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18 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

19 STEPHANIE CLIFFORD a.k.a.
20 STORMY DANIELS a.k.a. PEGGY
PETERSON, an individual,

21 Plaintiff,

22 v.

23 DONALD J. TRUMP a.k.a. DAVID
24 DENNISON, an individual,
ESSENTIAL CONSULTANTS, LLC, a
25 Delaware Limited Liability Company,
MICHAEL COHEN, an individual, and
26 DOES 1 through 10, inclusive,

27 Defendants.
28

Case No. 2:18-CV-02217

**JOINT REPORT ON STATUS OF
CRIMINAL PROCEEDINGS
REGARDING DEFENDANT
MICHAEL COHEN**

Status Conference

Date: July 27, 2018

Time: 9:00 a.m.

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

Action Filed: March 6, 2018

1 Plaintiff Stephanie Clifford (“Plaintiff”) and Defendants Essential Consultants,
2 LLC (“EC”), Michael Cohen (“Mr. Cohen”) and Donald J. Trump (“Mr. Trump”)
3 (collectively, “Defendants”) (together with Plaintiff, the “Parties”) hereby submit the
4 following joint report on the status of the criminal proceedings relating to Mr. Cohen.

5 **I. Summary**

6 The criminal investigation of Mr. Cohen being conducted by the Federal
7 Bureau of Investigation (“FBI”) and United States Attorney’s Office for the Southern
8 District of New York (“USAO-SDNY”) (collectively, the “Government”) remains
9 ongoing. However, the Parties do not know when the Government’s investigation of
10 Mr. Cohen will be completed, or if a criminal indictment of Mr. Cohen will occur.

11 As of June 25, 2018, Mr. Cohen completed his review of the materials seized
12 by the FBI on April 9, 2018 (the “Seized Materials”) and designated the materials he
13 believes to be protected by the attorney-client privilege or attorney-work product
14 doctrine. From among those Seized Materials, more than three million non-
15 privileged items have been turned over to the Government for substantive review in
16 connection with the investigation, and the process is ongoing.

17 As discussed in detail in Section II below, this review process has been
18 carefully overseen by the Honorable Kimba M. Wood, United States District Judge
19 for the Southern District of New York (“SDNY”), and the Special Master appointed
20 by Judge Wood, the Honorable Barbara S. Jones (Ret.), in the case filed by Mr.
21 Cohen in the SDNY entitled, *In the Matter of Search Warrants Executed on April 9,*
22 *2018*, Case No. 18-mj-03161 (the “Cohen SDNY Action”).

23 The Parties are also unaware of the exact scope of the investigation of Mr.
24 Cohen, or the full extent to which it overlaps with this case. However, the Parties can
25 confirm that: Plaintiff filed a motion to intervene in the Cohen SDNY Action on the
26 basis that certain privileged and/or confidential information of Plaintiff was included
27 in the Seized Materials. The Court held the motion in abeyance to allow Plaintiff and
28 the SDNY-USAO to resolve any issues informally. Plaintiff is currently not pursuing

1 the motion. Plaintiff provided documents to the Government pursuant to a grand jury
2 subpoena; and Plaintiff was scheduled to have a meeting with the Government in
3 preparation for her grand jury testimony, before it was cancelled by the SDNY-
4 USAO after the press learned of it. A meeting between Plaintiff and the SDNY-
5 USAO has not been rescheduled at this time.

6 **II. The Cohen SDNY Action**

7 As the SDNY-USAO recounted in its initial filing in the Cohen SDNY Action:
8 “On April 9, 2018, agents from the New York field office of the Federal Bureau of
9 Investigation (‘FBI’) executed search warrants for Michael Cohen’s residence, hotel
10 room, office, safety deposit box, and electronic devices. The searches were
11 authorized by a federal magistrate judge, who had found probable cause to believe
12 that the premises and devices searched contained evidence, fruits, and
13 instrumentalities of conduct for which Cohen is under criminal investigation.” [ECF
14 No. 40-1, Ex. 1, p. 1.] “These searches were carried out as part of an ongoing grand
15 jury investigation being conducted by the USAO-SDNY and the FBI.” [*Id.* at p. 3.]

