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9 ESSENTIAL CONSULTANTS, LLC

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 STEPHANIE CLIFFORD a.k.a.  
14 STORMY DANIELS a.k.a. PEGGY  
15 PETERSON, an individual,

16 Plaintiff,

17 v.

18 DONALD J. TRUMP a.k.a. DAVID  
19 DENNISON, an individual,  
20 ESSENTIAL CONSULTANTS, LLC, a  
21 Delaware Limited Liability Company,  
22 and DOES 1 through 10, inclusive,

23 Defendants.  
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Case No. 2:18-CV-02217

**JOINT *EX PARTE* APPLICATION  
OF DEFENDANTS ESSENTIAL  
CONSULTANT, LLC AND DONALD  
J. TRUMP FOR EXTENSION OF  
TIME TO RESPOND TO FIRST  
AMENDED COMPLAINT**

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 (“EC”) and Donald J. Trump (collectively, “Defendants”) will and hereby do move *ex parte* for an order granting Defendants an extension of time to file an answer or Rule 12 motion to dismiss the First Amended Complaint (“FAC”) filed by Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson (“Clifford” or “Plaintiff”) of: (1) 30-days; or (2) 14 days (or another reasonable time) following the Court’s ruling on EC’s Motion to Compel Arbitration [Dkt. No. 20] (the “Arbitration Motion”), in which Mr. Trump joined, if necessary.

10 Defendants are aware that *ex parte* applications are solely for extraordinary relief and are discouraged by the Court. Court’s Standing Order, ¶ 30. However, Plaintiff’s conduct (as detailed herein) and refusal to agree to the requested extension has left Defendants no choice but to seek relief on an *ex parte* basis.

14 The current deadline for Defendants to respond the FAC is April 9, 2018, which is well before this Court’s anticipated ruling on the Arbitration Motion. If the Arbitration Motion is granted, it will likely obviate the need for Defendants to file any response to the FAC. If the Arbitration Motion is denied, the Court’s ruling may dispose of certain issues that Defendants could raise in a Rule 12 motion to dismiss.

19 The requested extension is therefore in the interest of judicial economy and is likely to save the parties time and expense of engaging in unnecessary motion practice. Additionally, as detailed below, Defendants diligently attempted to obtain a stipulation from Plaintiff on this matter, but given Plaintiff’s refusal and the short period of time to respond to the FAC, there is insufficient time to make this request via a noticed motion. Further, Defendants have not previously requested such an extension from the Court.

26 This application is based on this Notice, the accompanying Memorandum of Points and Authorities, the accompanying Declarations of Brent H. Blakely, any reply papers filed by Plaintiff, all other papers on file in this action, all materials that may be

1 properly considered in connection with this motion, and oral argument at any hearing  
2 on this matter.

3 Plaintiff is represented by:  
4 Michael J. Avenatti  
5 Avenatti & Associates, APC  
6 520 Newport Center Drive, Suite 1400  
7 Newport Beach, California 92660  
8 (949) 706-7000  
9 [mavenatti@eoalaw.com](mailto:mavenatti@eoalaw.com)

10 On April 2, 2018, counsel for EC, Brent Blakely, orally advised counsel for  
11 Plaintiff, Michael Avenatti, that Defendants would bring the instant *ex parte*  
12 application if Plaintiff did not agree to an extension of time for Defendants to respond  
13 to the FAC. Declaration of Brent H. Blakely (“Blakely Decl.”), ¶¶ 6-7. At the time,  
14 no agreement on an extension was reached because Mr. Avenatti placed an entirely  
15 unreasonable condition on the extension (discussed in detail below). *Id.*

16 On April 3, 2018, counsel for Defendants advised Mr. Avenatti of this *ex parte*  
17 application, in writing, on two occasions. Blakely Decl., ¶¶ 8-10; Ex. C and Ex. D to  
18 Blakely Decl. On the second occasion, pursuant to Local Rule 7-19.1, Mr. Blakely  
19 attempted to schedule a call the following day (April 4, 2018) to discuss the date and  
20 substance of this application. Blakely Decl., ¶ 10; Ex. D to Blakely Decl. However,  
21 Mr. Avenatti did not respond to Mr. Blakely’s email for over thirty (30) hours, and  
22 when he did respond, Mr. Avenatti offered to schedule the call over the weekend (i.e.  
23 at least 2 days later). Blakely Decl., ¶ 11; Ex. E to Blakely Decl. In the interim, on  
24 April 4, 2018, Mr. Avenatti appeared on at least three national television news shows  
25 to discuss this case: (a) *Anderson Cooper 360* on CNN; (b) *Megyn Kelly Today* on  
26 NBC News; and (c) *New Day* on CNN, with Alisyn Camerota. Blakely Decl., ¶ 11.

