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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: _____
Aviva Cuyler

Attorneys for Plaintiff
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T.R. White & Company