16 On or about April 13, 2018, Mr. Cohen initiated the Cohen SDNY Action,
17 wherein he sought, among other things, a temporary restraining order preventing the
18 government from reviewing the Seized Materials until Mr. Cohen’s counsel had an
19 opportunity to review them for information protected by the attorney-client privilege
20 and the attorney-work product doctrine. [Cohen SDNY Action ECF No. 5.]

21 On April 16, 2018, the Court denied Mr. Cohen’s request for a temporary
22 restraining order as moot based upon the Government’s agreement to refrain from
23 substantively reviewing the Seized Materials pending a ruling by Judge Wood on Mr.
24 Cohen’s motion. [ECF No. 51, Ex. 1, pp. 90:8-91:12; Cohen SDNY Action ECF No.
25 16.]

26 On April 27, 2018, the Court appointed Hon. Barbara S. Jones (Ret.) as Special
27 Master to conduct “an initial privilege review of the Seized Materials and adjudicate[
28] privilege disputes between the parties...” [Cohen SDNY Action ECF No. 30.]

1 On May 4, 2018, the Special Master issued a Report “to provide the Court with
2 a scheduling plan setting forth the procedure and timeline for conducting the
3 privilege review of the Seized Materials and resolving any disputes as to privilege.”
4 [Cohen SDNY Action ECF No. 39.] In the Report, the Special Master confirmed the
5 Government’s agreement to “provide electronic copies of the materials to [Mr.
6 Cohen] and Special Master on an expedited and rolling basis.” [*Id.*, p. 1.] The
7 Report also provides that, after receipt of the Seized Materials, “counsel for [Mr.
8 Cohen] and the Intervenors will conduct their own privilege review and will provide
9 the results of that review to the Special Master on an expedited and rolling basis.”¹
10 [*Id.*, pp. 1-2.]

11 On June 25, 2018, counsel for Mr. Cohen submitted a letter in the Cohen
12 SDNY Action to inform the Court that they had completed their review of the Seized
13 Materials, stating:

14 We write to advise the Court that we have met the Court’s deadline and
15 have completed our review and privilege designations of the more than 4
16 million files produced to us by the Government. We have designated
17 over 12,061 files as privilege pursuant to the attorney-client privilege and
18 attorney-work product doctrine.

19 The Government’s production of documents began on April 26, 2018,
20 with the subsequent productions being made on May 1, 2018, May 3,
21 2018, May 17, 2018, May 18, 2018, June 14, 2018 and June 15, 2018.

22
23 ¹ The Intervenors in the Cohen SDNY Action are Mr. Trump and the Trump
24 Organization. On April 14, 2018, the Court granted Mr. Trump’s motion to intervene
25 in the Cohen SDNY Action. [Cohen SDNY Action ECF No. 4.] On April 19, 2018,
26 the Court granted the Trump Organization’s motion to intervene in the Cohen SDNY
27 Action. [Cohen SDNY Action ECF No. 17.] Mr. Trump and the Trump Organization
28 intervened in the Cohen SDNY Action for the purpose of reviewing the Seized
Materials pertaining to each of them, respectively, for privileged materials. [*See, e.g.*,
Cohen SDNY Action ECF Nos. 23, 25.]

1 [Cohen SDNY Action ECF No. 87.]

2 Also on June 25, 2018, the USAO-SDNY submitted a letter in the Cohen
3 SDNY Action opposing any further delay in the designation of privileged materials,
4 and confirming that its investigation is ongoing, stating: “The Government has
5 already consented to an adjournment of [Mr. Cohen’s] time to make designations,
6 and it has been nearly three months since execution of the search warrants. Further
7 delay will unreasonably impede the Government’s investigation.” [Cohen SDNY
8 Action ECF No. 86.]

9 On July 2, 2018, the Special Master issued a Report confirming that all Seized
10 Materials had been provided to the Special Master (except the contents of one
11 Blackberry), and that Mr. Cohen had submitted privilege designations for all Seized
12 Materials provided to his counsel, stating:

13 As of June 15, 2018, all of the Seized Materials have been provided to
14 the Special Master with the exception of the electronic contents of one
15 Blackberry phone. Pursuant to the Court’s Order dated June 26, 2018
16 [Dkt No. 88], [Mr. Cohen] and Intervenors have submitted designations
17 to the Special Master for items in their possession with the exception of
18 22,633 items currently being reviewed by the Trump Organization,
19 which must be completed on or before July 5.

