale Law School, Sidley Austin-Robert D. McLean Visiting Professor of Law (spring semester).

2015 Faculty. Linguistic Society of America Summer Institute, University of Chicago (course on Language and Law).

2014 University of Greifswald (Germany). Visiting Professor, Faculty of Law. Intensive course on comparative statutory interpretation (June).

2013 Princeton University, Visiting Professor in the Council of the Humanities (fall semester).

2012 University of Lucerne Faculty of Law, Visiting Professor. Intensive course on Statutory Interpretation: Comparative Perspectives.

2010 Princeton University, Visiting Professor and Fellow in the Department of Psychology, Visiting Professor in the Council of the Humanities (fall semester).

2010 Universitat Pompeu Fabra, Barcelona, Spain, member of faculty for masters program in forensic linguistics.

2009 Wuhan Institute of Technology, China, Honorary Professor.

2008 University of Southern California, Gould School of Law, Distinguished Visitor (October 2008).

2006 Yale University, Visiting Professor of Law (spring semester). Legislation and Statutory Interpretation, and seminar on language and law.

2003 Princeton University, Visiting Fellow in the Department of Psychology (spring semester).

2002 Princeton University, Visiting Professor in the Linguistics Program (spring semester). Undergraduate seminar on language and law.

1999-2000 Princeton University, Visiting Associate Professor in the Linguistics Program (fall semester). Undergraduate seminar on language and law; series of faculty seminars on language and law sponsored by the Council of the Humanities.

Other Teaching Experience

1980-1982 Harvard Extension School, Instructor. Organized course on legal aspects of the non-profit organization.

1981 Brandeis University, Lecturer in Legal Studies.

1974-1978 University of Massachusetts, Graduate Instructor. Taught course on language acquisition.

LEGAL EXPERIENCE:

1983-1996 Orans, Elsen & Lupert, New York, New York. Partner from 1989, associate from 1983-1989. The firm has nine lawyers and specializes in

complex commercial litigation, white collar criminal defense work, and the representation of individuals being investigated by government agencies.

1982-1983 Law Clerk to Justice Stewart Pollock, Supreme Court of New Jersey, Court House, Morristown, New Jersey 07960.

Admitted to practice law in New York and New Jersey.

PUBLICATIONS:

Books:

Speaking of Language and Law: Conversations on the Work of Peter Tiersma (co-edited with Janet Ainsworth and Roger Shuy), Oxford University Press (2015).

The Oxford Handbook of Language and Law (co-edited with Peter Tiersma) (2012).

The Language of Statutes: Laws and Their Interpretation, University of Chicago Press (2010).

Speaking of Crime: The Language of Criminal Justice (with Peter Tiersma), University of Chicago Press (2005).

The Language of Judges, University of Chicago Press (1993).

Pronominal Reference: Child Language and the Theory of Grammar, D. Reidel Publishing Company (1983).

Articles

"Witness Cross-Examinations in Non-Stranger Assault Crimes: An Appraisal Analysis" (Tammy Gales & Lawrence M. Solan). 4 *Language and Law/Linguagem e Direito* 108 (2017).

"Patterns in Language and Law." 6 *International Journal of Language & Law* 46 (2017), available at file:///C:/Users/lsolan/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/25-110-3-PB.pdf.

"We are all Translators Now: Constitutional Analysis as Translation." 28 *Comparative Legilinguistics* 7 (2016), available at file:///L:/Articles/We%20Are%20All%20Tanslators%20Now.pdf.

"Argumentation and Decision Making in Professional Practice." (Julie Gainsburg, John Fox, and Lawrence M. Solan). 55 *Theory into Practice* 332 (2016).

"Finding Ordinary Meaning in Law: The Judge, the Dictionary or the Corpus?" (Lawrence M. Solan and Tammy Gales). 1 *International Journal of Legal Discourse* 253 (2016), available at

https://www.degruyter.com/view/j/ijld.2016.1.issue-2/ijld-2016-0016/ijld-2016-0016.xml.

"Can Corpus Linguistics Help Make Originalism Scientific?, 126 *Yale Law Journal Forum* 57 (2016), http://www.yalelawjournal.org/forum/can-corpus-linguistics-help-make-originalism-scientific."

"Die Auslegung mehrsprachigen Rechts: Einige Vor – und Nachteile [The Interpretation of Multilingual Laws – Some Costs and Benefits], 21 *GreifRecht* 38 (2016).

