UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Search Warrants Executed on April 9, 2018	
MICHAEL D. COHEN, Plaintiff, - against – UNITED STATES OF AMERICA, Defendant.	18-MJ-3161 (KMW) **RESPONSE TO PLAINTIFF MICHAEL D. COHEN'S OBJECTION TO *PRO HAC VICE* ADMISSION OF MICHAEL J. AVENATTI**

On May 9th, Michael Cohen ("Mr. Cohen"), through his attorneys, filed an opposition to the *pro hac vice* admission of Michael J. Avenatti, attorney for proposed intervenor Stephanie Clifford ("Ms. Clifford"). On May 11th, this Court ordered that "[i]f Michael Avenatti wishes to be heard at the May 24th, 2018 conference in this matter, as counsel for Stephanie Clifford, he must move for admission *pro hac vice* by May 17th, 2018." [Dkt No. 42.]

Pursuant to the Court's order, Mr. Avenatti filed his application for *pro hac vice* admission earlier today. Mr. Avenatti now files this Memorandum to explain why Mr. Cohen's arguments opposing admission to appear in this Court on behalf of Ms. Clifford are without merit and should be rejected.

As the Court is aware, *pro hac vice* admissions are governed by Local Civil Rule 1.3(c) (made applicable to this action by Local Criminal Rule 1.1(b)). Rule 1.3(c) states, in relevant part:

> (c) A member in good standing of the bar of any state or of any United States District Court may be permitted to argue or try a particular case in whole or in part as counsel or advocate, upon motion (which may be made by the applicant) and (1) upon filing with the Clerk of the District Court a certificate of the court for

> each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days of filing and states that the applicant is a member in good standing of the bar of that state court, and an affidavit by the applicant stating (a) whether the applicant has ever been convicted of a felony, (b) whether the applicant has ever been censured, suspended, disbarred or denied admission or readmission by any court, (c) whether there are any disciplinary proceedings presently against the applicant and (d) the facts and circumstances surrounding any affirmative responses to (a) through (c); and (2) upon paying the required fee. . . . Only an attorney who has been so admitted or who is a member of the bar of this Court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders.

"The decision to admit an attorney to practice *pro hac vice* rests with the discretion of the Court." Mohamed v. Rajoub, No. 05 CIV. 8335 (LAP), 2008 WL 194746, at *1 (S.D.N.Y. Jan. 17, 2008). The principal concern of the Court in considering the application of an out-of-state attorney to practice in this Court is to "have some reasonable assurance that the attorney is familiar with the Federal Rules of Civil Procedure, the Local Rules for the Southern District of New York, this Court's Individual Practices, as well as its customs and practices." Id.

Importantly, Mr. Avenatti has also previously been admitted to practice in the Southern District and the Second Circuit without incident in a matter entitled Arnold v. KPMG LLP, et al., No. 1:05-cv-07349 (PAC) (S.D.N.Y.). Here, Mr. Avenatti has satisfied the *pro hac vice* requirements as set forth in his application for admission. [See Ex. 1.] Indeed, nothing in Mr. Cohen's opposition suggests that any of these requirements have *not* been satisfied. Nor does Mr. Cohen cite a single statute, rule, case, or any other legal authority suggesting that *pro hac* admission should be denied based on any of the arguments put before the Court. Given the dearth of legal or factual support relating to anything having to do with Mr. Avenatti's right to advocate on behalf of his client in this Court, Mr. Cohen's arguments must be summarily rejected.

Mr. Cohen's submission does not specify what legal wrong Mr. Cohen alleges was done that would justify the extraordinary remedy of denying a *pro hac* vice admission—applications that are routinely granted as a matter of course. And remarkably, he fails to cite any legal authority that would support the denial of *pro hac vice* admission. In fact, Mr. Cohen does not cite the Court to *any* legal authority *at all*.[1] Indeed, Mr. Avenatti is clearly protected by First Amendment rights of free speech to publish information on matters that, without serious dispute, are of the utmost public concern. See, e.g., Lane v. Franks, 134 S. Ct. 2369, 2377 (2014) ("Speech by citizens on matters of public concern lies at the heart of the First Amendment, which 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'") (quoting Roth v. United States, 354 U.S. 476, 484 (1957)). Therefore, Mr. Cohen's submission is completely devoid of merit.

In fact, in less than 48 hours after it was published, more than 99 percent of the payments to Mr. Cohen listed in the report were proven accurate either by other reporting *or by the entities themselves that made the payments.* [See Exs. 2-5.] Columbus Nova ($500,000), Novartis ($397,920), AT&T ($200,000), and Korea Aerospace Industries ($150,000), **all publicly admitted to hiring Mr. Cohen and paying this money.** [See Exs.2-5.] In the case of Novartis and AT&T, both companies were forced to disclose hundreds of thousands of dollars in additional payments made to Mr. Cohen that were not listed in the report. [See Exs. 6-7.] And AT&T, admitting it was a "big mistake" for the company to hire Mr. Cohen, took the bold step of forcing its Senior Executive Vice President of External and Legislative Affairs to step down over

[1] Mr. Cohen's citation to various unsubstantiated media reports, which are themselves hearsay, hardly qualifies as sufficient evidence to deny Mr. Avenatti's application.

the scandal. [See Ex. 6.] Tellingly, Mr. Cohen does not dispute any of these facts in his submission for one simple reason – he can't.