20 [Cohen SDNY Action ECF No. 89.]

21 The Special Master also confirmed that, on July 2, 2018, “[a] release of
22 1,310,365 items that were not designated Privileged, Partially Privileged or Highly
23 Personal by [Mr. Cohen] or an Intervenor were released to the Government²” and that
24 “once the Trump Organization submits its designations, any remaining items that are
25

26 ² Additional items were previously released to the Government by the Special
27 Master on a rolling basis, including 1,025,363 non-privileged, non-highly personal
28 items that were released on or about May 30, 2018. [Cohen SDNY Action ECF No.
65, p. 3.]

1 not designated Privileged, Partially Privileged or Highly Personal will be promptly
2 released to the Government.” [*Id.*, pp. 1-2.]

3 On July 10, 2018, Court approved a request by Mr. Cohen’s counsel in the
4 Cohen SDNY Action, McDermott Will & Emory, to allow Mr. Cohen’s newly
5 retained counsel, Guy Petrillo, access to the Seized Materials. [Cohen SDNY Action
6 ECF No. 91.] To date, Mr. Cohen’s counsel in the civil litigations (*Clifford v. Trump*
7 and *Clifford v. Davidson*), Brent Blakely, has not been given access to the Seized
8 Materials.

9 On July 13, 2018, the Special Master confirmed that, on that day, “[a] release
10 of 883,634 items that were not designated Privileged, Partially Privileged or Highly
11 Personal by [Mr. Cohen], Intervenors or Special Master was made to the Government
12 today.” [Cohen SDNY Action ECF No. 92.]

13 **III. Defendants’ Position Regarding the Stay**

14 The events following the issuance of the Court’s Stay Order on April 27, 2018
15 should not change the Court’s analysis set forth therein and, in fact, support an
16 extension of the Stay Order. Over the last several months, Mr. Cohen’s legal team at
17 McDermott Will & Emory engaged in a nearly around-the-clock review of the Seized
18 Materials to identify privileged and/or confidential information that should be
19 excluded from review by the Government in connection with its ongoing investigation
20 of Mr. Cohen.

21 During that time, the Government was not permitted to substantively review
22 any of the Seized Materials until after they were reviewed by Mr. Cohen’s legal team
23 (and others) and released by the Special Master. This process is ongoing. Thus, an
24 extension of the stay is necessary to, among other things, allow the Government to
25 complete its review of the Seized Materials and complete its investigation.

26 Moreover, Plaintiff’s attempt to intervene in the Cohen SDNY Action and her
27 involvement in the Government’s investigation confirms that there is substantial
28 overlap between this case and the ongoing investigation of Mr. Cohen, and that

1 Defendants would be severely prejudiced if the stay is lifted at this juncture. A
2 summary of publicly available information regarding Plaintiff’s involvement in the
3 Cohen SDNY Action and the Government’s investigation is as follows:

4 **a. Plaintiff’s Appearances In The Cohen SDNY Action**

5 Plaintiff’s attorney, Michael Avenatti, appeared at multiple hearings in the
6 Cohen SDNY Action on behalf of Plaintiff, alternately as counsel for “Interested
7 Party Stephanie Clifford a/k/a ‘Stormy Daniels’” (April 13, 2018, April 16, 2018 and
8 May 30, 2018, *see* ECF No. 51, Exs. 1-2, ECF No. 57-3, Ex. B) and as counsel for
9 “Intervenor Stephanie Clifford” (April 26, 2018, *see* Cohen SDNY Action ECF,
10 Minute Entry for 04/26/18). As set forth in a planned Motion to Intervene posted to
11 Twitter by Plaintiff’s counsel, Plaintiff sought to intervene on the basis that:

12 Ms. Clifford has significant reason to believe that the government is in
13 possession of materials that are protected by her attorney-client privilege
14 and settlement communications privilege. These materials are likely to
15 include not only Ms. Clifford’s direct attorney-client communications
16 between her and Mr. Davidson, but also (1) attorney-client
17 communications Mr. Davidson improperly shared with Mr. Cohen as
18 reflected in e-mails, text messages, and possibly audio recordings, (2)
19 protected settlement communications between Mr. Davidson and Mr.
20 Cohen, and (3) communications between Mr. Davidson and Mr. Cohen
21 (i.e. text messages and e-mails) relating to Ms. Clifford that are the
22 property of Ms. Clifford pursuant to California law.