"Precedent in Statutory Interpretation," 94 *North Carolina Law Review* 1165 (2016).

"Identifying Where People Come from by How They Speak: A Methodological Gap Worth Bridging, 21 *International Journal of Speech, Language and the Law* 383 (2014).

"Multilingualism and Morality in Statutory Interpretation," 1 *Language and Law/Linguagem e Direito* 5 (2014).

"Is it Time for a Restatement of Statutory Interpretation?" 79 *Brooklyn Law Review* 733 (2014).

"Must Torts be Wrongs? An Empirical Perspective," (with Joseph Sanders, Matthew Kugler and John Darley), 49 *Wake Forest Law Review* 1 (2014).

"Four Reasons to Teach Psychology to Legal Writing Students," 22 *Journal of Law & Policy* 7 (2013).

"Intuition versus Algorithm: The Case of Forensic Authorship Attribution," 21 *Journal of Law & Policy* 551 (2013).

"When Does Knowledge Become Intent? Perceiving the Minds of Wrongdoers" (with Pam Mueller and John Darley), 9 *Journal of Empirical Legal Studies* 859 (2012).

"Legislative Style and Judicial Discretion: The Case of Guardianship Law,"35 *Int'l Journal of Law and Psychiatry* 464 (2012).

"Lawyers as Insincere (But Truthful) Actors," 36 *Journal of the Legal Profession* 487 (2012).

"Justifying Board Diversity" (with James Fanto and John Darley), 89 *North Carolina L. Rev.*901 (2011).

"Statutory Interpretation, Morality, and the Text," Symposium on Statutory Interpretation, 76 *Brooklyn Law Review* 1033 (2011).

"Response: Opportunistic Textualism," 158 *U. Pa. L. Rev. PENNumbra* 224 (2010).

"Doing Wrong without Creating Harm," (with John M. Darley, Matthew Kugler and Joseph Sanders), 7 *Journal of Empirical Legal Studies* 30 (2010).

"Praise, Blame, and the Structure of Legal Rules," 75 *Brooklyn Law Review* 517 [Symposium: Is Morality Universal and Should the Law Care?] (2010).

"The Interpretation of Multilingual Statutes by the European Court of Justice," 34 *Brooklyn Journal of International Law* 277 (2009).

"False Consensus Bias in Contract Interpretation," (with Terri Rosenblatt and Daniel Osherson), 108 *Columbia Law Review* 1268 (2008).

"The Uneasy Relationship Between Science and Law: An Essay and Introduction," (with Margaret A. Berger), 73 *Brooklyn Law Review* 847 (2008).

"Contract as Agreement,"83 *Notre Dame Law Review* 353 (2007).

"Tax Shelters and the Code: Navigating Between Text and Intent," (with Steven Dean), 26 *Virginia Tax Review* 879 (2007).

"Where Does Blaming Come From?" 71 *Brooklyn Law Review* 939 (2006).

"The New Textualists' New Text," [Symposium: Statutory Interpretation] 38 *Loyola Law Review* 2027 (2005).

"Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation," 93 *Georgetown Law Journal* 427 (2005).

"Author Identification in American Courts," (with Peter M. Tiersma) 25 *Applied Linguistics* 448 (2004).

"Pernicious Ambiguity in Legal Interpretation," 79 *Chicago-Kent Law Review* 859 (2004).

"Cops and Robbers: Selective Literalism in American Courts," (with Peter M. Tiersma), 38 *Law & Society Review* 229 (2004).

"Jurors as Statutory Interpreters," 78 *Chicago-Kent Law Review* 1281 (2003).

"Statutory Inflation and Institutional Choice," 44 *William & Mary Law Review* 2209 (2003).

"The Impulse to Blame," symposium article, 68 *Brooklyn Law Review* 1003 (2003).

"Hearing Voices: Speaker Identification in Court," (with Peter M. Tiersma), 54 *Hastings Law Review* 373 (2003).

"Should Criminal Statutes be Interpreted Dynamically?" *Issues in Legal Scholarship*, Symposium on Dynamic Statutory Interpretation (2002)(www.bepress.com/ils/iss3/art8).

"The Linguist on the Witness Stand: Forensic Linguistics in American Courts," (with Peter M. Tiersma), 78 *Language* 221 (2002).

