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12 Attorneys for Defendants CASEY AFFLECK and  
13 FLEMMY PRODUCTIONS, LLC

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES

16 AMANDA WHITE, an individual, ) CASE NO. BC 442321  
17 Plaintiff, ) [Hon. Richard L. Fruin, Jr. - Dept. 15]  
18 v. )  
19 CASEY AFFLECK, an individual; ) NOTICE OF MOTION AND MOTION  
20 FLEMMY PRODUCTIONS, LLC, a ) TO COMPEL ARBITRATION OF  
21 California limited liability company; and ) PLAINTIFF'S CLAIMS AGAINST  
22 DOES 1 through 10, inclusive, ) DEFENDANTS CASEY AFFLECK AND  
23 Defendants. ) FLEMMY PRODUCTIONS, LLC;  
24 ) REQUEST FOR ATTORNEY'S FEES  
25 ) AND COSTS; MEMORANDUM OF  
26 ) POINTS AND AUTHORITIES;  
27 ) DECLARATIONS OF CASEY  
28 ) AFFLECK, AUGUST J.  
 ) BRANDENSTEIN, DAVID WEBER,  
 ) AND MARTIN D. SINGER  
 )  
 ) [Filed concurrently with (Proposed) Order]  
 )  
 ) Date: September 22, 2010  
 ) Time: 8:30 a.m.  
 ) Dep't: 15  
 )  
 ) Complaint Filed: July 23, 2010

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE that on September 22, 2010, at 8:30 a.m., in Department  
3 15 of the Los Angeles Superior Court, located at [REDACTED] Los Angeles,  
4 California 90012, Defendants Casey Affleck (“Affleck”) and Flemmy Productions, LLC  
5 (“Flemmy”) (collectively, “Defendants”) will and hereby do move the Court for an order  
6 compelling arbitration of all claims alleged against them by Plaintiff Amanda White  
7 (“Plaintiff”). Defendants also seek an award of attorney’s fees and costs in the amount of  
8 \$18,825 associated with this Motion to enforce the mandatory contractual arbitration  
9 agreement between the parties, against Plaintiff and her attorney of record, jointly and  
10 severally, pursuant to California Civil Code § 1717.

11 This Motion will be made pursuant to California Code of Civil Procedure § 1280 *et*  
12 *seq.*, including § 1281.2 and § 1281.4, on the grounds that in January 2009 Plaintiff, on the  
13 one hand, and Flemmy, on the other hand, entered into a Work-for-Hire/Independent  
14 Contractor Agreement (the “Agreement”) related to Plaintiff’s employment by Flemmy as a  
15 contractor. Pursuant to paragraph 4 of the Agreement, the parties agreed that “[a]ll disputes  
16 which may arise between the parties . . . will be determined solely by arbitration in accordance  
17 with the rules of the American Arbitration Association.” A true and correct copy of the  
18 Agreement is attached to the accompanying Declarations of Casey Affleck and August J.  
19 Brandenstein as Exhibits A.

20 On July 23, 2010, Plaintiff filed her Complaint in this action. On July 27, 2010,  
21 Defendants requested that Plaintiff submit all of her claims pending against them to binding  
22 arbitration pursuant to paragraph 4 of the parties’ Agreement. As of the time of the filing of  
23 this Motion, Plaintiff has failed to agree to submit her claims to binding arbitration, thereby  
24 necessitating this Motion.

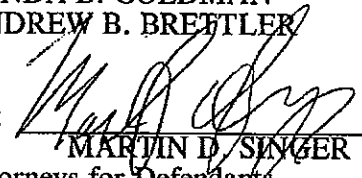
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This Motion will be based upon this Notice of Motion, the attached Memorandum of Points and Authorities and the Declarations of Casey Affleck, August J. Brandenstein, David Weber, and Martin D. Singer and the exhibits attached thereto, the files and records in this action and on such other argument and evidence which the Court may desire to consider.

DATE: July 28, 2010

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
LYNDA B. GOLDMAN  
ANDREW B. BRETTLER

By:   
MARTIN D. SINGER

Attorneys for Defendants  
CASEY AFFLECK and FLEMMY  
PRODUCTIONS, INC.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Amanda White (“White” or “Plaintiff”) concocted this fabricated sexual  
4 harassment lawsuit over a year after she failed in her devious attempt extort a better production  
5 deal by walking off the film documentary Project and withholding key production documents  
6 she had tried to ransom for a bigger pay-day. Over the course of more than 15 months, she  
7 had unsuccessfully undertook a series of extortionate tactics in her effort to obtain more  
8 compensation than she was legally entitled to and repeatedly threatened to interfere with the  
9 film Project. First, in early 2009, she withheld key production documents, refusing to turn  
10 them over unless her demands to improve her “deal” were met. (Affleck Decl. ¶¶ 8–10 &  
11 Exs. F–G.) Next, she refused to confirm that she had provided the Production with all of the  
12 necessary executed agreements which it had been her responsibility to have signed (including  
13 her own executed agreement obligating her to arbitrate all disputes).

