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20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

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

25 Plaintiff,

26 v.

27 DONALD J. TRUMP a.k.a. DAVID
 28 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

**JOINT *EX PARTE* APPLICATION
 OF DEFENDANTS ESSENTIAL
 CONSULTANTS, LLC, DONALD J.
 TRUMP AND MICHAEL COHEN
 FOR A STAY OF THIS ACTION**

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

Action Filed: March 6, 2018

1 **TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendants Essential Consultants, LLC
3 (“EC”), Michael Cohen (“Mr. Cohen”) and Donald J. Trump (collectively,
4 “Defendants”) will and hereby do move *ex parte* for an order staying the case for a
5 period of 90 days or to an alternative date suitable to the Court, and permitting
6 Defendants to request a further stay, if necessary.

7 Defendants are aware that *ex parte* applications are solely for extraordinary
8 relief and are discouraged by the Court. However, given the sudden April 9, 2018 FBI
9 raid on Mr. Cohen’s residence, office and hotel room, and the upcoming May 14,
10 2018 hearing on pending motions and the related response deadlines, there is
11 insufficient time for Defendants to make this request via noticed motion.

12 Because the facts underlying this action and the criminal investigation related
13 to Mr. Cohen overlap, Mr. Cohen’s Fifth Amendment rights may be adversely
14 impacted if this case proceeds. As such, if this action is not stayed, Defendants will
15 be unable to fully respond to and defend themselves against the claims asserted by
16 Plaintiff (including in connection with the currently pending motions), resulting in
17 substantial prejudice. Additionally, Plaintiff may also be prejudiced if a stay is not
18 granted because she likely would be unable to obtain the documents and deposition
19 testimony that she is seeking from Mr. Cohen pursuant to her Motion for Expedited
20 Discovery, in the event that motion is granted (which it should not be). The requested
21 stay therefore is necessary to prevent all such prejudice.

22 This application is based on this Notice, the accompanying Memorandum of
23 Points and Authorities, the accompanying Declaration of Brent H. Blakely, any reply
24 papers filed by Plaintiff, all other papers on file in this action, all materials that may be
25 properly considered in connection with this motion, and oral argument at any hearing
26 on this matter.

27
28

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10 On April 12, 2018, counsel for Defendants conferred telephonically with
11 Plaintiff's counsel, and advised that Defendants intended to bring the instant *Ex Parte*
12 Application. Declaration of Brent H. Blakely, ¶ 6. In response, Plaintiff's counsel
13 advised that Plaintiff would not consent to a stay and would oppose the request. *Id.*
14 The parties stipulated to a briefing schedule in connection with this *Ex Parte*
15 Application and also to a seven-day continuance of the parties' respective response
16 deadlines in connection with all pending motions. [Dkt. No. 36]. On April 12, 2018,
17 the Court approved this stipulation. [Dkt. No. 37].

18 Dated: April 13, 2018

BLAKELY LAW GROUP

19 By: /s/ Brent H. Blakely

BRENT H. BLAKELY

Attorneys for Defendants

ESSENTIAL CONSULTANTS, LLC and

MICHAEL COHEN

23 Dated: April 13, 2018

HARDER LLP

24 By: /s/ Charles J. Harder

CHARLES J. HARDER

Attorneys for Defendant

DONALD J. TRUMP

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The instant *Ex Parte* Application of Defendants Essential Consultants, LLC
4 (“EC”), Michael Cohen (“Mr. Cohen”) and Donald J. Trump (“Mr. Trump”)
5 (collectively, “Defendants”) is necessary to prevent substantial prejudice to
6 Defendants’ ability to defend themselves in this action.

7 On April 9, 2018, the Federal Bureau of Investigation (“FBI”) raided Mr.
8 Cohen’s residence, office and hotel room, located in New York, in connection with an
9 apparent criminal investigation related in part to the facts giving rise to the claims
10 asserted by Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson’s
11 (“Clifford” or “Plaintiff”) in this case, namely the payment made by EC to Clifford.
12 Declaration of Brent H. Blakely (“Blakely Dec.”), ¶ 3, Ex. A, 4/13/18 *CNN* Article.