"The Written Contract as Safe Harbor for Dishonest Conduct," 77 *Chicago-Kent Law Review* 87 (2001).

"Convicting the Innocent Beyond a Reasonable Doubt: Some Lessons About Jury Instructions from the *Sheppard* Case," Symposium on the *Sheppard* case, 49 *Cleveland State Law Review* 465 (2001).

"Introduction: Symposium: The Jury in the 21st Century," (with Susan N. Herman), 66 *Brooklyn Law Review* 971 (2001).

"Causation, Contribution and Legal Liability: An Empirical Study," (with John M. Darley), 64 *Law & Contemporary Problems* 265 (2001).

"Why Laws Work Pretty Well, But Not Great: Words and Rules in Legal Interpretation," 26 *Law & Social Inquiry* 243 (2001).

"Un effet du principe C chez l'enfant francophone," (with Helen Goodluck), 45 *Canadian Journal of Linguistics* 49 (2000).

"Let Us Never Forget Our Humanity: Reflections on Justice Stewart Pollock," 31 *Rutgers L. J.* (2000).

"Refocusing the Burden of Proof in Criminal Cases: Some Doubt About Reasonable Doubt," 78 *Texas L. Rev. 105* (1999).

"Can the Legal System Use Experts on Meaning," 66 *Tennessee L. Rev.* 1167 (1999).

"Linguistic Experts as Semantic Tour Guides, 5 *Forensic Linguistics* 87 (1998).

"Law, Language and Lenity," 40 *William & Mary L. Rev.* 57 (1998).

"Learning Our Limits: The Decline of Textualism in Statutory Cases," 1997 *Wisconsin L. Rev. 235.*

"Judicial Decisions and Linguistic Analysis: Is There a Linguist in the Court?" 73 *Washington Univ. L. Q.* 1069 (1995).

"When All is Lost: Why it is Difficult for Judges to Write About Concepts," 1 *Graven Images* (1994).

"When Judges Use the Dictionary," 68 *American Speech* 50 (1993).

"Focus and Levels of Representation," 15 *Linguistic Inquiry* 174 (1984).

"Contrastive Stress and Children's Interpretation of Pronouns," 23 *Journal of Speech and Hearing Research* 688 (1980).

"A Reevaluation of the Basic Operations Hypothesis," (H. Goodluck and L. Solan), 7 *Cognition* 85 (1979).

Book Chapters

“Legal Indeterminacy in the Spoken Word” (Lawrence M. Solan and Silvia Dahmen) in *Meaning and Power in the Language of Law* (Janny HC Leung and Alan Durant, eds.). Cambridge University Press (2018).

“Text, Intent, and Taxation in the United States, the United Kingdom, and France” (Steven A. Dean, Lawrence M. Solan and Lukasz Stankiewicz) in *The Routledge Companion to Tax Avoidance Research* (Nigar Hashimzade and Yuliya Epifantseva, eds.). Routledge (2017).

“One Ambiguity, Three Legal Approaches,” in *The Pragmatic Turn in Law: Inference and Interpretation in Legal Discourse* (Janet Giltrow and Dieter Stein, eds.). Walter de Gruyter, Inc. (2017).

“Linguistic Knowledge and Legal Interpretation: What Goes Right, What Goes Wrong,” in *The Nature of Legal Interpretation: What Jurists Can Learn About Legal Interpretation from Linguistics and Philosophy* (Brian Slocum, ed.). University of Chicago Press (2017).

“Why it is so Difficult to Resolve Vagueness in Legal Interpretation,” in *Vagueness and Law: Philosophical and Legal Perspectives* (Geert Keil & Ralf Poscher, eds.). Oxford University Press (2016).

“Transparent and Opaque Consent in Contract Formation,” in *Coercion and Consent in the Legal Process: Linguistic and Discursive Perspectives* (Susan Ehrlich, Diana Eades and Janet Ainsworth, eds.) (2016).

“Expert Witness Communication” (with Lorna Fadden), in *Communication in Investigative and Legal Contexts: Integrated Approaches from Forensic Psychology, Linguistics and Law Enforcement* (Gavin Oxburgh, Trond Myklebust, Tim Grant and Rebecca R. Milne, eds.)(2015).

“Talk about Text as Text,” in *Speaking of Language and Law: Conversations on the Work of Peter Tiersma* (Lawrence M. Solan, Janet Ainsworth and Roger Shuy, eds.)(2015).