23 [See <https://twitter.com/michaelavenatti/status/989528885330087941?lang=en>.]

24 On April 30, 2018, the Court granted the Government’s request, with the
25 consent of counsel for Plaintiff, to hold Plaintiff’s motion to intervene in abeyance.
26 [Cohen SDNY Action ECF No. 35.]

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1 On May 15, 2018, Mr. Avenatti filed a *Pro Hac Vice* application in the Cohen
2 SDNY Action to appear as counsel for “Intervenor Stephanie Clifford.” [Cohen
3 SDNY Action ECF No. 49.]

4 On May 30, 2018, during a status conference in the Cohen SDNY Action,
5 Judge Kimba Wood told Mr. Avenatti that if he were to be admitted *Pro Hac Vice* in
6 that matter, he would have to “change [his] conduct” and “stop in its tracks [his]
7 publicity tour” because “this conduct is inimitable [*sic*] to giving Mr. Cohen
8 eventually a fair trial” and “could potentially deprive him of a fair trial by tainting a
9 jury pool.” [ECF No. 57-3, Ex. B, 5/30/18 Transcript, pp. 27:12-28:13.] Mr.
10 Avenatti withdrew his *Pro Hac Vice* application the same day. [Cohen SDNY Action
11 ECF No. 68.]

12 **b. Plaintiff’s Scheduled Interview With The Government**

13 On June 24, 2018, *CNN* published an article reporting that a meeting between
14 Plaintiff and the Government was scheduled the following day³, stating:

15 Stormy Daniels will be interviewed by federal prosecutors from the
16 Southern District of New York on Monday as part of their probe into
17 President Donald Trump’s former personal attorney, Michael Cohen,
18 according to a source familiar with the investigation.

19 The source said the meeting is scheduled in advance of Daniels’ grand
20 jury testimony. The adult film actress has been cooperating with
21 investigators for several months and has been in regular contact with
22 them, the source added.

23 Daniels’ lawyer, Michael Avenatti, and a spokesman for the U.S.
24 Attorney’s Office in Manhattan declined to comment.

25 One focus of the questioning for Daniels is expected to be the \$130,000

26
27 ³ This article followed an article by *The Washington Post*, which, according to
28 *CNN*, first reported the scheduled interview.

1 payment she received from Cohen in 2016 in exchange for her silence
2 about an alleged sexual encounter she had with Trump about a decade
3 earlier, which Trump denies

4 Daniels was subpoenaed by prosecutors as part of the Cohen
5 investigation, the source said, and she provided authorities with
6 documentation about the \$130,000 payment. The Washington Post first
7 reported the interview.

8 [See [https://www.cnn.com/2018/06/24/politics/stormy-daniels-trump-cohen-
investigators-interview/index.html](https://www.cnn.com/2018/06/24/politics/stormy-daniels-trump-cohen-
9 investigators-interview/index.html).]

10 Later that night, the Government cancelled the interview with Plaintiff because
11 it was leaked to the press. At 8:02 p.m. on June 24, 2018, Plaintiff's counsel,
12 Michael Avenatti, Tweeted the following regarding the cancellation:

13 So I was just informed by the US Attys office that they are canceling the
14 mtg tmrw scheduled with me and my client (for weeks) because the press
15 found out about the mtg and they can't handle a few cameras outside
16 their offices. If they consider this a big deal, how will they ever bring any
17 serious criminal charges against Cohen et al., let alone handle a trial, in
18 such a high profile matter? We have bent over backwards to
19 accommodate them. This is unheard of. We remain willing to cooperate
20 but something isn't right...

21 [See <https://twitter.com/MichaelAvenatti/status/1011082062483394560>.]

22 In a subsequent Tweet at 9:32 p.m. on June 24, 2018, Mr. Avenatti tweeted
23 again, stating:

24 Here is the email that we sent to the US Attys office after they first stated
25 their intention to cancel the meeting because they were concerned about
26 a few cameras outside. They don't appear to have the stomach for a case
27 of this magnitude unfortunately.

28 [See <https://twitter.com/MichaelAvenatti/status/1011104912825077761>.] The email

1 referenced by Mr. Avenatti in this Tweet stated, in part:

2 We have gone to great lengths to accommodate this meeting (that your
3 office requested) and we are prepared to proceed as scheduled tomorrow.