13 Because the facts underlying this action and criminal investigation overlap, Mr.
14 Cohen’s Fifth Amendment rights may be adversely impacted if this case proceeds.
15 *See Neman Fin., L.P. v. Citigroup Glob. Markets, Inc.*, 2015 WL 12837640, at *4
16 (C.D. Cal. Apr. 17, 2015). As a party to this action as a defendant and EC’s principal,
17 Mr. Cohen is a key witness in this action and Defendants’ most knowledgeable person
18 with respect to the facts underlying this action because he is the only person (other
19 than Plaintiff’s prior attorney) who negotiated the underlying Settlement Agreement
20 and he arranged for payment of the \$130,000 to Plaintiff, which is at issue in this
21 action. Blakely Dec., ¶ 5; First Amended Complaint (“FAC”), ¶ 17, 24 [Dkt No. 14].

22 Thus, if the case moves forward, Defendants’ key witness would have to
23 choose between exercising his Fifth Amendment rights, and testifying on Defendants’
24 behalf. In other words, Defendants could be forced to proceed with this case without
25 presenting key testimony in their defense. Additionally, Plaintiff may also be
26 prejudiced if a stay is not granted because she will likely be unable to obtain the
27 documents and deposition testimony that she is seeking from Mr. Cohen pursuant to
28 her Motion for Expedited Discovery, in the event the motion is granted (which it

1 should not be).

2 Accordingly, the requested 90-day stay of this action is reasonable and
3 necessary. *See Chrome Hearts, LLC, v. Old School Fairfax, Inc.*, No. 16-CV-09080
4 AB, Docket No. 70 (C.D. Cal. Feb. 26, 2018, Judge Birotte) (granting a 90 day stay
5 under similar circumstances).

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 On April 9, 2018, the FBI raided Mr. Cohen's residence, office and hotel room,
8 located in New York. Blakely Dec., ¶ 3, Ex. A. In the course of this raid, the FBI
9 sought documents in Mr. Cohen's possession relating to several topics, including the
10 payment of \$130,000 to Plaintiff, which is at issue in this action. *Id.* As such, this
11 criminal investigation arises out of the same facts alleged by Plaintiff in her First
12 Amended Complaint. *Id.* This investigation is still ongoing, and has been confirmed
13 by the U.S. Department of Justice. *Id.*

14 As of the date of the aforementioned raid, Defendants' response deadlines in
15 connection with the currently pending motions in this action were as follows: EC's
16 and Mr. Trump's deadline to file replies in support of EC's Motion to Compel
17 Arbitration: Monday, May 16, 2018; EC's and Mr. Trump's deadline to file
18 oppositions to Plaintiff's Motion for Expedited Discovery and Jury Trial: Wednesday
19 April 17, 2018; Mr. Cohen's deadline to file a reply in support of his Motion to Strike
20 Plaintiff's First Amended Complaint: Monday, April 23, 2018. Blakely Dec., ¶ 4.
21 The Court has scheduled the hearings on the foregoing motions for Monday, May 14,
22 2018. [Dkt. No. 35].

23 On April 12, 2018, counsel for Defendants conferred telephonically with
24 Plaintiff's counsel, and advised that Defendants intended to bring the instant *Ex Parte*
25 Application. Blakely Dec., ¶ 6. In connection with this meet and confer, Defendants
26 provided Plaintiff with a copy of a recent ruling by Judge Birotte in *Chrome Hearts,*
27 *LLC v. Old School Fairfax, Inc.* (CDCA Case No. 16-cv-09080), wherein Judge
28 Birotte granted a stay under similar circumstances. *Id.* In response, Plaintiff's

1 counsel advised that Plaintiff would not consent to a stay and would oppose this
2 request. *Id.* However, the parties stipulated to a briefing schedule in connection with
3 this *Ex Parte* Application and to a seven-day continuance of the parties' respective
4 response deadlines in connection with all pending motions. [Dkt. No. 36]. On April
5 12, 2018, the Court approved this stipulation. [Dkt. No. 37].