“Interpretando las Leyes:¿Lenguaje o Intención?,” in *Lingüística Forense: la Lingüística en el ámbito Legal y Policial* (Elena Garayzábal Heinze, Miriam Jiménez Bernal, Mercedes Reigosa Riveiros, eds.)(2014).

“Ética y Método en Lingüística Forense,” in *Lingüística Forense: la Lingüística en el ámbito*

Legal y Policial (Elena Garayzábal Heinze, Miriam Jiménez Bernal, Mercedes Reigosa Riveiros, eds.)(2014).

"Judging Language Plain," in *Ens Queda la Paraula: Estudis de Lingüística Aplicada en Honor a M. Teresa Turell,* (Raquel Casesnoves, Montse Forcadell and Núria Gavaldà, eds.)(2014).

"The Language of Crime" (with Peter Tiersma), in *Oxford Handbook of Language and Law* (P. Tiersma and L. Solan, eds.)(2012).

"Linguistic Issues in Statutory Interpretation," in *Oxford Handbook of Language and Law* (P. Tiersma and L. Solan, eds.)(2012).

"Introduction," (with Peter Tiersma), in *Oxford Handbook of Language and Law* (P. Tiersma and L. Solan, eds.)(2012).

"Ethics and Method in Forensic Linguistics," Proceedings of the International Association of Forensic Linguist' Tenth Biennial Conference (Samuel Tomblin, et al., eds. 2012), available at http://www.forensiclinguistics.net/iafl-10-proceedings.pdf.

"The Forensic Linguist Meets the Adversarial System," in *The Routledge Handbook of Forensic Linguistics* (Malcolm Coulthard and Alison Johnson, eds.)(2010).

"Statutory Interpretation in the EU: The Augustinian Approach," in *Translation Issues in Language and Law* (Dieter Stein, Frances Olsen & Alexander Lorz, eds.) (2009).

"Talking Like a Person, Thinking Like a Lawyer (and Vice Versa)," in *Verbal/Visual narrative Texts in Higher Education* (Martin Solly, Michelangelo Conoscenti & Sandra Campagna, eds.)(2008).

"La Lingúística Forense en los tribunales norteamericanos," (with Peter M. Tiersma), in *Lingüística forense, lengua y derecho. conceptos, métodos y aplicaciones* (M. Turell, ed.) (2006).

"Language and Law: Definitions in Law." *Elsevier Encyclopedia of Language and Linguistics* (Keith Brown, ed.)(2006).

"Ordinary Meaning in Legal Interpretation," in *Ordinary and Legal Language* (Barbara Pozzo, ed.) 125 (2005).

"Vagueness and Ambiguity in Legal Interpretation," in *Vagueness in Normative Texts* (Vijay Bhatia, Jan Engberg, Maurizio Gotti, Dorothee Heller, eds.) 73 (2005).

"Finding Ordinary Meaning in the Dictionary," in M. Robinson, ed., *Language and Law: Proceedings of a Conference* (2003).

"The Clinton Scandal: Some Legal Lessons from Linguistics," in J. Cotterill, ed., *Language in*

the Legal Process, Palgrave, (2002).

"Ordinary Meaning in Legal Interpretation," *Pohjois-Suomen Tuomarikoulu - Julkaisuja* 4/2001 (Rovaniemi Finland, 2002).

"Perjury and Impeachment: The Rule of Law or the Rule of Lawyers?" in *Aftermath: The Clinton Scandal and the Future of the Presidency and the Liberal State* (L. Kaplan and B. Moran, eds.), NYU Press, 199-211 (2001).

"Chomsky and Cardozo: Linguistics and the Law," in Carlos P. Otero, ed., *Noam Chomsky: Critical Assessments*, London: Routledge (1994).

"Does the Legal System Need Experts in English Syntax?" In W. Stewart and R. Reiber, eds., *The Language Scientist as Expert in the Legal Setting*, New York Academy of Sciences (1990).

"Linguistic Principles as the Rule of Law," in P. Pupier and J. Woehrling, eds., *Langue et droit -- Language and Law*, Wilson & Lafleur Itee (1989).

"Parameter Setting and the Development of Pronouns and Reflexives," in T. Roeper and E. Williams, eds., *Parameter Setting*, D. Reidel Publishing Company (1987).

