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Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN FRANCISCO**

11 EVENTBRITE, INC., a Delaware corporation, )

12 Plaintiff, )

13 v. )

14 WANTICKETS RDM, LLC, a Delaware )  
Limited Liability Company, and DOES 1 )  
15 through 25, )

16 Defendants. )

) Case No. CGC-16-554711

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **DEFENDANT WANTICKETS RDM,**  
) **LLC'S MOTION TO STAY**

) Hearing Date: January 17, 2017  
) Hearing Time: 9:30 a.m.  
) Hearing Judge: Harold Kahn  
) Department: 302

) Complaint Filed: Oct. 7, 2016

) **RESERVATION NO. 12050117-07**

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1 Defendant Wantickets RDM, LLC (“Wantickets”) respectfully submits this memorandum  
2 of points and authorities in support of its motion for a stay of this action brought by Eventbrite,  
3 Inc. (“Eventbrite”) pending final resolution of an earlier-filed New York action addressing the  
4 same issues.

### 5 INTRODUCTION

6 The same parties should not litigate the same issues simultaneously in two different  
7 courts. Yet, that is precisely what Eventbrite seeks to do. Eventbrite has filed an action in this  
8 court seeking resolution of the exact issues that are already pending before a New York court.  
9 This later-filed action should be stayed pending resolution of the earlier-filed New York action.

10 In August 2016, Wantickets initiated suit against Eventbrite in New York state court,  
11 alleging Eventbrite aided and abetted breaches of fiduciary duties by two former Wantickets  
12 executives that occurred while Eventbrite was contemplating acquiring Wantickets. Several  
13 months later, instead of bringing a counterclaim in the New York action, Eventbrite initiated this  
14 entirely separate action, asserting Wantickets had breached its confidentiality obligations in  
15 connection with the contemplated acquisition and seeking declaratory relief covering the same  
16 issues at the heart of the New York action.

17 Allowing both cases to proceed simultaneously would risk inconsistent judicial  
18 determinations, violate the principle of comity, and waste the resources of the courts and parties.  
19 In these circumstances, California law strongly supports staying this action until resolution of the  
20 New York action.

### 21 FACTUAL BACKGROUND

#### 22 **Eventbrite Uses Wantickets Employees to Promote Itself at Wantickets’ Expense**

23 Eventbrite and Wantickets are in the business of selling ticketing services to promoters of  
24 events and to entertainment venues. (*See* Request for Judicial Notice (“RJN”), Ex. 1 (Wantickets  
25 NY Compl.) ¶ 2.) From approximately March to July 2016, Eventbrite explored a potential  
26 acquisition of Wantickets. (*Id.*) During that period, two of Wantickets’ most senior executives –  
27 Barak Schurr and Diego Carlin – promoted Eventbrite to Wantickets’ actual and potential clients  
28 even though they were still employed by Wantickets and there was no guarantee that the

1 acquisition would occur. (*Id.* ¶¶ 2, 11-13.) Mr. Schurr and Mr. Carlin arranged meetings and  
2 calls to introduce Eventbrite to actual and potential clients of Wantickets and to tout the  
3 advantages of Eventbrite. (*Id.* ¶ 13.) Eventbrite also pitched itself to the potential clients it met  
4 through Mr. Schurr and Mr. Carlin and paid to send Mr. Schurr to Ibiza, Spain to develop  
5 business for Eventbrite. (*Id.* ¶ 14.)

6 Ultimately, the Eventbrite-Wantickets transaction did not come to fruition. Instead,  
7 control of Wantickets changed hands in a separate transaction in July 2016. (*Id.* ¶ 16.)

8 Shortly thereafter, Wantickets’ new CEO learned of Mr. Schurr’s and Mr. Carlin’s  
9 disloyalty and Wantickets terminated them. (*Id.*) Eventbrite promptly hired both Mr. Schurr and  
10 Mr. Carlin. (*Id.*)

11 Wantickets believes Mr. Schurr and Mr. Carlin have continued to violate the restrictive  
12 covenants in their employment agreements during their employment with Wantickets and that  
13 Eventbrite has acted in concert with them to cause these breaches. (*Id.* ¶ 17.)