6 The Court-approved stipulation set forth the following briefing schedule in
7 connection with this *Ex Parte* Application: Defendants' deadline to file the
8 Application: 6:00 p.m. on Friday, April 13, 2018; Plaintiff's deadline to file her
9 opposition to the Application: 6:00 p.m. on Monday, April 16, 2018; Defendants'
10 deadline to file their reply in support of the Application: 6:00 p.m. on Tuesday, April
11 17, 2018. [Dkt. No. 37]. The Court also extended the due dates for all opposition and
12 reply briefs in connection with all other currently pending motions by a period of
13 seven days. *Id.*

14 **III. GOOD CAUSE EXISTS TO GRANT THE REQUESTED STAY**

15 **A. There Is Good Cause for *Ex Parte* Relief**

16 Defendants are aware that *ex parte* applications are solely for extraordinary
17 relief and are discouraged by the Court. However, given the sudden raid on Mr.
18 Cohen's residence, office and hotel room and the upcoming response deadlines for
19 pending motions, there is insufficient time for Defendants to make this request via
20 noticed motion.

21 In *Mission Power Eng'g Co. v. Continental Casualty Co.*, 883 F. Supp 488,
22 492 (C.D. Cal. 1995), the court set forth a two-part test to determine whether a
23 moving party is entitled to *ex parte* relief: the moving party must show (1) that its
24 "cause will be irreparably prejudiced if the underlying motion is heard according to
25 regular noticed motion procedures"; and (2) that the moving party is "without fault in
26 creating the crisis that requires *ex parte* relief, or that the crisis occurred as a result of
27 excusable neglect."
28

1 As discussed above, and in the accompanying Declaration of Brent K. Blakely,
2 the circumstances necessitating this request for a stay did not arise until Monday,
3 April 9, 2018, at which time EC’s and Mr. Trump’s reply briefs in support of EC’s
4 Motion to Compel Arbitration were already required to be filed on Monday, April 16,
5 2018. Blakely Dec., ¶ 3-4. Additionally, although the Court has continued this and
6 all other briefing deadlines for pending motion for a period of seven days, there is still
7 insufficient time for Defendants to proceed via a noticed motion. As such,
8 Defendants were not the cause of the instant emergency.

9 Additionally, Defendants will be irreparably prejudiced if this request is heard
10 according to regular noticed procedures. As a party to this action and EC’s principal,
11 Mr. Cohen is a key witness in this action and Defendants’ most knowledgeable person
12 with respect to the facts underlying this action. Blakely Dec., ¶ 5; FAC, ¶ 17, 24. As
13 such, if this action is not stayed, Defendants will be unable to fully respond to and
14 defend themselves against the claims asserted by Plaintiff, including in connection
15 with the briefs due on the pending motions.

16 **B. Mr. Cohen’s Fifth Amendment Rights May be Adversely Impacted if**
17 **this Case Proceeds**

18 Where, as here, the facts underlying civil and criminal proceedings overlap, the
19 civil case implicates Fifth Amendment rights. *Neman Fin., L.P. v. Citigroup Glob.*
20 *Markets, Inc.*, 2015 WL 12837640, at *4 (C.D. Cal. Apr. 17, 2015) (“That this case
21 involves factual circumstances related to those underlying the criminal charges
22 suggests that Plaintiffs Fifth Amendment rights may be adversely affected if this
23 matter proceeds.”). Accordingly, “[a] party asserting the Fifth Amendment privilege
24 should suffer no penalty for his silence.” *Pacers, Inc. v. Superior Court*, 162 Cal.
25 App. 3d 686, 689 (1984). “In this context ‘penalty’ is not restricted to fine or
26 imprisonment. It means...the imposition of any sanction which makes assertion of
27 the Fifth Amendment privilege costly.” *Id.* (internal quotations omitted). A court
28 may therefore, in its discretion, stay civil proceedings when the interests of justice so

1 require. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995).
2 Accordingly, where there are overlapping issues in criminal and civil cases, a stay “is
3 appropriate to preserve [an individual’s] Fifth Amendment Rights.” *Am. Express Bus.*
4 *Fin. Corp. v. RW Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 265 (E.D.N.Y.
5 2002).