"The Judge as Linguist: Linguistic Principles as Rule of Law," in Fred Marshall, ed., *Proceedings of the Third Eastern States Conference on Linguistics*, University of Pittsburgh (1986).

"A Comparison of Null and Pronoun Anaphora in First Language Acquisition," (B. Lust, L. Solan, S. Flynn, C. Cross, and E. Schuetz, in B. Lust, ed., *Studies in the Acquisition of Anaphora: Defining the Constraints*, D. Reidel Publishing Company (1986).

"Language Acquisition Data and the Theory of Markedness: Evidence from Spanish," in F. Eckman, E. Moravcsik and J. Wirth, eds., *Markedness*, Plenum (1986).

"A Metrical Analysis of Spanish Stress," in W. Cressey and D. Napoli, eds., *Linguistic Symposium on Romance Languages*: 9, Georgetown University Press (1981). Translated in "Analisis métrico del acento español," in Juana Gil (ed.), *Panorama actual de la fonología del español* (2000).

"Fixing Parameters: Language Acquisition and Language Variation," in J. Pustejovsky and V. Burke, eds., *Markedness and Learnability*, University of Massachusetts Occasional Papers in Linguistics, Volume 6 (1981).

"The Acquisition of Structural Restrictions on Anaphora," in S. Tavakolian, ed., *Language Acquisition and Linguistic Theory* 59-73, MIT Press (1981).

"The Acquisition of Tough Movement," in F. Eckman and A. Hastings, eds,, *Studies in First and Second Language Acquisition*, Newbury House Publishers (1979).

"Children's Use of Syntactic Structure in Interpreting Relative Clauses," (with Tom Roeper), in 1996 H. Goodluck and L. Solan, eds., *Papers in the Structure and Development of Child Language*, University of Massachusetts Occasional Papers in Linguistics, Volume 4 (1978).

Reviews and Editorial

With Scalia Gone, Who is Wearing the Thick Grammarian's Spectacles Now? Balkinization, posted 3/9/2016, http://balkin.blogspot.com/2016/03/with-scalia-gone-whoswearing-thick.html.

Confronting the Interpreter, Balkinization, posted 3/3/2016, http://balkin.blogspot.com/2016/03/confronting-theinterpreter-lawrence.html.

Pay Associates Less, *Huffington Post*, January, 2013.

Review, Roger Shuy, *Creating Language Crime*s, 11 *Theoretical Criminology* 126 (2007).

Forum: Forensic Science, No Consensus (with Peter Tiersma), *Issues in Science and Technology* (2003).

"Wrist Slaps are No Deterrent," *National L. J.* (2003).

"Fault Lies Not Only in Starr but in Law," *National L.J.* A19 (Apr. 20, 1998).

Review, Bernard Jackson, *Making Sense in Law*, 4 *Forensic Linguistics* 305 (1997).

RECENT LECTURES AND PRESENTATIONS

"Using Corpus Linguistics in Legal Interpretation" (with Tammy Gales).
University of Connecticut Law School, September 2017.
University of Wisconsin Law School, September 2017.
Copenhagen University Faculty of Law, November 2017.
University of Würzburg, Department of Linguistics, November 2017.
University of Bonn, Department of English Applied Linguistics, December 2017
Heinrich Heine University, Düsseldorf, December 2017
Aston University, Birmingham, England, December 2017
Ulster University, Belfast, Northern Ireland, December, 2017

"Big Data in Legal Interpretation," Max Planck Institute, Bonn, November 2017.

"Lies, Deceit and BS in Court," Symposium – Shall These Bones Live? Resurrecting Truth in American Law and Public Discourse, Duquesne University School of Law, November 2017.

"Legal Linguistics in the US: Looking Back, Looking Ahead," Keynote address, International Language & Law Association, Freiburg, Germany, September 2017.

"Corpus Linguistics in Legal Interpretation," Conference on Historical Semantics and Legal Analysis, University of Chicago, May 2017.

"The Risks of Entering the U.S. Legal System as a Non-Native Speaker of English" and "Linguistic Issues in Legal Interpretation." Conference on The Syntax of Justice: Law, Language, Access & Exclusion. Northeastern University, March 2017.

"The Language of Assault Trials" (Tammy Gales and Lawrence M. Solan). American Association for the Advancement of Science. Boston, February 2017.