That Mr. Cohen may be dismayed that these damaging revelations have come to light and have been proven true does not come remotely close to justifying a denial of Mr. Avenatti's right to appear before this Court. As discussed in her motion to intervene, Ms. Clifford has very important and legitimate interests in protecting her records. She should not be denied counsel from representing and advancing those interests based on Mr. Cohen's embarrassment resulting from discomforting information being made public.

Finally, even if Mr. Cohen's allegations had any relation to the Court's determination of whether to grant *pro hac vice* admission to Mr. Avenatti in this case, Mr. Cohen has failed to meet his burden of demonstrating what legal violations have supposedly occurred. Mr. Cohen cites no legal authority that overrides Mr. Avenatti's First Amendment rights to make public information about a public figure like Mr. Cohen regarding matters that are, without dispute, of the utmost public concern. Further, even if Mr. Cohen's allegations were true (and they are not) laws restricting disclosure of banking information and suspicious activity reports (SARs) apply to financial institutions and government entities, not third parties. See, e.g., 12 U.S.C. §§ 3402 (with noted exceptions, prohibiting government access to financial records); 3403 (prohibiting financial institution from releasing financial records to government unless exception applies); 15 U.S.C. §§ 6801, *et seq.* (imposing obligations on "financial institutions" to protect customer privacy); In re JPMorgan Chase Bank, N.A., 799 F.3d 36, 41-42 (1st Cir. 2015) (explaining that Bank Secrecy Act "expressly forbids disclosure only by reporting financial institutions and their officers and agents, and by government entities, officials, and agents on the receiving end of SARs" and concluding that "neither the Act nor the regulations restrict third parties—that is,

parties on neither the financial-institution side nor the government side of a SAR exchange—from disclosing the existence or non-existence of a particular SAR.").

In sum, it is difficult to conclude that Mr. Cohen's filing is anything but a highly improper attempt to soil Mr. Avenatti and unnecessarily lure and entangle this Court into Mr. Cohen's elaborate campaign to now discredit Mr. Avenatti.

For these reasons, and the reasons set forth in Mr. Avenatti's application for admission *pro hac vice* filed on May 14th, Mr. Avenatti respectfully requests the Court to grant Mr. Avenatti's application.

Dated: May 14, 2018

Respectfully Submitted,

/s/ Michael J. Avenatti

Michael J. Avenatti
AVENATTI & ASSOCIATES, APC
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Tel: (949) 706-7000
Fax: (949) 706-7050
E-Mail: mavenatti@eoalaw.com

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Search Warrants Executed on April 9, 2018	
MICHAEL D. COHEN, Plaintiff, - against – UNITED STATES OF AMERICA, Defendant.	18-MJ-3161 (KMW) **MOTION OF MICHAEL J. AVENATTI FOR ADMISSION *PRO HAC VICE***

Pursuant to Rule 1.3 of the Local Rules of the United States Courts for the Southern and Eastern Districts of New York, Michael J. Avenatti, hereby moves this Court for an Order for admission to practice *pro hac vice* to appear as counsel for Intervenor Stephanie Clifford a.k.a. Stormy Daniels in the above-captioned action.

I am in good standing of the bar of the State of California and there are no pending disciplinary proceedings against me in any State or Federal Court. I have never been convicted of a felony. I have never been censured, suspended, disbarred or denied admission or readmission by any court. I have attached the affidavit pursuant to Local Rule 1.3.

Dated: May 13, 2018

Respectfully Submitted,

Michael J. Avenatti
AVENATTI & ASSOCIATES, APC
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Tel: (949) 706-7000
Fax: (949) 706-7050
E-Mail: mavenatti@eoalaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Search Warrants Executed on April 9, 2018	
MICHAEL D. COHEN, Plaintiff, - against – UNITED STATES OF AMERICA, Defendant.	18-MJ-3161 (KMW) **AFFIDAVIT OF MICHAEL J. AVENATTI IN SUPPORT OF MOTION FOR ADMISSION *PRO HAC VICE***

Michael J. Avenatti, being duly sworn, hereby deposes and says as follows:

1. I am the managing partner of Avenatti & Associates, APC.

2. I submit this affidavit in support of my motion for admission to practice *pro hac vice* in the above captioned matter.

3. I am the recipient of the 2009 Trial Lawyer of the Year award from the Orange County Trial Lawyers Association. I undertook undergraduate studies at the University of Pennsylvania and I graduated at the top of my class from George Washington University Law School, where I presently serve as a member of the Board of Advisors. In 2007, I was named as one of the "Top 20 Lawyers in California Under 40" by *The Daily Journal*. I have tried cases in courts throughout the United States and have served as lead counsel in cases resulting in verdicts and settlements totaling over $1 Billion since I began my career as an attorney. Included among

4. As shown in the Certificates of Good Standing annexed hereto I am a member in good standing of the Bar of the State of California.

5. There are no pending disciplinary proceedings against me in any State or Federal Court.

6. I have not been convicted of a felony.

7. I have not been censured, suspended, disbarred or denied admission or readmission by any court.

8. Wherefore your affiant respectfully submits that he be permitted to appear as counsel and advocate *pro hac vice* in this one case for Intervenor Stephanie Clifford a.k.a. Stormy Daniels.

Dated: May 13, 2018

Michael J. Avenatti
AVENATTI & ASSOCIATES, APC
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Tel: (949) 706-7000
Fax: (949) 706-7050
E-Mail: mavenatti@eoalaw.com