14 After those gambits failed to pressure the Production into capitulating to her  
15 unwarranted demands, White next implicitly threatened to interfere with the release of the film  
16 by claiming in March of 2010 (through her lawyer-friend) that she supposedly owned the  
17 “results and proceeds” of her services on the Project. (Weber Decl. ¶ 7 & Ex. A.) When that  
18 tactic also failed, White next overtly threatened (again through her lawyer-friend) in June of  
19 2010 to interfere with the release of the documentary, this time directly stating that unless  
20 White’s demands were met, she would contact the documentary’s distributor. (Weber Decl.  
21 ¶ 8.) Even in the face of these heavy-handed extortionate threats, the Production remained  
22 unwilling to capitulate to White’s baseless and unreasonable demands for more compensation  
23 than she was legally entitled to receive. Then, in July of 2010—*15 months after White walked*  
24 *off the Project*—White claimed for the very first time that she allegedly had claims against the  
25 Production based on an alleged “hostile work environment.” (Weber Decl. ¶ 10.) White’s  
26 assertion of this newly fabricated legal theory (again via her lawyer-friend) came in response to  
27 being warned that White should refrain from interfering with the Project. (Weber Decl. ¶ 10.)

28

1           When White’s last-ditch heavy-handed threat of an alleged “hostile work environment”  
2 claim failed to extort the compensation she wanted, White maliciously filed a public lawsuit in  
3 violation of her contractual obligation to arbitrate all disputes regarding the Project. (Singer  
4 Decl. ¶ 2.) White, with the help of a lawyer-friend, conjured up salacious but fictional  
5 “harassment” claims which are not only time-barred, but which are subject to mandatory  
6 arbitration in any event. Indeed, White’s own words belie the claims in her lawsuit, revealing  
7 that she had loved working on the film Project, enjoyed her personal and professional  
8 relationship with Defendant Casey Affleck (“Affleck”), and wished him and his family all the  
9 best months after she walked of the Project. (Affleck Decl. ¶¶ 6-7 & Exs. D-E.)

10           White gushed in an email in March of 2009, “I am really happy to be a part of this  
11 project. I do enjoy working with you and I think that most of the time, we do it well”  
12 (Affleck Decl. ¶ 6 & Ex. D), and emailed Affleck a month later in April of 2009 (*after* she  
13 walked off the job) to wish him well, to thank him for the opportunity, and to glowingly  
14 express to him, “I am happy to have been a part of it. All the best, Amanda.” (Affleck  
15 Decl. ¶ 7 & Ex. E.) White even emailed Affleck a birthday greeting in August 2009, wishing  
16 him “All the best to you and your family.” (Affleck Decl. ¶ 11 & Ex. H.) Despite all this,  
17 White now outrageously alleges that before she stopped working on the Project back on  
18 April 1, 2009, she had supposedly been subjected to unwanted sexual harassment. However,  
19 after leaving the Project, White even told Affleck that it had been “difficult to walk away.”  
20 (Affleck Decl. ¶ 7 & Ex. E.) Had she really been subjected to unwarranted and unwelcome  
21 harassment, leaving would have been easy.

22           Throughout her work on the production from late December 2008 through April 1,  
23 2009 when she walked away from the Project, White never complained that she had  
24 supposedly been subjected to sexual harassment or offensive conduct. (Affleck Decl. ¶ 6.) To  
25 the contrary, she repeatedly told Affleck how happy she was to be part of the Project, and how  
26 much she cared for him professionally and personally. (Affleck Decl. ¶¶ 6-7 & Exs. D-E.)

27           Nevertheless, White withheld key documents—including those she herself had signed in  
28 connection with her work on the film Project—in an extortionate attempt to use them as

1 leverage to negotiate a better “deal” for herself on the Project. (Affleck Decl. ¶¶ 8–10 &  
2 Exs. F–G.)

3 More than 15 months later, White filed this meritless lawsuit in this Court. (Singer  
4 Decl. ¶ 2.) However, White is bound by an agreement to resolve all disputes regarding the  
5 Project solely by arbitration before the American Arbitration Association. In January 2009,  
6 White, on the one hand, and Defendant Flemmy Productions, LLC (“Flemmy”), on the other  
7 hand, had entered into a Work-for-Hire/Independent Contractor Agreement (the “Agreement”)  
8 related to White’s employment as a contractor on the Project. Pursuant to paragraph 4 of the  
9 Agreement, the parties agreed that “[a]ll disputes which may arise between the parties . . .  
10 will be determined solely by arbitration in accordance with the rules of the American  
11 Arbitration Association.” (Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.)

12 White filed her Complaint in this action on July 23, 2010 (Singer Decl. ¶ 2), despite  
13 having agreed to submit all disputes to Arbitration. On July 27, 2010, Affleck and Flemmy  
14 (collectively, “Defendants”) requested that White comply with the terms of the Agreement and  
15 submit all of her claims pending against them to binding arbitration. (Singer Decl. ¶¶ 3, 6 &  
16 Exs. A, C.) White has refused, thereby necessitating this Motion. (Singer Decl. ¶ 7.)