"Using Corpus Linguistics as a Tool in Legal Interpretation" (Lawrence M. Solan and Tammy Gales). Conference on Corpus Linguistics and Law, Brigham Young University, February 2017.

Commentator, AALS Program on Emerging Scholars in Legislation and Statutory Interpretation. San Francisco, January 2017.

"Corpus Linguistics as a Tool in Legal Interpretation." Federalist Society Faculty Program, San Francisco, January 2017.

"From Textualism to Pragmatism in the U.S. Supreme Court?" University of Oslo Conference on Pragmatic Inference in Legal Interpretation, October 2016.

"Finding Ordinary Meaning: The Judge, The Dictionary or the Corpus?" Sixth International Conference on Law, Language and Discourse, Haifa University, August 2016.

"Linguistic Issues in Legal Interpretation." Faculty of Law, Adama Mickiewicz University, Poznan, Poland, June 2016.

"We Are All Translators Now: Constitutional Analysis as Translation." Plenary address, 11th Conference on Legal Translation, Court Interpreting and Comparative Legalinguistics, Adama Mickiewicz University, Poznan, Poland, June 2016.

"Remarks on Legislative Intent," Symposium: Legislative Intent: Can We, Do We, Should We Seek It? Sponsored by CUNY Graduate Center Department of Philosophy, and University of London Institute of Advanced Legal Studies and Institute of Philosophy, New York, April 2016.

"The Dictionary, the Corpus, and the Judge," Dictionary Society of North America, New York, April 2016.

"Linguistic Issues in Legal Interpretation: How Obamacare Survives," Yale Law School, April 2016.

"Legal Indeterminacy in the Spoken Word" (with Silvia Dahmen and Kevin Tang), Department of Linguistics, Yale University, March 2016.

"Patterns in the Fabric of Law and Language," (keynote address), Conference on The Fabric of Law and Language: Discovering Patterns through Legal Corpus Linguistics, University of Heidelberg, March 2016.

"The Linguistics of Legal Interpretation," Käte Hamburger Kollegs "Recht als Kultur" Center for Advanced Study in the Humanities, University of Bonn, March 2016.

"Precedent in Statutory Interpretation," Roundtable on Statutory Interpretation, Cardozo Law School, New York, March 2016.

"Lies, Deceit and BS in Court: What are the Differences and Why do They Matter?" Brooklyn Law School Center for the Study of Law, Language and Cognition, February 2016.

Commentator, AALS Emerging Scholars Program on Legislation and Statutory Interpretation, New York, January 2016.

"Precedent in the EU and the US: A Comparative View," Conference on Precedent in EU Law: The Linguistic Aspect, sponsored by Exeter University and the Irish Centre for European Law, Dublin, December 2015.

"Communicating with Experts" (with Lorna Fadden), Keynote Address, Conference on Expertise in Language and Law, Cardiff University, November 2015.

"How Dishonest May Lawyers Be?" Universidad Pontificia Comillas, Madrid, September 2015.

"The Interpretation of Multilingual Legislation: Some Costs and Benefits," International Conference on Law and Social Order, Spiru Haret University, Constanta, Romania, September 2015.

"Can Posting a Poem on Facebook Land You in Prison? Putting Peter Tiersma's Work to Work," Aston University, Birmingham, England, September 2015.

"Legal Indeterminacy in the Spoken Word" (with Silvia Dahmen), Phonetics Institute, University of Cologne, June 2015.

"Communicating with Experts" (with Lorna Fadden), Law & Society Association, Seattle, May 2015.

"Legal Indeterminacy in the Spoken Word" (with Silvia Dahmen), symposium on linguistic philosophy and legal interpretation, McGeorge School of Law, Sacramento CA, May 2015.

"Beyond Babel: The Interpretation of Multilingual Statutes in the EU," University of Lyon 3, March 2015.

"Lies, Deceit and BS in Court: What are the Differences and Why do they Matter?" Administrative Judicial Institute, New York, November 2014.

"Precedent in Statutory Interpretation," Pace University School of Law, September 2014.

"Statutory Interpretation: Why We Can't Avoid Pragmatics," presented at Pragmatic Turn conference, University of British Columbia, Vancouver, July 2014.

"Europe, Babel and Beyond: Statutory Interpretation in Multilingual Legal Regimes," University of Greifswald (Germany), Faculty of Law, June 2014.