4 ...

5 Your office repeatedly stated that you want to proceed with the
6 investigation as quickly as possible. If true, then you should proceed
7 with the meeting, which has been scheduled for weeks. ...

8 In sum, we see no reason to cancel the meeting, which we understood
9 was important to your investigation.

10 [*Id.*]

11 Thereafter, *CNN* published an article quoting from a response to Mr.
12 Avenatti's email by Assistant U.S. Attorney Nicolas Roos, which stated that the
13 meeting was cancelled because Mr. Avenatti leaked it to the press. The article stated,
14 in part:

15 According to a fuller email exchange shared by Avenatti, Assistant US
16 Attorney Nicolas Roos responded that the meeting was canceled because
17 "we have learned that you leaked to the press the fact and location of our
18 meeting with your client."

19 "Such leaks are inappropriate in and of themselves, and more
20 importantly, call into question your commitment to maintaining the
21 required confidentiality of the substance of our meeting with your
22 client," Roos said. "Such confidentiality is critical to the diligence,
23 fairness, and integrity of this, and indeed all, investigations conducted by
24 this Office. For these reasons we have cancelled our meeting, and will
25 reassess how to proceed."

26 [See [https://www.cnn.com/2018/06/24/politics/stormy-daniels-interview-](https://www.cnn.com/2018/06/24/politics/stormy-daniels-interview-canceled/index.html)
27 [canceled/index.html](https://www.cnn.com/2018/06/24/politics/stormy-daniels-interview-canceled/index.html).]

28

1 **c. Plaintiff’s refusal to provide information about Clifford’s**
2 **Involvement in the SDNY Investigation**

3 During the preparation of this Joint Report, Defendant Cohen’s counsel
4 requested that Plaintiff provide information pertaining to Clifford’s involvement
5 with the SDNY investigation and Mr. Avenatti’s recent statement that Mr. Cohen
6 would be arrested by the end of the Summer. Specifically, Defendant Cohen
7 requested, in writing, the subpoena served on Ms. Clifford, any communications
8 between Clifford/Avenatti and the U.S. Attorney’s Office, and the basis for Mr.
9 Avenatti’s statement. Plaintiff refused to provide any such information, which
10 would be relevant to the overlap between the criminal and civil proceedings, on the
11 basis that it would purportedly interfere with the criminal investigation. However,
12 as discussed above, it is reasonable to conclude that Plaintiff and her counsel have
13 no problem disclosing such communications with the media so long as it serves their
14 purpose. Given the extensive communications between Clifford’s counsel and the
15 government, it is reasonable to conclude that Clifford knows more about the overlap
16 between this case and the investigation than Cohen does at this stage of the
17 proceedings.

18 **d. Conclusion**

19 This Court has already considered, and rejected, the arguments contained in
20 Section IV, Plaintiff’s Position Regarding the Stay. As this Court held: “...as the
21 alleged mastermind behind the Agreement and **the person with the most direct**
22 **knowledge of the facts and circumstances surrounding its formation,** [Mr.
23 Cohen’s] testimony would be **indispensable to the disposition of this action.**” [Stay
24 Order, p. 7, ECF No. 53.] (Emphasis added.) For the reasons stated in this Joint Status
25 Report, the Stay Order [ECF No. 53], Defendants’ Joint *Ex Parte* Application for Stay
26 and supporting papers [ECF Nos. 38, 40, 50], Defendants’ Opposition to Plaintiff’s
27 Motion for Reconsideration of the Stay Order [ECF No. 57], and the Court’s Order
28 denying the Motion for Reconsideration [ECF No. 63], there remains good cause for

1 this matter to be stayed and Defendants respectfully request that the Court extend the
2 stay for another ninety (90) days.