14 **Wantickets Sues Eventbrite in New York**

15 After Wantickets terminated Mr. Schurr and Mr. Carlin, Wantickets sought to hold Mr.  
16 Schurr and Mr. Carlin and Eventbrite responsible for the harm they had caused Wantickets. On  
17 August 3, 2016, Wantickets filed an application for a temporary restraining order and preliminary  
18 injunction in New York state court to enjoin Mr. Schurr and Mr. Carlin from continuing to violate  
19 their employment agreements pending arbitration of Wantickets’ claims against them in New  
20 York. (RJN, Ex. 2 (TRO App).) The New York state court granted Wantickets’ application for  
21 a temporary restraining order on August 3, 2016 and its motion for a preliminary injunction on  
22 November 8, 2016. (RJN, Ex. 3 (Aug. 3 Order) & Ex. 4 (Nov. 8 Order).)

23 In addition, on August 12, 2016, Wantickets sued Eventbrite in New York state court for  
24 “aiding and abetting breaches of fiduciary duty” and “tortious interference, arising from  
25 Eventbrite joining forces with two former employees of the plaintiff, and exploiting the plaintiff’s  
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1 confidential information, for the purpose of redirecting business away from the plaintiff and to  
2 Eventbrite.” (RJN, Ex. 5 (Summons With Notice).)<sup>1</sup>

3 Wantickets’ complaint alleges two causes of action against Eventbrite. (RJN, Ex. 1  
4 (Wantickets NY Compl.).)<sup>2</sup> First, Wantickets alleges Eventbrite aided, abetted, and/or  
5 participated in breaches of fiduciary duty by participating with two former Wantickets employees  
6 in “facilitating or encouraging the overall effort to divert business from Wantickets to  
7 Eventbrite.” (*Id.* ¶¶ 20-24.) Second, Wantickets alleges Eventbrite committed tortious  
8 interference by causing two former Wantickets employees to breach their employment  
9 agreements with Wantickets. (*Id.* ¶¶ 25-28.)

### 10 **Eventbrite Sues Wantickets in California**

11 Nearly two months after Wantickets commenced its New York action against Eventbrite,  
12 Eventbrite initiated this action against Wantickets on October 7, 2016 in California. (Eventbrite  
13 Compl.) Eventbrite’s original complaint alleged a single cause of action against Wantickets for  
14 breach of contract, contending Wantickets had violated the confidentiality and no-shop provisions  
15 of the agreements Wantickets entered with Eventbrite when Eventbrite was contemplating  
16 acquiring Wantickets. (*See* Eventbrite Compl.) Before Wantickets’ response to Eventbrite’s  
17 complaint was due, Eventbrite filed a First Amended Complaint on November 2, 2016, adding a  
18 declaratory relief claim that addresses the same exact issues as in Wantickets’ New York action  
19 against Eventbrite. (*See* Eventbrite First Am. Compl. ¶¶ 30-32.) Eventbrite’s declaratory relief  
20 claim seeks determination of the following issues:

21 whether Eventbrite breached any contract, aided or abetted breaches  
22 of contractual or fiduciary duty against Wantickets or otherwise  
23 tortuously [*sic*] interfered with Wantickets’ current or prospective  
24 business relationships, or is otherwise liable to Wantickets in any  
way for conduct relating to Eventbrite’s relationship with  
Wantickets’ former employees, alleged use of Wantickets’  
confidential information, or otherwise.

25 \_\_\_\_\_  
26 <sup>1</sup> In New York state court, an action may be commenced by filing a summons with notice in lieu of  
a summons and complaint. *See* N.Y. Civ. Prac. L. & R. (“N.Y. CPLR”) § 304. Once a defendant  
27 appears, a formal complaint must be served within twenty days. *See* N.Y. CPLR § 3012(b).

28 <sup>2</sup> The Summons with Notice initiating the suit incorrectly identified the plaintiff as Wantickets  
RDM, Inc., a company that has been converted, under 8 Del. C. § 266(e), to Wantickets. (*See* RJN,  
Ex. 1 n.1.)

1 (*Id.* ¶ 31.) Wantickets’ New York action against Eventbrite, which alleges Eventbrite aided and  
2 abetted breaches of fiduciary duty against Wantickets and committed tortious interference with  
3 Wanticket’s customers, seeks the same determination. (*See generally* RJN, Ex. 1.)