"Interpreting Laws in a Multilingual World," China University of Political Science and Law (Beijing), June 2014.

"Multilingual Legislation: Some Costs and Benefits," Keynote Address, International Roundtable on the Semiotics of Law, University of Copenhagen, June 2014.

"Legal Interpretation: What Goes Wrong," Harvard-Yenching Institute Workshop on Language and Law, April 2014.

"Legal Standards in Forensic Linguistics," Hofstra University Program in Forensic Linguistics, April 2014.

"Precedent in Statutory Interpretation," Conference on Statutory Interpretation, Notre Dame University Law School, London, February 2014.

"Linguistic Issues in Legal Interpretation," Lectio Magistralis, Rome Science Festival, January 2014.

"Morality and Multilingualism in Legal Interpretation," keynote address, Conference on Language and Law: Bridging the Gap, Federal University of Santa Catarina, Florianopolis, Brazil, December 2013.

"Word Meaning in Legal Interpretation," Psychology Lab Presentation, Princeton University, December 2013.

"Linguistic Issues in Legal Interpretation," Hong Kong University Law Faculty, October 2013.

"The Interpretation of Multilingual Statutes in the EU," Universidad Pontificia Comillas, Madrid, September 2013.

"Forensic Linguistics: The Need for Methodology," PAN/CLEF Conference (keynote speaker, computer science conference), Valencia Spain, September 2013.

Same talk, Universitat Pompeu Fabra ForensicLab, Barcelona, September 2013.

"Forensic Linguistics: Linguistic Evidence in Court and How to Provide It," Law as Text in Context Seminar, University of Copenhagen Faculty of Law, August 2013.

"Forensic Linguistics: The Need for Methodology," University of Copenhagen Faculty of Law, Lecture to Ph.D. students, August 2013.

"Consumer Contract formation in the U.S. and Europe: Almost a World Apart," University of Hamburg, Germany, Sponsored by DAJV, August, 2013.

"Law, Language and the Modular Mind," University of Exeter Law School, UK, June 2013.

"American Perspectives on National and International Jurisdiction over International Crimes," panel on National and International Jurisdiction over International Crimes, St. Petersburg International Legal Forum, St. Petersburg, Russia, May 2013.

"Vagueness and Ambiguity in Legal Interpretation," Conference on Vagueness in Law: Philosophical and Legal Approaches, NYU Department of Philosophy, March 2013.

"Linguistic Issues in Legal Interpretation," Department of Linguistics, College of William & Mary, March 2013.

"Four Reasons to Teach Psychology to Legal Writing Students," Symposium: The Impact of Cognitive Bias on Persuasion and Writing Strategies, Brooklyn Law School, March 2013.

"Linguistic Issues in Statutory Interpretation," Department of Linguistics, University of California, Davis, February 2013.

"Transparent and Opaque Consent in Contract Formation," University of the Pacific, McGeorge School of Law, February, 2013.

"Transparent and Opaque Consent in Contract Formation," Conference on Contract Law, Texas Wesleyan Law School, February 2013.

"Why We Do Not Need a Restatement of Statutory Interpretation," Symposium: Restatement of *X*, Brooklyn Law School, January 2013.

"Fear of Vagueness," AALS joint session on Law & Economics, and Law & Interpretation, New Orleans, January 2013.

Earlier Presentations

Judges and Judicial Officers

Sixth Circuit Judicial Conference, U.S. District Court Judges for the E.D. Michigan, E.D. Pennsylvania, D. Oregon and C.D. California, New Jersey Judicial College, New York Family Court Judges Association.

Organizations

American Association for the Advancement of Science (AAAS), American Association of Applied Linguistics, American Society of Comparative Law, Association of American Law Schools (AALS), DAJV (Deutsch-Amerikanische Juristen-Vereinigung *German-American Bar Association*) and the U.S. Department of State, Law and Society Association, National Institute of Justice Science and Law Conference, MERGE Conference on Experimental Philosophy, National Association of Judicial Interpreters and Translators, New York Academy of Sciences, Linguistic Society of America, International Association of Forensic Linguistics (plenary speaker, 1997), International Congress of Law and Mental Health, International Association of Forensic Phonetics, Society of Empirical Legal Studies, Various Bar Associations