17 In keeping with California’s strong public policy favoring arbitration, Defendants  
18 respectfully request that the Court issue an Order compelling arbitration of all of Plaintiff’s  
19 claims against them. Defendants also respectfully request that Plaintiff and her attorneys of  
20 record, jointly and severally, be required to pay Defendants’ attorney’s fees and costs incurred  
21 in connection with the instant Motion, in the amount of \$18,825, and for such other and  
22 further relief as the Court may deem just and appropriate.

## 23 **II. FACTUAL BACKGROUND**

24 White alleges that in December of 2008, she started work on the documentary film  
25 project which was subsequently titled *I’m Still Here: The Lost Year of Joaquin Phoenix* (the  
26 “Project”). (Complaint ¶¶ 2, 17.) During the time that she worked on the Project from late  
27 December until she stopped work on or about April 1, 1009, White never once complained that  
28 she had been subjected to unwanted sexual harassment. (Affleck Decl. ¶ 6.) Nor were any



1 complaints that White had been subjected to unwanted sexual harassment voiced by White's  
2 agent or lawyers, who were also involved in negotiating her "deal." (Brandenstein Decl. ¶ 5;  
3 Weber Decl. ¶ 9.) To the contrary, White sent an email to Affleck on March 6, 2009, telling  
4 him how much she enjoyed working with him and how thrilled she was to be part of the  
5 Project. She gushed, "I am really happy to be a part of this project. I do enjoy working  
6 with you and I think that most of the time, we do it well." She then proceeded to apologize  
7 to Affleck for "being short" with him. (Affleck Decl. ¶ 6 & Ex. D.)

8 A month later, on April 6, 2009, White emailed Affleck to wish him well, thank him  
9 for the opportunity, and to glowingly express to him: "I am happy to have been a part of it.  
10 All the best, Amanda." (Affleck Decl. ¶ 7 & Ex. E.) She also expressed her support of the  
11 film Project and conveyed good wishes to Affleck, telling him, "I wish you well with the  
12 project. I do believe in it, I thank you for the opportunity and for whatever endorsements  
13 you gave me along the way." (Affleck Decl. ¶ 7 & Ex. E.) She warmly noted, "I do care  
14 about our relationship, both personal and professional . . . ." (Affleck Decl. ¶ 7 & Ex. E.)  
15 White even lamented in her April 6, 2009 email that she found it "difficult to walk away"  
16 from the Project. (Affleck Decl. ¶ 7 & Ex. E.) Of course, if White had been subjected to  
17 unwelcome harassment as she now contends, it obviously would *not* have been at all "difficult  
18 to walk away."

19 Some four months later, on August 15, 2009, White even emailed birthday greetings to  
20 Affleck under the subject line "Happy Birthday," telling him, "I thought I'd reach out and  
21 wish you a happy birthday," and wished him "All the best to you and your family . . . ."  
22 (Affleck Decl. ¶ 11 & Ex. H.)

23 Meanwhile, on January 12, 2009, White met with August J. Brandenstein and David  
24 Weber, the lawyers who were handling some of the legal work in connection with the Project.  
25 (Compl. ¶ 21; Brandenstein Decl. ¶¶ 1-2; Weber Decl. ¶¶ 1-2.) White alleges that they  
26 discussed procedures for obtaining clearances, release forms, deal memos, and other important  
27 aspects of the production. (Compl. ¶ 21.) At that January 12, 2009 meeting, they also  
28 discussed that all of the crew members—including White as a member of the crew—were

1 required to sign important production documents which would be provided to her, and that it  
2 was White's responsibility to obtain signatures on those documents by all the crew members.  
3 (Brandenstein Decl. ¶ 2; Weber Decl. ¶ 2.)

4 Two days later, on January 14, 2009, Mr. Brandenstein sent White the documents  
5 which it was her responsibility to have signed by the people working on the Project.  
6 (Brandenstein Decl. ¶ 3 & Ex. B; Weber Decl. ¶ 2.) Those documents included a Work-for-  
7 Hire/Independent Contractor Agreement containing rights releases, confidentiality terms, and a  
8 provision requiring the arbitration of all future disputes. (Brandenstein Decl. ¶ 3 & Ex. B;  
9 Weber Decl. ¶ 2.) Also transmitted to White at that time were a Crowd Notice and Release,  
10 Location Agreement, and a Likeness Release. (Brandenstein Decl. ¶ 3 & Ex. B; Weber Decl.  
11 ¶ 2.) Those documents were transmitted to White not only because her job responsibilities on  
12 the Project required her to obtain signatures on the documents from everyone else working on  
13 the film, but also so that all crew members, including White, would sign the required  
14 documents as well. (Brandenstein Decl. ¶¶ 2-3; Weber Decl. ¶ 2.) White told Affleck that  
15 she had, indeed, signed the documents required by her, which included the Agreement  
16 containing the arbitration provision. (Affleck Decl. ¶ 5; Weber Decl. ¶ 3.)