3 **IV. Plaintiff's Position Regarding the Stay**

4 Plaintiff contends that the stay should be lifted. Mr. Cohen has not been
5 indicted. Fed. Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 889, 903 (9th Cir. 1989)
6 (case for staying civil proceedings is “far weaker” when no indictment has been
7 returned); Perez v. Cty of Los Angeles, No. CV 15-09585 SJO (FFMx), 2016 WL
8 10576622, at *3 (C.D. Cal. May 3, 2016) (there is “no basis in either law or reason to
9 create” a rule that civil litigation should be stayed based on the mere “**possibility** of
10 bringing criminal charges . . .”) (Otero, J.). Although it has been more than three
11 months since the FBI raised Mr. Cohen’s home, office, and hotel room, Mr. Cohen
12 has been unable to demonstrate *with actual evidence* that the government is
13 investigating him for his conduct in relation to his representation of Mr. Trump with
14 regards to the October 2016 non-disclosure and settlement agreement (the
15 “Agreement”), and \$130,000 payment, that are at issue in this lawsuit.

16 The mere fact that records pertaining to Plaintiff were seized by the
17 government does not establish that Mr. Cohen is actually being investigated for
18 committing crimes that have a relation to his conduct vis-à-vis Plaintiff. By that
19 logic, Mr. Cohen is being criminally investigated for every person and company
20 referenced in the millions of records seized by the FBI based on the mere fact alone
21 that Mr. Cohen sent an e-mail, wrote a letter, or made a recording that mentions said
22 person or company. Such an assertion would be absurd. Instead, Mr. Cohen must be
23 held to his evidentiary burden.

24 There is no reason why he would not be capable of meeting this burden if, in
25 fact, there was a factual basis to assert that the government was investigating Mr.
26 Cohen for his conduct with regards to the Agreement and \$130,000 payment. Mr.
27 Cohen’s criminal counsel has presumably had regular contact with the U.S.
28 Attorney’s office for the Southern District of New York and is kept apprised of

1 developments in the investigation. That information is then shared with Mr. Cohen’s
2 counsel in the present case. Tellingly, Mr. Cohen’s update includes no reporting of
3 information suggesting that Mr. Cohen and his legal team have an actual belief that
4 Mr. Cohen will be criminally charged for his work on the Agreement and \$130,000
5 payment. Instead of updating the Court with relevant developments, Mr. Cohen
6 elected to regurgitate various public filings. Moreover, not to be overlooked, Mr.
7 Trump and his attorney Rudy Giuliani have made it clear that Mr. Cohen is only
8 being investigated for matters relating to his “businesses” and not any legal work he
9 did for Mr. Trump, and that there was no campaign finance violation. [Dkt No. 56-1
10 at 7-12, 14-16.]

11 Defendants’ discussion concerning Plaintiff’s counsel’s appearances in the
12 SDNY action and the USAO-SDNY’s cancellation of their interview with Plaintiff is
13 completely irrelevant. It has nothing to do with the narrow question presently before
14 the Court, which is to decide whether the stay should be extended. Defendants’
15 inclusion of this recitation instead is designed to create a sideshow in an unfortunate
16 attempt to impugn the character and credibility of Plaintiff’s counsel before this
17 Court. Plaintiff therefore does not intend to waste the Court’s time on a “tit-for-tat”
18 exchange of words in this joint report in which the Court ordered the parties to limit
19 their discussion to issues relating to the progress of the criminal investigation.

20 With regards to Defendants’ comments in section III(c), the government has a
21 compelling interest to conduct its criminal investigation without interference. Mr.
22 Cohen is a clear target of the investigation. Therefore, Defendants’ demand,
23 unaccompanied by any legal authority, to disclose sensitive communications between
24 the government and Plaintiff is wholly improper. Among other things, disclosure
25 would create a risk of tipping Mr. Cohen off to the subject matters involved in the
26 investigation and would thus clearly interfere with the work of the government. But
27 more to the point, as noted above, Mr. Cohen and his attorneys are plainly in a better
28 position to know and share facts concerning the investigation, including whether Mr.

1 Cohen will be criminally charged for the work he did with regards to the Agreement
2 and \$130,000 payment. No such information has been made available to Plaintiff or
3 the Court, however.