6 Moreover, an individual need not be subject to any formal criminal proceedings
7 or indictment to exercise his Fifth Amendment rights. “A valid assertion of the
8 privilege does not require an imminent criminal prosecution or investigation: The
9 right to assert one’s privilege against self-incrimination does not depend upon the
10 likelihood, but upon the possibility of prosecution.” *Englebrick v. Worthington*
11 *Indus., Inc.*, 670 F. Supp. 2d 1048, 1050 (C.D. Cal. 2009), quoting *In re Master Key*
12 *Litigation*, 507 F.2d 292, 293 (9th Cir.1974). “The mere possibility of criminal
13 prosecution is all that is necessary for the Fifth Amendment privilege against self-
14 incrimination to be invoked.” *Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum*
15 *Fin., Inc.*, 2009 WL 2136986, at *3 (E.D. Cal. July 15, 2009).

16 **C. Adverse Impact on Mr. Cohen’s Fifth Amendment Right Prejudices**
17 **the Other Defendants**

18 A stay also is appropriate where the Fifth Amendment rights of an individual
19 will prejudice another’s ability to meaningfully defend itself in a civil action. When a
20 defendant’s main witnesses are likely to invoke their Fifth Amendment rights, it “will
21 certainly hinder [the defendant’s] defense in a substantial way.” *Delphi Connection*
22 *Sys., LLC v. Koehlke Components, Inc.*, 2012 WL 12895670, at *2 (C.D. Cal. Oct. 17,
23 2012); *see also Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum Fin., Inc.*, 2009
24 WL 2136986, at *3 (E.D. Cal. July 15, 2009) (explaining that, while a defendant
25 corporation did not have Fifth Amendment rights, its directors’ Fifth Amendment
26 rights prejudiced its “ability to meaningfully defend itself...”); *Medina v. Argent*
27 *Mortg. Co.*, 2006 WL 1305230, at *2 (N.D. Cal. May 11, 2006) (granting a stay
28 where persons most knowledgeable for defendant were charged with crimes related to

1 the facts of the civil matter).

2 Because Mr. Cohen is a key witness, Defendants will be unable to fully
3 respond to and meaningfully defend themselves against the claims asserted by
4 Plaintiff, resulting in substantial prejudice. Blakely Dec., ¶ 5; FAC, ¶ 17, 24.
5 Additionally, Plaintiff may also be prejudiced if a stay is not granted because she will
6 likely be unable to obtain the documents and deposition testimony that she is seeking
7 from Mr. Cohen pursuant to her Motion for Expedited Discovery, in the event the
8 motion is granted (which it should not be). A stay of this action therefore is
9 warranted.

10 **D. The Molinaro Factors Weigh in Favor of Granting a Stay**

11 In evaluating whether to grant a stay, Courts also consider the following
12 factors:

13 (1) the interest of the plaintiffs in proceeding expeditiously with
14 this litigation or any particular aspect of it, and the potential
15 prejudice to plaintiffs of a delay; (2) the burden which any
16 particular aspect of the proceedings may impose on defendants; (3)
17 the convenience of the court in the management of its cases, and
18 the efficient use of judicial resources; (4) the interests of persons
19 not parties to the civil litigation; and (5) the interest of the public in
20 the pending civil and criminal litigation. *Fed. Sav. & Loan Ins.*
21 *Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989).