17 Moreover, in response to Affleck's request that White and her friends, Devorah and  
18 Jeff, each sign the required confidentiality agreement, White wrote in a January 17, 2009 email  
19 to Affleck: "I already have signed an NDA and a [D]evorah and [J]eff did last night as  
20 well. I get it and respect it." (Affleck Decl. ¶ 5 & Ex. C.)

21 White alleges that at the meeting with the production's lawyers in January of 2009, she  
22 told them that although she had discussed payment terms with Affleck in December of 2008,  
23 she now wanted a better deal. (Compl. ¶ 23.) Therefore, as leverage, White held onto the  
24 various executed production documents, including the Agreement she had signed containing  
25 the arbitration provision. (See Affleck Decl. ¶¶ 8-10 & Exs. F-G.) Meanwhile, on or about  
26 February 2, 2009, White's agent, Stephanie Comer of UTA, called Mr. Weber to discuss the  
27 terms of White's "deal." (Weber Decl. ¶ 4.) Mr. Weber had a subsequent conversation with  
28 Ms. Comer regarding White's compensation and other aspects of her "deal" on or about

1 March 19, 2009. (Weber Decl. ¶ 4.) On or about April 1, 2009, Mr. Brandenstein also had a  
2 discussion with Ms. Comer regarding White's compensation. (Brandenstein Decl. ¶ 4.) And  
3 Mr. Weber had another conversation with Ms. Comer on April 2, 2009, during which Ms.  
4 Comer told Mr. Weber that White wanted to resume working on the Project. (Weber Decl.  
5 ¶ 5.) Mr. Weber continued to discuss with Ms. Comer the terms of White's engagement on  
6 the Project through mid-September 2009, and on October 8, 2009, White's then-attorney, Erin  
7 McPherson, sent a letter to Mr. Weber stating that negotiations were being terminated.  
8 (Weber Decl. ¶ 6.)

9         Several months later, Mr. Weber received a letter, dated March 23, 2010, from  
10 White's new attorney, Brian Procel. (Weber Decl. ¶ 7 & Ex. A.) In that letter, Mr. Procel  
11 attempted to resume negotiations on behalf of White, and he implicitly threatened to interfere  
12 with the release of the film by claiming on White's behalf that she supposedly owned the  
13 "results and proceeds" of her services on the Project. (Weber Decl. ¶ 7 & Ex. A.) Mr.  
14 Procel sent Mr. Weber a subsequent letter on June 29, 2010, again threatening to interfere  
15 with the release of the documentary, but in this letter Mr. Procel directly stated that unless his  
16 client's financial demands were met, he intended to contact the documentary's distributor.  
17 (Weber Decl. ¶ 8.) And, on or about July 7, 2010, Mr. Weber received another letter from  
18 Mr. Procel, dated July 2, 2010, in which Mr. Procel raised the issue for the very first time that  
19 White allegedly had claims based on an alleged "hostile work environment." (Weber Decl.  
20 ¶ 10.) Mr. Procel sent his July 2, 2010 letter in response to a letter which had been sent to  
21 him by counsel to Flemmy, which had cautioned Mr. Procel and his client to refrain from  
22 interfering with the Project as he had repeatedly threatened. (Weber Decl. ¶ 10.)

23         At no time during any of the communications between representatives for Defendants,  
24 on the one hand, and representatives of White, on the other hand, did anyone representing  
25 White state that she had been subjected to unwanted and unwelcome sexual harassment.  
26 (Brandenstein Decl. ¶ 5; Weber Decl. ¶ 9.)

27         All of the claims asserted in White's Complaint arise out of her employment with  
28 Flemmy as a contractor and the Agreement she signed in connection with that employment.

1 Under the Agreement's plain terms, White's claims against Defendants must be submitted  
2 solely to binding arbitration. (Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) The  
3 Agreement mandates that "[a]ll disputes which may arise between the parties . . . will be  
4 determined solely by arbitration in accordance with the rules of the American Arbitration  
5 Association." (Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A. ¶ 4.) The Agreement  
6 further provides: "In the event of a dispute, the aggrieved party shall serve upon the other  
7 party a notice in writing requiring arbitration and designating the first arbitrator." (Affleck  
8 Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) White ignored these requirements, and filed  
9 her Complaint in this action on July 23, 2010. (Singer Decl. ¶ 2.)

10 Defendants requested that White comply with her Agreement to arbitrate, and agree to  
11 resolve her claims via arbitration. (Singer Decl. ¶¶ 3-6 & Exs. A-C.) She has not done so.  
12 (Singer Decl. ¶ 7.)