#### 4 ARGUMENT

5 The Court should stay this action because it raises the same issues presented in an earlier-  
6 filed action in New York between the same parties. When a claim brought before a California  
7 court is pending elsewhere, California courts routinely stay the California action. *See Leadford v.*  
8 *Leadford*, 6 Cal. App. 4th 571, 574-75 (1992). Under “the doctrine of comity,” a “court should  
9 ordinarily decline to entertain jurisdiction of” a second action between the same parties  
10 addressing the same subject matter. *Simmons v. Sup. Ct.*, 96 Cal. App. 2d 119, 124 (1950); *see*  
11 *also* Cal. Civ. Proc. Code § 430.10(c) (an action is subject to demurrer if there “is another action  
12 pending between the same parties on the same cause of action”).<sup>3</sup> Furthermore, “[e]quity abhors  
13 a multiplicity of actions,” and a stay helps “to avoid a multiplicity of suits and prevent vexatious  
14 litigation, conflicting judgments, confusion and unseemly controversy between litigants and  
15 courts.” *Simmons*, 96 Cal. App. 2d at 125, 130; *see also Leadford*, 6 Cal. App. 4th at 575  
16 (recognizing that comity and prevention of multiple and vexatious litigation generally favor  
17 granting a stay); *see also Farmland Irr. Co. v. Dopplemaier*, 48 Cal. 2d 208, 215 (1957) (other  
18 factors to consider are “whether the rights of the parties can best be determined by the court of  
19 the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or  
20 the stage to which the proceedings in the other court have already advanced”). Principles of  
21 comity and equity, in addition to other factors courts consider when determining whether to stay  
22 an action, strongly weigh in favor of granting a stay.

#### 23 I. THE COURT SHOULD STAY THIS ACTION BECAUSE THE EARLIER-FILED 24 NEW YORK ACTION RAISES THE SAME ISSUES BETWEEN THE SAME 25 PARTIES

26 <sup>3</sup> A demurrer in the second action is appropriate when both actions are pending in California.  
27 When one action is outside of California, a California court has discretion to stay the second  
28 action. *See Leadford*, 6 Cal. App. 4th at 574-75. However, there is no distinction in principle  
between duplicative suits in the same state and in different states; the same justifications to avoid a  
multiplicity of suits, conflicting rulings, and confusion apply to both scenarios. *See Simmons*, 96  
Cal. App. 2d at 125.

1 In August 2016, Wantickets sued Eventbrite in New York for aiding and abetting  
2 breaches of fiduciary duty and for tortious interference in encouraging former Wantickets  
3 employees to breach their employment agreements with Wantickets and drive business from  
4 Wantickets to Eventbrite while Eventbrite was contemplating acquiring Wantickets. (RJN, Ex. 1  
5 ¶¶ 20-28).) Eventbrite could have brought a counterclaim in the New York action. *See* N.Y.  
6 CPLR §§ 3011, 3019(a) (a defendant may assert any claim it has against the plaintiff through a  
7 counterclaim). Instead, it decided to initiate an entirely separate action in California that arises  
8 from the same series of events and addresses the same issues as in the New York action.

9 Initially, Eventbrite’s complaint, which was filed several months after Wantickets’ New  
10 York action, alleged that Wantickets had breached the confidentiality and no-shop provisions of  
11 the agreements governing Eventbrite’s contemplated acquisition of Wantickets, the same  
12 acquisition at issue in Wantickets’ complaint against Eventbrite. Eventbrite then amended its  
13 complaint to add a declaratory relief claim that seeks to determine whether Eventbrite “aided or  
14 abetted” a breach of fiduciary duty “or otherwise tortuously [*sic*] interfered with Wantickets’  
15 current or prospective business relationships.” (Eventbrite First Am. Compl. ¶ 31.)<sup>4</sup> Those issues  
16 are the same exact ones presented in the New York action.

17 Allowing both cases to proceed runs the risk of inconsistent adjudications. One court  
18 could find that Eventbrite committed tortious interference and the other could reach the opposite  
19 conclusion, leading to confusion and clashes between the parties in their attempts to enforce  
20 contradictory judgments. Proceeding to litigate these issues in both courts is inconsistent with the  
21 principles of comity; a stay is appropriate. *See, e.g., Simmons*, 96 Cal. App. 2d at 131 (finding  
22 “respect for Texas and its courts demands” a stay of a later-filed California action in favor of a  
23 Texas action).

24 California courts repeatedly have rejected efforts like Eventbrite’s to use a declaratory  
25 relief claim to duplicate a claim already being addressed in pending litigation. In *Allstate*

26 \_\_\_\_\_  
27 <sup>4</sup> Eventbrite’s declaratory relief action also seeks resolution of any controversy concerning breach  
28 of contract by Eventbrite. (Eventbrite First Am. Compl. ¶ 31.) Wantickets’ Summons with Notice  
alerted Eventbrite to a possible breach of contract claim being asserted in the New York action,  
although Wantickets has not yet alleged a cause of action for breach of contract. (*See* RJN, Ex. 5.)