22 These factors weigh in favor of granting the requested stay.

23 Although Plaintiff undoubtedly has an interest in this case proceeding
24 expeditiously, she will not be prejudiced by the requested stay. There is no risk of
25 any loss of property and Plaintiff's ability to obtain her requested relief will not be
26 impaired by the stay. Additionally, Plaintiff has already appeared on a national
27 television show, 60 Minutes, to tell her alleged story. Indeed, another court in this
28 district has found a 90 day stay to be reasonable under similar circumstances. *See*

1 *Chrome Hearts, LLC, v. Old School Fairfax, Inc.*, No. 16-CV-09080 AB, Docket No.
2 70, at p. 5 (C.D. Cal. Feb. 26, 2018) (granting the requested stay and finding that “[a]
3 90 day stay will not overly prejudice Plaintiff.”). Moreover, as previously explained,
4 Plaintiff also may be prejudiced if a stay is not granted.

5 Defendants will be substantially prejudiced if compelled to proceed with this
6 case while the criminal investigation related to Mr. Cohen is ongoing, given the
7 substantial overlap between the facts in this action and the criminal investigation, and
8 Mr. Cohen’s status as is a key witness. Blakely Dec., ¶ 5; FAC, ¶ 17, 24. Thus, if the
9 case moves forward, Defendants’ key witness would have to choose between
10 exercising his Fifth Amendment rights and testifying on Defendants’ behalf. In other
11 words, Defendants could be forced to proceed with this case without presenting key
12 testimony in their defense.

13 The other *Molinaro* factors similarly weigh in favor of the requested stay. If
14 this case is not stayed, this Court may be required to decide certain issues without
15 necessary information from a key witness, which would not be an efficient use of
16 judicial resources. *See Jones v. Conte*, 2005 WL 1287017, at *2 (N.D. Cal. Apr. 19,
17 2005) (“Staying the case makes efficient use of judicial resources by insuring that
18 common issues of fact will be resolved and subsequent civil discovery will proceed
19 unobstructed by concerns regarding self-incrimination.”). Additionally, a 90 day stay
20 “will not significantly impact the Court’s ability to clear its docket.” *See Chrome*
21 *Hearts, LLC, v. Old School Fairfax, Inc.*, No. 16-CV-09080 AB, Docket No. 70, at p.
22 7. The requested stay will also not implicate the interests of persons not parties to this
23 action.

24 Furthermore, public interest is best served by ensuring this action does not
25 interfere with the criminal investigation. *See Douglas v. United States*, 2006 WL
26 2038375, at *6 (N.D. Cal. July 17, 2006) (“The public has an interest in ensuring that
27 the criminal process is not subverted by ongoing civil cases.”). While the public may
28 also have an interest in the resolution of this action, a 90 day stay “effectively

1 accounts for that interest” since it will allow this case to be resolved if criminal
2 proceedings conclude within that time. *See Chrome Hearts, LLC, v. Old School*
3 *Fairfax, Inc.*, No. 16-CV-09080 AB, Docket No. 70, at p. 8.

4 Accordingly, the requested stay is appropriate and necessary to prevent
5 prejudice in this action.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Defendants respectfully requests that the Court grant
8 the instant *Ex Parte* Application and issue an order staying the case for a period of 90
9 days or to an alternative date suitable to the Court, and permitting Defendants to
10 request a further stay, if necessary.

11
12 Dated: April 13, 2018

BLAKELY LAW GROUP

13
14 By: /s/ Brent H. Blakely

BRENT H. BLAKELY

Attorneys for Defendants

ESSENTIAL CONSULTANTS, LLC and

MICHAEL COHEN

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18 Dated: April 13, 2018

HARDER LLP

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20 By: /s/ Charles J. Harder

CHARLES J. HARDER

Attorneys for Defendant

DONALD J. TRUMP

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22
23 Pursuant to Local Rule 5-4.3.4, I Brent H. Blakely, hereby attest that all other
24 signatories to this *Ex Parte* Application, and on whose behalf it is submitted, concur
25 in its content and have authorized its filing.

26 Dated: April 13, 2018

/s/ Brent H. Blakely

BRENT H. BLAKELY