27 Given that the current due date for Defendants’ response to the FAC is the next  
28 business day (Monday, April 9, 2018) following Mr. Avenatti’s proposed meet and  
confer, Defendants could not wait until the weekend to further meet and confer with  
Mr. Avenatti. Blakely Decl., ¶ 12. Thus, Defendants have no choice but to file the

1 instant application.  
2

3 Dated: April 5, 2018

BLAKELY LAW GROUP

4  
5 By: /s/ Brent H. Blakely

BRENT H. BLAKELY

6 Attorneys for Defendant ESSENTIAL  
7 CONSULTANTS, LLC  
8

9 Dated: April 5, 2018

HARDER LLP

10  
11 By: /s/ Charles J. Harder

CHARLES J. HARDER

12 Attorneys for Defendant  
13 DONALD J. TRUMP  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The instant *Ex Parte* Application of Defendants Essential Consultants, LLC (“EC”) and Donald J. Trump (collectively, “Defendants”) is necessary due to Plaintiff Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson’s (“Clifford” or “Plaintiff”) counsel’s refusal to agree to a routine request to extend the current April 9, 2018 deadline for Defendants to file an answer or a Rule 12 motion to dismiss the First Amended Complaint (“FAC”). In light of EC’s pending Motion to Compel Arbitration [Dkt. No. 20] (the “Arbitration Motion”), in which Mr. Trump has joined, Defendants requested that Plaintiff stipulate to a 30-day extension of their response deadline, in the interest of judicial economy. Rather than simply grant this routine request, Plaintiff’s counsel, Michael Avenatti, conditioned Plaintiff’s stipulation to an extension on a separate agreement by defendant Michael Cohen (who is not a party to the cause of action brought against Defendants, and is not requesting an extension at this time) to arbitrate Plaintiff’s second cause of action of defamation against him in the event the Court grants the Arbitration Motion.

Plaintiff’s attempt to condition Defendants’ routine request for an extension upon a separate agreement from a separate defendant (Michael Cohen) is wholly inappropriate and runs afoul of Section B.2. of the Central District’s Civility and Professionalism Guidelines, which states in pertinent part: “Unless time is of the essence, as a matter of courtesy we will grant first requests for reasonable extensions of time to respond to litigation deadlines.” *See also In re Barrera*, 2016 WL 3004429, at \*2 (Bankr. C.D. Cal. May 17, 2016) (stating counsel should be able to agree to a reasonable extension of time to respond to a complaint “without attaching any extraneous conditions”).

Additionally, such requests for an extension are routinely granted by courts and are the proper subject of *ex parte* requests. *See Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 8-D* (emphasis added) (“Requests for initial extensions should

1 not be unreasonably refused. Civility between counsel is good strategy and always  
 2 appreciated by the court. Unless it would give defendant a strategic advantage and  
 3 the matter is important, stipulate to the extension of time (**particularly because**  
 4 **courts routinely grant initial extensions**).”); Ex Parte Motions, Rutter Group Prac.  
 5 Guide Fed. Civ. Pro. Before Trial Ch. 12-F (*ex parte* orders in connection with  
 6 scheduling matters are proper).

7 Accordingly, there is good cause for the Court issue an order granting  
 8 Defendants: (1) a 30-day extension of time to respond to the FAC; or in the  
 9 alternative (2) 14 days (or another reasonable period of time) to respond to the FAC  
 10 following the Court’s ruling on the Arbitration Motion.

11 Prior to filing this application, counsel for Defendants advised Plaintiff’s  
 12 counsel, Mr. Avenatti, of the Civility and Professionalism Guidelines set forth herein.  
 13 Notwithstanding the same, and following multiple requests for a stipulation to the  
 14 extension requested herein, Mr. Avenatti refused the request, thus requiring  
 15 Defendants to incur the cost of preparing this Application, and requiring this Court to  
 16 expend the resources to consider this Application, as opposed to a simple and routine  
 17 stipulation.

## 18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 This action was commenced by Plaintiff in Los Angeles Superior Court on  
 20 March 6, 2018 through the filing of the Complaint. Plaintiff’s Complaint asserted a  
 21 single cause of action for declaratory relief against Defendants. On March 16, 2018,  
 22 EC removed this action to the United States District Court, Central District of  
 23 California; Mr. Trump consented to and joined in this removal. [Dkt. Nos. 1, 5]

24 On March 21, 2018, counsel for Defendants met with counsel for Plaintiff to  
 25 discuss the Arbitration Motion and Plaintiff’s Motion for Expedited Jury Trial  
 26 pursuant to Local Rule 7-3. Blakely Decl., ¶ 3. The parties however were unable  
 27 reach an agreement to eliminate the need for their respective motions. *Id.*  
 28