1 *Insurance Company v. Fisher*, 31 Cal. App. 3d 391, 394 (1973), the court held that “an action in  
2 declaratory relief will not lie where the issue to be determined is the same as that in a pending  
3 action at law between the same parties.” Similarly, in *Taliaferro v. Taliaferro*, 179 Cal. App. 2d  
4 787, 791 (1960), the court concluded a “dispute that is the subject of another action pending  
5 between the same parties and arising out of the subject matter may not be the subject of an  
6 independent action for declaratory relief because the controversy will have been rendered moot  
7 by judgment in the former action.” Dismissal was appropriate in *Allstate* and *Taliaferro* under  
8 CCP § 430.10(c) because all claims were pending in California, but the reasoning of those courts  
9 applies with equal force here and justifies a stay. *See Simmons*, 96 Cal. App. 2d at 125. The  
10 Court should not allow Eventbrite to pursue a duplicative declaratory relief claim while a prior  
11 claim addressing the same issues is pending in New York.

12       Eventbrite will not suffer any prejudice from a stay of this action. Wantickets  
13 commenced the first suit between the parties in New York, and there are substantial connections  
14 between New York and the parties’ disputes. Mr. Schurr and Mr. Carlin, the former Wantickets  
15 employees whom Eventbrite aided and abetted in breaching their fiduciary duties, did so while  
16 reporting to Wantickets’ New York ownership group and working under employment agreements  
17 governed by New York law. (Declaration of Richard Blakeley (“Blakeley Decl.”) ¶¶ 2-3.)  
18 Wantickets’ claims against them are being resolved through arbitration in New York. (*Id.* ¶ 4.)  
19 Therefore, they should have no trouble appearing there to testify. New York is also the site of  
20 Wantickets’ headquarters and of its current ownership. (*Id.* ¶ 5.) A New York court can easily  
21 resolve Wantickets’ claims against Eventbrite, which are the same claims Eventbrite has raised  
22 through its declaratory relief cause of action.

23       Finally, Eventbrite has the power to consolidate all of its disputes with Wantickets into  
24 the New York action, which was filed months before Eventbrite brought suit in California.  
25 Eventbrite can bring a counterclaim against Wantickets in the New York action that includes its  
26 breach of contract claim. Consolidating all claims into a single action would allow for timely and  
27 efficient resolution of all disputes and serve the interests of equity by avoiding a multiplicity of  
28 actions. *See Simmons*, 96 Cal. App. 2d at 130. If Eventbrite declines to consolidate all of its

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claims in New York, Eventbrite would be able to litigate any remaining controversies following resolution of the New York action, which was filed first.

**CONCLUSION**

For the foregoing reasons, Wantickets respectfully requests that the Court grant an order staying this action until the New York action between the parties is finally resolved.

Dated: December 6, 2016

STEPTOE & JOHNSON LLP

By: /s/ Laurie Edelstein  
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**PROOF OF SERVICE**

I, Shaina Butler, declare as follows:

I am employed with the law firm of Steptoe & Johnson LLP, whose address is 1891 Page Mill Road, Suite 200, Palo Alto, California 94304. I am over the age of eighteen years and not a party to this action. On December 6, 2016, I served the following documents by the method indicated below on the parties listed on the attached service list.

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO STAY**

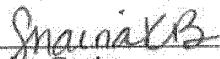
(BY ELECTRONIC SERVICE VIA File & ServeXpress). I electronically transmitted the document(s) listed above to File & ServeXpress, an electronic filing service. To my knowledge, the transmission was reported as complete and without error.

(BY FIRST CLASS MAIL). I placed true copies thereof in sealed envelopes, addressed as shown above, for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.

(BY EXPRESS COURIER). I placed true copies thereof in a sealed FedEx envelope, air bill addressed as shown, for collection and delivery pursuant to the ordinary business practice of this office which is that correspondence for overnight delivery via courier service is collected and deposited with the courier service representative on the same day in the ordinary course of business.

(BY HAND DELIVERY). I personally arranged for delivery of the documents by hand to the addressee, as noted below, via messenger service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this proof of service was executed on December 6, 2016 at Palo Alto, California.

  
\_\_\_\_\_  
Shaina Butler

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