### 13 **III. ARGUMENT**

#### 14 **A. The Court Should Enforce the Contractual Arbitration Provision Contained** 15 **in the Parties' Agreement**

##### 16 **1. California Has a Strong Public Policy in Favor of Arbitration**

17 Code of Civil Procedure provides in relevant part that "the court *shall* order the  
18 petitioner and the respondent to arbitrate the controversy if it determines that an agreement to  
19 arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration  
20 has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement."  
21 Cal. Civ. Proc. Code § 1281.2 (emphasis added). "A written agreement to submit to  
22 arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and  
23 irrevocable, save upon such grounds as exist for the revocation of any contract." *Id.* § 1281;  
24 *Wagner Constr. Co. v. Pac. Mech. Corp.*, 41 Cal. 4th 19, 25-26, 58 Cal. Rptr. 3d 434,  
25 437-38 (2007).

26 California law recognizes a "strong public policy in favor of arbitration as a speedy and  
27 relatively inexpensive means of dispute resolution." *Wagner*, 41 Cal. 4th at 25, 58 Cal. Rptr.  
28 3d at 438 (citations and internal quotations omitted). Courts "will indulge every intendment to

1 give effect to [arbitration] proceedings” and are to construe arbitration agreements liberally.  
2 *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9, 10 Cal. Rptr. 2d 183, 186 (1992) (citations and  
3 internal quotations omitted); *see also Izzi v. Mesquite Country Club*, 186 Cal. App.3d 1309,  
4 1315, 231 Cal. Rptr. 315, 317 (4th Dist. 1986) (“Arbitration is a favored method of dispute  
5 resolution and agreements to arbitrate disputes are liberally interpreted.”). “When the parties  
6 to an arbitrable controversy have agreed in writing to arbitrate it and one has refused, the  
7 court, under section 1281.2, *must ordinarily grant a petition to compel arbitration.*” *Wagner*,  
8 41 Cal. 4th at 26, 58 Cal. Rptr. 3d at 438 (emphasis added); *see also Pac. Inv. Co. v.*  
9 *Townsend*, 58 Cal. App. 3d 1, 9, 129 Cal. Rptr. 489, 493 (2d Dist. 1976) (Arbitration  
10 agreements should be upheld “unless it can be said with assurance that the arbitration clause is  
11 not susceptible of an interpretation that covers the asserted dispute.”). Even in cases unlike  
12 this one where there is doubt as to whether a dispute is subject to arbitration, California courts  
13 have held that “doubts concerning the scope of arbitrable issues are to be resolved in favor of  
14 arbitration.” *See, e.g., Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak*  
15 *St.*, 35 Cal. 3d 312, 323, 197 Cal. Rptr. 581, 587 (1983) (analyzing arbitration agreement  
16 under federal law). Thus, even if *arguendo* there were any doubt that White’s claims came  
17 within the scope of the Agreement to arbitrate, such doubts would be resolved in favor of  
18 compelling arbitration.

19       2.       **The Agreement is Valid and Enforceable**

20       On January 12, 2009, White met with Messrs. Brandenstein and Weber of Sloane,  
21 Offer, Weber and Dern, LLP, the law firm representing Defendants in connection with the  
22 Project. (Compl. ¶ 21; Brandenstein Decl. ¶¶ 1-2; Weber Decl. ¶¶ 1-2.) During the  
23 meeting, Messrs. Weber and Brandenstein discussed with White that it would be her  
24 responsibility as a producer on the Project to obtain the necessary signed agreements from  
25 individuals who either would be appearing on film and/or working on the Project. (Compl.  
26 ¶ 21; Brandenstein Decl. ¶ 2; Weber Decl. ¶ 2.) When they met on January 12, 2009,  
27 Messrs. Brandenstein and Weber made it clear to White that, as a crew member, she needed to  
28 sign the documents as well. (Brandenstein Decl. ¶ 2; Weber Decl. ¶ 2.) Among those

1 documents was the Agreement that contained confidentiality provisions (*see* Affleck Decl. Ex.  
2 A ¶ 5; Brandenstein Decl. Ex. A ¶ 5) and a binding arbitration clause (*see* Affleck Decl. Ex. A  
3 ¶ 4; Brandenstein Decl. Ex. A ¶ 4). White agreed to accept that responsibility, and she further  
4 agreed to execute an Agreement containing the confidentiality and arbitration provisions.  
5 (Brandenstein Decl. ¶ 2; Weber Decl. ¶ 2.)

6 On January 14, 2009, Mr. Brandenstein sent White copies of the form agreements  
7 containing the important confidentiality provision and binding arbitration clause that she would  
8 execute and have others execute prior to their involvement with the Project. (Brandenstein  
9 Decl. ¶ 3 & Ex. B; Weber Decl. ¶ 2.) White later told Affleck that she had signed the  
10 Agreement. (Affleck Decl. ¶ 5; Weber Decl. ¶ 3.) Moreover, in response to Affleck's request  
11 that White and her friends, Devorah and Jeff, each sign the required confidentiality agreement,  
12 White wrote in a January 17, 2009 email to Affleck: "I already have signed an NDA and a  
13 [D]evorah and [J]eff did last night as well. I get it and respect it." (Affleck Decl. ¶ 5 &  
14 Ex. C.)