1 On March 26, 2018, Plaintiff filed her First Amended Complaint (the “FAC”),  
2 which asserted a second cause of action for defamation against a new party: Michael  
3 Cohen (“Mr. Cohen”). [Dkt. No. 14]

4 On March 27, 2018, Plaintiff filed her Motion for Expedited Jury Trial. [Dkt.  
5 No. 16] The Court denied this motion, *sua sponte*, without prejudice on March 29,  
6 2018. [Dkt No. 17] In its ruling, the Court ordered Plaintiff to file proofs of service  
7 for the FAC within 14 days and further ordered Defendants to file a response to the  
8 FAC within 14 days of the date service was accomplished. *Id.* at p. 4. On April 3,  
9 2018, Plaintiff filed a certificate of service [Dkt. No. 22], which reflected that the  
10 FAC was served on Defendants on March 26, 2018 and established that the deadline  
11 for Defendants to respond to the FAC is April 9, 2018.

12 On March 27, 2018, counsel for Mr. Cohen, Brent Blakely, sent a letter to Mr.  
13 Avenatti requesting a meet and confer in connection with Mr. Cohen’s contemplated  
14 motion to strike Plaintiff’s second cause of action pursuant to California Code of Civil  
15 Procedure § 425.16. Ex. A to Blakely Decl., 3/27/18 Letter. This correspondence  
16 further advised Mr. Avenatti that Mr. Blakely was beginning a trial on April 3, 2018  
17 and requested that the in-person meet and confer take place during the same week. *Id.*

18 Having received no response from Mr. Avenatti for nearly three days, Mr.  
19 Blakely sent a follow-up email to Mr. Avenatti on Friday, March 30, 2018. Ex. B to  
20 Blakely Decl., 3/30/18 Email Chain. Additionally, citing the then-upcoming  
21 Arbitration Motion and the interests of judicial economy, Mr. Blakely requested on  
22 behalf of Defendants that Plaintiff stipulate to a 30-day extension of Defendants’  
23 deadline to file an answer or Rule 12 motion to the FAC. *Id.*

24 In response, Mr. Avenatti did not state whether or not he would agree to the  
25 requested extension, and instead stated that he would discuss it during the parties’  
26 meet and confer on Mr. Cohen’s motion to strike and/or dismiss, which he scheduled  
27 to take place on Monday, April 2, 2018, at 11:00 am. Ex. B to Blakely Decl.  
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1 The meet and confer between Mr. Blakely and Mr. Avenatti took place on  
2 April 2, 2018; and was held telephonically due to Mr. Blakely's need to prepare for a  
3 trial beginning the next day. Blakely Decl., ¶ 6. During the conference, Mr. Avenatti  
4 proposed an extension of time for Defendants to respond to the FAC until 10-14 days  
5 after the Court ruled on the Arbitration Motion; however, this proposal was  
6 conditioned upon defendant Michael Cohen (who was not requesting an extension and  
7 is not even a party to the one cause of action against Defendants: the First Cause of  
8 Action for Declaratory Relief) agreeing to arbitrate Plaintiff's second cause of action  
9 for defamation against him, in the event the Court grants the Arbitration Motion. *Id.*,  
10 ¶ 7. As result, no agreement on an extension of time was reached and Mr. Blakely  
11 informed Mr. Avenatti that an *ex parte* application would be necessary if Plaintiff did  
12 not agree to the extension. *Id.*

13 On April 2, 2018, EC filed the Arbitration Motion, which Mr. Trump has  
14 joined. [Dkt. Nos. 20-21]

15 On April 3, 2018, counsel for Mr. Trump, Charles Harder, sent a follow-up  
16 letter to Mr. Avenatti advising that the aforementioned condition on the extension  
17 requested by Defendants was inappropriate and in violation of the Central District's  
18 Civility and Professionalism Guidelines, and requested that Plaintiff to agree to an  
19 extension without this condition. Ex. C to Blakely Decl., 4/3/18 Letter. In response,  
20 Mr. Avenatti claimed that Mr. Harder's letter was "inaccurate in many aspects," but  
21 did not identify any of the purported inaccuracies or respond to the substance of the  
22 letter, namely, whether or not Plaintiff would agree to the requested extension without  
23 conditions. Ex. D to Blakely Decl., 4/3/18 Email Chain. In response, Mr. Harder  
24 advised that his letter was accurate, and reiterated his request that Plaintiff clarify  
25 whether she would agree to the requested extension without conditions. *Id.* Mr.  
26 Harder further advised Mr. Avenatti that Defendants would have no choice but to file  
27 an *ex parte* application for the requested extension if it was refused by Plaintiff. *Id.*  
28

