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7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF MARIN**

9 TERRY R. WHITE dba )  
10 T.R. WHITE & COMPANY )

11 Plaintiff,

12 vs.

13 DAVID SHAW, KATHRYN SHAW, )  
EXCHANGE BANK, and DOES 1-25, )  
14 Inclusive. )

15 Defendants. )  
16 )  
17 )

Case No.: CV 030685

) MEMORANDUM OF POINTS AND  
) AUTHORITIES IN SUPPORT OF  
) MOTION TO STAY PROCEEDINGS  
) PURSUANT TO CIVIL CODE § 1281.5

18 In this action, plaintiff seeks to foreclose on its Mechanics' Lien Claim, duly  
19 recorded on November 20, 2002, and to recover the damages it suffered as a result of  
20 defendants' breach of the parties' construction contract. Plaintiff has applied for a stay of  
21 the action pending the conclusion of arbitration of the claims made in the complaint. The  
22 contract contains the following arbitration provision: that "[a]ny controversy or claim

1 arising out of or relating to this contract, or the breach thereof, shall be settled by  
2 arbitration in accordance with the Construction Industry Arbitration Rules of the  
3 American Arbitration Association.” See Demand for Arbitration, p.2, attached hereto as  
4 Exhibit A. Plaintiff has submitted the matter to arbitration pursuant to that provision.  
5 See Exhibit A.

6 Under California law, a contractor who wishes to comply with a contractual  
7 arbitration provision while preserving his lien rights pursuant to Civil Code §§ 3082, *et*  
8 *seq.*, should file a complaint to foreclose the mechanics’ lien within 90 days of its  
9 recordation, and apply for a stay of the court action pending arbitration. C.C.P. §  
10 1281.5(a); Kaneko Ford Design v. Citipark, Inc. (1988) 202 Cal.App.3d 1220, 1227;  
11 Ross v. Blanchard (1967) 251 Cal.App.2d 739; Homestead Sav. & Loan Assn. V.  
12 Superior Court (1961) 195 Cal.App.2d 697.

13 “It has long been the policy in California to recognize and give the utmost effect to  
14 arbitration agreements . . . The policy of the law in recognizing arbitration agreements  
15 and in providing by statute for their enforcement is to encourage persons who wish to  
16 avoid delays incident to a civil action to obtain an adjustment of their differences by a  
17 tribunal of their own choosing . . . Therefore every reasonable intendment will be  
18 indulged to give effect to such proceedings. . . The policy of the law also favors  
19 mechanics' liens.” Homestead Sav. & Loan, at 700 (quotations and citations omitted).

## 20 **CONCLUSION**

21 For the foregoing reasons, plaintiff respectfully requests that the Court stay the  
22 action pending conclusion of the arbitration.

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Dated:

CHILVERS & TAYLOR PC

By:

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Aviva Cuyler

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