15 Because a copy of the Agreement signed by White has not yet been located, she may try  
16 to argue that she never signed the Agreement. However, her physical signature on the  
17 Agreement itself is not—and never has been—legally required in order to form a valid and  
18 enforceable contract. First, her admission that she signed the Agreement is alone sufficient to  
19 prove the existence of the contract. *See Application of G.W. McNear, Inc.*, 90 Cal. App. 2d  
20 662, 666, 203 P.2d 550 (4th Dist. 1949) (finding existence of contract based on a party's  
21 admission that the contract was executed). Second, all that is required under California law to  
22 form a contract is evidence of mutual consent—i.e., a proposal or offer by one party and an  
23 acceptance by the other. *See* Cal. Civ. Code. § 1565 ("The consent of the parties to a contract  
24 must be: 1. Free; 2. Mutual; and, 3. Communicated by each to the other."); *id.* § 1583  
25 ("Consent is deemed to be fully communicated between the parties as soon as the party  
26 accepting a proposal has put his acceptance in the course of transmission to the  
27 proposer . . .").

28 ///

1 Here, White told Affleck that she had signed the Agreement (Affleck Decl. ¶ 5; Weber  
2 Decl. ¶ 3.) In addition, White's January 17, 2009 written acknowledgment in her email to  
3 Affleck that she "already ha[s] signed" the non-disclosure agreement (Affleck Decl. ¶ 5 &  
4 Ex. C), is sufficient to prove that she, in fact, had done so. See *Tuso v. Green*, 194 Cal. 574,  
5 580-81, 229 P. 327 (1924) ("A contract between two parties is created by a proposal or offer  
6 by one of the parties and an acceptance thereof by the other."). Finally, White's January 17,  
7 2009 email to Affleck includes her typed signature (see Affleck Decl. Ex. C), and thus  
8 qualifies as a writing signed by her. See Cal. Civ. Code § 1633.7(b) ("A contract may not be  
9 denied legal effect or enforceability solely because an electronic record was used in its  
10 formation."). Accordingly, for all of these reasons, White cannot in good faith dispute that  
11 she signed the Agreement.

12 Pursuant to paragraph 4 of the Agreement, "[a]ll disputes which may arise between the  
13 parties under or with respect to this Agreement will be determined solely by arbitration in  
14 accordance with the rules of the American Arbitration Association pursuant to the procedures  
15 hereinafter set forth." (Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) Here, all of  
16 the claims asserted in White's Complaint arise out of her employment with Flemmy as a  
17 contractor and the Agreement she signed in connection with that employment. Under the plain  
18 terms of the Agreement, White's claims against Defendants must be submitted to binding  
19 arbitration. (Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) The Agreement  
20 provides: "In the event of a dispute, the aggrieved party shall serve upon the other party a  
21 notice in writing requiring arbitration and designating the first arbitrator." (Affleck Decl.  
22 Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) White failed to adhere to this requirement, and on  
23 July 23, 2010 she filed her Complaint in this action. (Singer Decl. ¶ 2.)

24 On July 27, 2010, Defendants requested that White dismiss her Complaint and submit  
25 all of her claims against Defendants to binding arbitration pursuant to paragraph 4 of the  
26 parties' Agreement. (Singer Decl. ¶ 3 & Ex. A.) On July 27, 2010, White's counsel  
27 requested that Defendants' counsel provide him with copies of the agreements to which  
28 Defendants' counsel referred in its July 27, 2010 letter. (Singer Decl. ¶ 5 & Ex. B.)

1 Defendants' counsel replied on July 27, 2010 and sent White's attorney a copy of White's  
2 January 17, 2009 email to Affleck in which White acknowledged that she signed the  
3 agreements in question. (Singer Decl. ¶ 6 & Ex. C.) Defendants' counsel instructed White's  
4 attorney to obtain copies of the agreements directly from his client. (Singer Decl. ¶ 6 &  
5 Ex. C.) Prior to filing this Motion, Defendants' counsel received no further communication  
6 from White's attorney. (Singer Decl. ¶ 7.) White's refusal to abide by the terms of the  
7 parties' Agreement governing "[a]ll disputes which may arise between the parties" (Affleck  
8 Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4) has necessitated this motion.

9 **B. Defendants Are Entitled to an Award of Attorney's Fees and Costs**

10 The prevailing party to a motion to compel arbitration brought pursuant to an  
11 arbitration provision in an agreement containing an attorney fee provision is entitled to recover  
12 its attorney's fees and costs associated with a successful motion to compel arbitration.  
13 *Acosta v. Kerrigan*, 150 Cal. App. 4th 1124, 1132, 58 Cal. Rptr. 3d 865, 871-72 (2d Dist.  
14 2007). The Court may award an interim fee award upon granting the motion to compel  
15 arbitration and prior to resolution of the resulting arbitration. *Id.* at 1132-33, 58 Cal. Rptr. 3d  
16 at 872.