1 In response, Mr. Avenatti again did not state whether Plaintiff would agree to an  
2 extension, and instead combatively hurled accusations. *Id.*

3       Thereafter, on the night of April 3, 2018, Mr. Blakely, after concluding the first  
4 day of trial before Judge Terry Hatter in the U.S. District Court, Central District of  
5 California, and preparing for the following day of trial, sent an email to Mr. Avenatti  
6 requesting yet another meet and confer telephonic conference to discuss the requested  
7 extension. Ex. D to Blakely Decl. Mr. Avenatti did not respond to Mr. Blakely's  
8 email for over thirty (30) hours, and when he did, Mr. Avenatti offered to meet and  
9 confer over the weekend (i.e. at least two days later). Blakely Decl., ¶ 11; Ex. E to  
10 Blakely Decl., 4/5/18 Email. In the interim, on April 4, 2018, Mr. Avenatti appeared  
11 on at least three national television news shows to discuss this case: (a) *Anderson*  
12 *Cooper 360* on CNN; (b) *Megyn Kelly Today* on NBC News; and (c) *New Day* on  
13 CNN, with Alisyn Camerota. Blakely Decl., ¶ 11.

14       Given that the current due date for Defendants' response to the FAC is the next  
15 business day (Monday, April 9, 2018) following Mr. Avenatti's proposed meet and  
16 confer, Defendants could not wait until the weekend to further meet and confer with  
17 Mr. Avenatti. Blakely Decl., ¶ 12.

18       As a result of the foregoing, Defendants were required to file the instant *Ex*  
19 *Parte* Application, to obtain the requested extension.

### 20 **III. GOOD CAUSE EXISTS TO GRANT THIS EX PARTE APPLICATION**

21       Defendants are aware that *ex parte* applications are solely for extraordinary  
22 relief and are discouraged by the Court. Court's Standing Order, ¶ 30. However,  
23 Plaintiff's aforementioned conduct and refusal to agree to the requested extension has  
24 left Defendants no choice but to seek relief on an *ex parte* basis.

25       In *Mission Power Eng'g Co. v. Continental Casualty Co.*, 883 F. Supp 488,  
26 492 (C.D. Cal. 1995) the court set forth a two-part test to determine whether a moving  
27 party is entitled to *ex parte* relief: the moving party must show (1) that its "cause will  
28 be irreparably prejudiced if the underlying motion is heard according to regular

1 noticed motion procedures”; and (2) that the moving party is “without fault in creating  
 2 the crisis that requires ex parte relief, or that the crisis occurred as a result of  
 3 excusable neglect.”

4 As discussed above, and in the accompanying Declaration of Brent H. Blakely,  
 5 Defendants diligently attempted to obtain a stipulation from Plaintiff on this matter,  
 6 but because Plaintiff refused, and because of the short period of time to respond to the  
 7 FAC (14 days), there is insufficient time make this request via a noticed motion.  
 8 Defendants have not previously requested such an extension from the Court.

9 Additionally, the current deadline for Defendants to respond the FAC is April  
 10 9, 2018, which is well before this Court’s ruling on Arbitration Motion. If the  
 11 Arbitration Motion is granted, it will likely obviate the need for Defendants to file any  
 12 response to the FAC. If the Arbitration Motion is denied, the Court’s ruling may  
 13 dispose of certain issues that Defendants could raise in a Rule 12 motion to dismiss.  
 14 The requested extension is therefore in the interest of judicial economy and will save  
 15 the parties time and expense from engaging in unnecessary motion practice.  
 16 Accordingly, there is good cause for the Court to grant the requested extension.

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, Defendants respectfully requests that the Court grant  
 19 the instant *Ex Parte* Application and issue an order granting Defendants an extension  
 20 of time to file an answer or motion to dismiss the FAC of: (1) 30 days; or in the  
 21 alternative (2) 14 days (or another reasonable period of time) following the Court’s  
 22 ruling on the Arbitration Motion.

24 Dated: April 5, 2018

BLAKELY LAW GROUP

26 By: /s/ Brent H. Blakely

BRENT H. BLAKELY

Attorneys for Defendant

ESSENTIAL CONSULTANTS, LLC

1 Dated: April 5, 2018

HARDER LLP

2  
3 By: /s/ Charles J. Harder

4 CHARLES J. HARDER

5 Attorneys for Defendant

6 DONALD J. TRUMP

7  
8 Pursuant to Local Rule 5-4.3.4, I Brent H. Blakely, hereby attest that all other  
9 signatories to this *Ex Parte* Application, and on whose behalf it is submitted, concur  
10 in its content and have authorized its filing.

11 Dated: April 5, 2018

/s/ Brent H. Blakely

BRENT H. BLAKELY