4 Further, Plaintiff reiterates her proposal that the Court impose a partial stay by
5 precluding the parties from conducting discovery from Mr. Cohen. The Court may
6 implement such a stay for 90 days, pending further developments from the SDNY
7 investigation. In the meantime, nothing should delay the parties from conducting
8 other activities in the litigation, including but not limited to, document discovery,
9 deposition discovery of any witness other than Mr. Cohen, and the setting of the
10 Federal Arbitration Act section 4 jury trial and other case management deadlines.
11 There should also be no delay with regards to resolving Plaintiff's renewed motion
12 for expedited discovery and jury trial. [Dkt No. 29.] No prejudice to Mr. Cohen will
13 result. Because he will not be required to answer questions at a deposition under
14 oath, his Fifth Amendment rights will remain intact with no risk of intrusion.
15 Moreover, even though a date for the FAA jury trial may be set, the Court may
16 implement safeguards to ensure (if necessary) that the trial will not proceed until
17 there is clarity concerning whether Mr. Cohen will be indicted for his activities
18 relating to the Agreement and the \$130,000 payment.⁴

19 _____
20
21 ⁴To be clear, Plaintiff does not believe Mr. Cohen has an affirmative legal right
22 to a stay even if it means that he would have to take the stand and assert the Fifth
23 Amendment privilege before the jury. That is because “[n]ot only is it permissible to
24 conduct a civil proceeding at the same time as a related criminal proceeding, *even if*
25 *that necessitates invocation of the Fifth Amendment privilege*, but it is even
26 permissible *for the trier of fact to draw adverse inferences* from the invocation of the
27 Fifth Amendment in a civil proceeding.” Keating v. Office of Thrift Supervision, 45
28 F.3d 322, 326 (9th Cir. 1995) (emphasis added). However, the Court need not decide
at this time whether the trial should actually proceed without Mr. Cohen's testimony.
The point is that the parties should not be delayed in their ability to conduct all other
discovery and litigate the remainder of the case right up to the point at which the
parties are prepared to try the arbitrability dispute.

1 Finally, Plaintiff believes that a stay should not be renewed for all of the
2 reasons discussed in her Opposition to Defendants' Joint *Ex Parte* Application to
3 Stay Action [Dkt No. 39], Response to Declaration of Michael D. Cohen Filed in
4 Support of Defendants' Joint *Ex Parte* Application for Stay [Dkt No. 52], Motion for
5 Reconsideration in Part of Order Imposing Stay [Dkt No. 56-1], and Reply in Support
6 of Motion for Reconsideration in Part of Order Imposing Stay [Dkt No. 59], which
7 are all incorporated herein by this reference.

8 In sum, although Defendants framed their initial request for a stay as a mere
9 temporary measure that would only last for a mere 90 days, it should now be clear to
10 the Court that this in reality this is not, and never has been, Defendants' true
11 intention. On the contrary, Defendants seek an indefinite stay. This serves their
12 interests nicely by permitting them to avoid having to litigate a case that contains
13 many uncomfortable facts and continues to give them a convenient basis to publicly
14 assert that the Agreement is valid, remains enforceable as to Plaintiff, and requires
15 arbitration. To compound the problem, nothing outlined in Defendants' position
16 statement places any end-point on the period during which the stay should remain in
17 effect, nor do Defendants even identify a milestone by which it will be clear whether
18 a stay is necessary. Instead, under the logic and rationale presented to the Court, a
19 stay would be justified during the entire period of the review and investigation, and
20 until after Mr. Cohen is charged, discovery is conducted, he is tried, post-trial
21 motions are resolved, and all of his appeals are exhausted. This process may take
22 **years**. Plaintiff should not have to wait and sit on her hands indefinitely to receive
23 justice. This is particularly true where, as here, it is undisputed that Mr. Cohen does
24 not possess a constitutional right to a stay. Keating v. Office of Thrift Supervision,
25 45 F.3d 322, 326 (9th Cir. 1995) (there is "no absolute right not to be forced to
26 choose between testifying in a civil matter and asserting his Fifth Amendment
27 privilege."); Molinaro, 889 F.2d at 889 (stay of civil proceedings pending the
28 outcome of parallel criminal proceedings "is not required by the Constitution.")

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Dated: July 17, 2018

BLAKELY LAW GROUP

By: /s/ Brent H. Blakely

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Dated: July 17, 2018

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Dated: July 17, 2018

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By: /s/ Michael J. Avenatti

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STEPHANIE CLIFFORD

Pursuant to Local Rule 5-4.3.4, I Brent H. Blakely, hereby attest that all other signatories to this Joint Report, and on whose behalf it is submitted, concur in its content and have authorized its filing.

Dated: July 17, 2018

/s/ Brent H. Blakely

BRENT H. BLAKELY