17 Here, paragraph 4 of the parties' Agreement provides, in pertinent part, that the  
18 "arbitration shall be held in Los Angeles, California and the cost thereof, including reasonable  
19 attorney's fees, shall be borne by the party which does not prevail therein." (Affleck Decl.  
20 Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.) Moreover, Defendants have demanded that White  
21 submit her claims to arbitration, but she has not done so. (Singer Decl. ¶¶ 3-7 & Ex. A-C.)  
22 Defense counsel informed White's attorney that if White refused to dismiss her Complaint  
23 voluntarily, then Defendants would be forced to bring this Motion to Compel Arbitration and  
24 would seek an award of attorney's fees and costs incurred in bringing such a motion. (Singer  
25 Decl. ¶¶ 4, 6 & Exs A, C.) White has nevertheless attempted to litigate this matter in court in  
26 complete disregard of her obligations to arbitrate all disputes pursuant to the parties'  
27 Agreement. (Singer Decl. ¶ 2; Affleck Decl. Ex. A ¶ 4; Brandenstein Decl. Ex. A ¶ 4.)

28 ///



1 As set forth in Mr. Singer's Declaration, Lynda B. Goldman, Esq. has spent in excess  
2 of twelve (12) hours preparing this Motion, Andrew B. Brettler, Esq. has spent in excess of  
3 sixteen (16) hours preparing this Motion, and Mr. Singer has spent in excess of two (2) hours  
4 preparing this Motion. (Singer Decl. ¶ 8.) Defendants' counsel anticipates that Ms. Goldman  
5 will spend an additional three (3) hours preparing the reply to Plaintiff's opposition to this  
6 Motion, Mr. Brettler will spend an additional eight (8) hours preparing the reply, and Mr.  
7 Singer will spend an additional two (2) attending the hearing on this Motion.

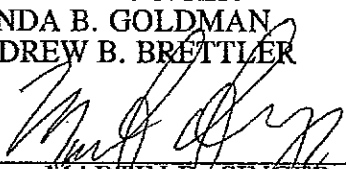
8 Mr. Singer's hourly rate is \$750, Ms. Goldman's hourly rate is \$525, and Mr.  
9 Brettler's hourly rate is \$300. Accordingly, should Defendants prevail on their Motion to  
10 Compel Arbitration, they respectfully request that the Court issue an interim fee award in their  
11 favor and against Plaintiff and her attorney of record, jointly and severally, in the amount of  
12 \$18,075, plus Defendants' first appearance fees totaling \$710 and the \$40 filing fee for this  
13 Motion, for a total award of \$18,825.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Defendants respectfully request that the Court issue an  
16 Order compelling arbitration of all of Plaintiff's claims against them, and requiring Plaintiff  
17 and her attorney of record, jointly and severally, to pay Defendants' attorney's fees and costs  
18 in the amount of \$18,825, and for such other and further relief as the Court may deem just and  
19 appropriate.

20  
21 DATE: July 28, 2010

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
LYNDA B. GOLDMAN  
ANDREW B. BRETTLER

22  
23  
24  
25 By:   
MARTIN D. SINGER  
Attorneys for Defendants  
CASEY AFFLECK and FLEMMY  
PRODUCTIONS, INC.  
26  
27  
28

TMZ

**DECLARATION OF AFFLECK**

**DECLARATION OF CASEY AFFLECK**

I, CASEY AFFLECK, declare:

1. I am a party to the action entitled *Amanda White v. Casey Affleck, et al.*, Los Angeles Superior Court, Case No. BC 442321. The facts set forth herein are of my own personal knowledge, and if called and sworn as a witness I could and would competently testify thereto. This Declaration is submitted in support of the Motion to Compel Arbitration filed on my behalf and on behalf of Defendant Flemmy Productions, LLC ("Flemmy Productions").

2. I am the director of a documentary film about the life of Joaquin Phoenix, titled *I'm Still Here: The Lost Years of Joaquin Phoenix* (the "Project"). In late December 2008, Plaintiff Amanda White was hired as a contractor by Flemmy Productions to produce aspects of the Project. Her job duties included obtaining the signatures from people working on the Project on various production documents, including releases, confidentiality agreements and agreements including arbitration provisions.

3. In connection with Ms. White's hire, she was required to enter into a Work-for-Hire/Independent Contractor Agreement (the "Agreement"), whereby she agreed to arbitrate all disputes involving her employment as a contractor and agreed to abide by the terms of the confidentiality clause contained therein. In mid-January, 2009, Ms. White told me that she had signed that Agreement. A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated by reference herein.

4. On January 17, 2009, I sent an email to Ms. White requesting that she and her friends, Devorah and Jeff, sign an Agreement containing the confidentiality provisions. A true and correct copy of my email, dated January 17, 2009 is attached hereto as Exhibit B and incorporated by reference herein.