Universities

American

Chicago-Kent School of Law, Columbia Law School, DePaul Law School, Duke University, Georgetown University Law Center, Georgetown University Department of Linguistics, Harvard University, John Jay College of Criminal Justice, John Marshall Law School, MIT, Swarthmore College, Seton Hall University School of Law, Princeton University, Rutgers Law School, Rutgers University (Political Science Department), Loyola School of Law (Chicago), University of Tennessee, Michigan State University School of Law, Loyola (LA) Law School, New England School of Law, Cleveland-Marshall School of Law, University of Minnesota School of Law, University of Texas Law School, University of Alabama Law School, University of Massachusetts (including endowed Freeman Lecture), University of North Carolina Law School, University of Pittsburgh, University of Rochester, University of Southern California (Gould School of Law), University of Wisconsin Law School, Virginia State University, Widener University School of Law, Yale Law School, Northwestern University Law School

International

Aston University (Birmingham, England), Cardiff University, Australia National University, Essex University (Colchester, England), Freiburg University, University of Amsterdam, University of Lapland (Finland), Lodz University (Poland), University of York (England), University of Birmingham (England), University of Bonn, Heinrich Heine University (Düsseldorf, Germany), Universitat Pompeu Fabra (Barcelona, Spain), China Central Normal University (Wuhan), China University of Political Science and Law (Beijing), Northwestern University of Political Science and Law (Xi'an), University of Sheffield (England), Universidad Autónoma, Madrid.

PROFESSIONAL AFFILIATIONS

Association of American Law Schools (AALS), Chair, Insurance Law Section (2009); Chair, Legislation Section (2010); Executive Committee, Law & Interpretation Section (2014-); Executive Committee, Section on Graduate Programs for Non-US Lawyers (2015-)

Federal Bar Council

American Bar Association

International Academy of Law and Mental Health (Member, Board of Directors, 1998-2014)

Linguistic Society of America (Chair, Committee on Social and Political Concerns (2000-01)

Law and Society Association

International Association of Forensic Linguists (President, 1999-2003)

OTHER ACTIVITIES

Within Brooklyn Law School

I have extensive administrative experience, both as Associate Dean for Academic Affairs, and through committee work during my tenure at Brooklyn Law School. Duties of the deanship included planning of academic program and schedule, development of new degree programs, coordination of interdepartmental administrative projects, support for faculty scholarship, contact with various alumni and other groups, hiring and supervision of adjunct faculty. I am currently responsible for building our LL.M. programs.

Director, Brooklyn Law School Center for the Study of Law, Language and Cognition. I have organized symposia on various issues involving law, language and psychology. See http://www.brooklaw.edu/intellectuallife/centerforlawlanguageandcognition/overview.aspx

Grants

I have received grants from the National Science Foundation, the National Institute of Justice and the Alfred P. Sloan Foundation to fund interdisciplinary conferences involving law, language and psychology. I am currently co-investigator on a grant awarded by the International Association of Forensic Phonetics and Acoustics for a project on the phonetics of trademark law (with Silvia Dahmen and Kevin Tang).

Additional Activities

Editorial and Advisory Boards

International Journal of Speech, Language and the Law

International Journal of Semiotics and Law

Language and Communication

Language and Law/ Linguagem e Direito

International Journal of Language and Law

Oxford University Press series on Language and Law (co-editor of series beginning 2016)

Peter Lang series, Studies in Language and Communication

Other

National Institute of Standards and Technology (NIST). Member of subcommittee on Speaker Recognition, 2016-

Federal Judicial Center: Have lectured to federal judges on issues in language and law, and have consulted on language issues in class action notices

Consultant to U.S. Department of Justice on linguistic issues in perjury prosecution

Consultant to private litigants on linguistic issues in various lawsuits, and to others on issues of language and law

Have reviewed grant proposals for National Science Foundation and for universities

Have served on doctoral committees at Yale University, Universitat Pompeu Fabra, University of California at Davis, University of Amsterdam, and City University of New York

Have reviewed article submissions for journals, including *Language, Journal of Child Language, Journal of Legal Education, Law, Culture and Humanities, Language in Society, Law & Society Review, Forensic Linguistics, Psychological Science, Journal of Pragmatics, Yale Law Journal, Stanford Law Review, International Journal of Law & Psychiatry.*

General Information

Court	United States District Court for the Central District of California; United States District Court for the Central District of California
Federal Nature of Suit	Contract - Other[190]
Docket Number	2:18-cv-02217