5. Later on January 17, 2009, Ms. White responded to my email and indicated that she "already ha[s] signed an NDA and [D]evorah and [J]eff did last night as well." Her email continued: "I get it and respect it." A true and correct copy of Ms. White's email that I received on January 17, 2009 is attached hereto as Exhibit C and incorporated by reference

1 herein. Although Ms. White told me that the documents had been signed, and although she  
2 obtained signatures on various production documents as part of her job, while working on the  
3 Project, she held onto these documents and did not provide them to me or others working on  
4 the Project.

5         6. Ms. White alleges in her lawsuit that she was subject to unwanted and  
6 unwelcome sexual harassment, claims which are completely fabricated. Ms. White repeatedly  
7 expressed to me that she was very happy to be part of the Project. Throughout her work on  
8 the Project from late December 2008 through early April 2009, when she walked away from  
9 the Project, Ms. White never complained that she had supposedly been subjected to sexual  
10 harassment or offensive conduct. To the contrary, she repeatedly told me verbally and by  
11 email how happy she was to be part of the Project and how much she valued our professional  
12 relationship as well as our friendship. In one March 6, 2009 email from Ms. White to me she  
13 wrote: "I am really happy to be a part of this project. I do enjoy working with you and I think  
14 that most of the time, we do it well. I'm sorry for being short with you . . . ." A true and  
15 correct copy of Ms. White's email that I received on March 6, 2009 is attached hereto as  
16 Exhibit D and incorporated by reference herein.

17         7. Ms. White continued to email me after she walked away from the Project in  
18 early April 2009. In an April 6, 2009 email, she wrote, "its difficult to walk away," and  
19 indicated that she felt "a sense of responsibility about seeing the [P]roject thru." Her email  
20 continued: "I do care about our relationship, both personal and professional . . . . I wish you  
21 well with the [P]roject. I do believe in it, I thank you for the opportunity and for whatever  
22 endorsements you gave me along the way. I am happy to have been a part of it. All the best,  
23 Amanda." A true and correct copy of Ms. White's email that I received on April 6, 2009 is  
24 attached hereto as Exhibit E and incorporated by reference herein.

25         8. After Ms. White stopped working on the Project in early April 2009, I asked  
26 her to return the executed production documents that she had withheld. On April 12, 2009, I  
27 sent an email to Ms. White indicating that I was "still waiting for the production documents,"  
28 and inquired whether I could "send someone to get them" because "the documents do not

1 belong to [her]." I even offered Ms. White the option of delivering the production documents  
2 to one of my attorneys, David Weber. A true and correct copy of my email, dated April, 12,  
3 2009 is attached hereto as Exhibit F and incorporated by reference herein.

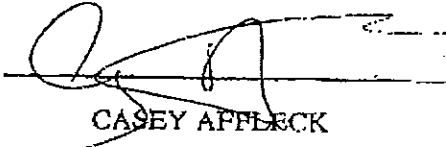
4 9. Ms. White responded to my April 12, 2009 email and indicated that she  
5 intended to "keep [the documents] until [her] deal is done." She wrote: "I would prefer to  
6 hold them in trust until we can get the matter of my deal resolved." See Ex. F. Based on Ms.  
7 White's response to me on April 12, 2009, I believed that she was attempting to use the  
8 documents as a bargaining chip to negotiate her "deal" in an attempt to return to working on  
9 the Project.

10 10. I then emailed Ms. White on April 13, 2009 and explained that "I need the  
11 signed releases and confidentiality agreements" as well as the "blank forms emailed to me." A  
12 true and correct copy of my email, dated April 13, 2009 is attached hereto as Exhibit G and  
13 incorporated by reference herein. Although Ms. White told me verbally and in writing that she  
14 signed the Agreement, she did not forward the executed Agreement to me.

15 11. On August 15, 2009, Ms. White sent me another email with the subject "Happy  
16 Birthday." In that message, she wrote, "I thought I'd reach out and wish you a happy  
17 birthday," and closed with "All the best to you and your family, Amanda." My birthday is  
18 not August 15, and I did not respond to Ms. White's message. A true and correct copy of Ms.  
19 White's email that I received on August 15, 2009 is attached hereto as Exhibit H and  
20 incorporated by reference herein.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct.

23 Executed this 27th day of July, 2010, in Tewksbury, Massachusetts.

24  
25  
26   
27 CASEY AFFLECK  
28

TMZ

**EXHIBIT C**

From: "Amanda White" <REDACTED>  
Date: January 17, 2009 6:17:28 PM PST  
To: <REDACTED>  
Subject: Re: So

Hey, I am totally fine...and I agree with everything you've said here...I already have signed an NDA and devorah and jeff did last night as well. I get it and respect it.

REDACTED

TMZ

From: "Amanda White" <REDACTED>  
Date: August 15, 2009 9:01:49 PM PDT  
To: "John Merrick" <REDACTED>  
Subject: Happy Birthday

Hey Casey,

My calendar told me it was today so I thought I'd reach out and wish you a happy birthday.

I hope one day we can be friends again.

All the best to you and your family,  
Amanda

amanda white  
<REDACTED>

TMZ