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

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

Plaintiff,

v.

KEITH M. DAVIDSON, an Individual,  
MICHAEL COHEN, an individual, and  
DOES 1 through 10, inclusive,

Defendants.

Case No. 2:18-cv-05052-SJO (FFMx)

**DEFENDANT MICHAEL  
COHEN'S NOTICE OF MOTION  
AND MOTION FOR STAY OF  
THIS ACTION**

**Date:** August 6, 2018  
**Time:** 10:00 a.m.  
**Location:** Courtroom 10C

**Hon. S. James Otero**

Action Filed: June 6, 2018

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 6, 2016, at 10:00 a.m., or as soon thereafter as the matter can be heard in Courtroom 10C of the United States District Court for the Central District of California located in the United States Courthouse at 350 W. 1<sup>st</sup> Street, Los Angeles, California 90012, Defendant Michael Cohen ("Defendant" or "Cohen") will and hereby does move the Court for an order staying the present action pursuant to the Order granting a Stay entered in *Clifford v. Trump et. al.* Case No. 18-02217 on April 27, 2018 (the "Stay Order").

1        This Motion will be and is based upon this notice; the attached memorandum of  
2 points and authorities; the declaration of Brent H. Blakely; the records, papers and  
3 pleadings on file in this action; and such further oral and/or documentary evidence  
4 and argument as may be presented prior to or at the hearing of the Motion.

5        This Motion is made following the meeting between counsel, which took place  
6 also took place on June 26, 2018.

7 Dated: July 3, 2018

BLAKELY LAW GROUP

8 By: /s/ Brent H. Blakely

9 Brent H. Blakely

10 *Attorneys for Defendant Michael Cohen*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant Michael Cohen (“Cohen”) will and hereby does move for an order:

1) staying this present case pursuant to the Order Granting Defendants’ Ex Parte Application to Stay Case entered in *Clifford v. Trump et. al.* Case No. 18-02217 on April 27, 2018 (the “Stay Order”). (RJN ECF #53)

This newly filed lawsuit filed by Plaintiff Stephanie Clifford aka Stormy Daniels further demonstrates Plaintiff’s utter contempt for this Court’s Stay Order. The Stay Order could not have been any clearer: because there is a large potential factual overlap between the *Clifford v. Trump* litigation and the criminal proceedings involving Cohen, Cohen’s Fifth Amendment rights are heavily implicated. Accordingly, this Court held that the five *Keating* factors all favored a stay. (RJN, ECF #53) Since the Stay Order was issued, not only has Clifford and her controversial counsel continued their unprincipled publicity tour, they have now filed two new lawsuits, both designed to circumvent this Court’s Stay Order.

Plaintiff and her counsel’s first end-run around the Stay Order occurred when they filed a defamation action against Mr. Trump in the Southern District of New York (the “Clifford SDNY Action”) one court day after issuance of the Stay Order. Plaintiff’s defamation claim against Mr. Trump falls squarely within the arbitration provision at issue in the *Clifford v. Trump* case, and substantially overlaps with the facts and issues against Mr. Cohen. This blatant attempt at judge-shopping and forum shopping, and effort to evade the Stay Order, is confirmed in public statements made by Avenatti before the Stay Order was issued, wherein he stated during an interview on CNN that he planned to file Plaintiff’s defamation claim against Mr. Trump in this action. (RJN ECF #38-1; Declaration of Brent H. Blakely (“Blakely Dec.”), ¶ 2, Ex. A, CNN Transcript)

This present lawsuit, wherein Clifford has sued Cohen for allegedly aiding and

1 abetting Keith Davidson in breaching Davidson’s fiduciary duty to Clifford, is yet  
2 another attempt at judge and forum shopping, and an effort to circumvent the Stay  
3 Order. As with *Clifford v. Trump*, there is significant overlap between this case, which  
4 again involves the Confidential Settlement Agreement and subsequent performance  
5 thereof, and the ongoing criminal investigation involving Cohen. For the same reasons  
6 this Court set forth in its Stay Order in *Clifford v. Trump*, this present litigation should  
7 also be subject to a stay.

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

9 Plaintiff filed her FAC in the *Clifford v. Trump* action on March 6, 2018.  
10 (RJN, ECF #14) On March 28, 2018, Plaintiff filed her Motion to Expedite. (RJN,  
11 ECF #16) In the Motion to Expedite, Plaintiff stated, in part: “Plaintiff must be  
12 permitted to... cross-examine... Mr. Cohen at a deposition regarding these topics that  
13 are at the heart of whether an agreement was ever formed.” (RJN, Motion to Expedite,  
14 pp. 16:24-17:2, ECF No. 16-1) Plaintiff further stated, in pertinent part: “In short,  
15 deposition testimony of... Mr. Cohen... is necessary to determine whether the  
16 Agreement and the arbitration clause had a lawful object and purpose.” (*Id.* at  
17 p. 20:25-27)

18 This court denied the Motion to Expedite, without prejudice, on March 29,  
19 2018. (RJN, ECF #17) Essential Consultants, LLC filed the Motion to Compel  
20 Arbitration, which was joined by Mr. Trump, on April 2, 2018. (RJN, ECF ## 20, 21)

21 On April 8, 2018, Plaintiff filed a Renewed Motion to Expedite. (RJN, ECF  
22 #29) In the Renewed Motion to Expedite, Plaintiff stated, in pertinent part: “Plaintiff  
23 must be permitted to...cross-examine...Mr. Cohen at a deposition regarding these  
24 topics that are at the heart of whether an agreement was ever formed” (RJN, Renewed  
25 Motion to Expedite, p. 13:4-7, ECF # 29-1) Plaintiff further stated, in pertinent part:  
26 “In short, deposition testimony of...Mr. Cohen...is necessary to determine whether  
27 the Agreement and the arbitration clause had a lawful object and purpose.” (*Id.* at  
28

1 p. 16:13-15)

2 On April 9, 2018, Plaintiff filed her opposition to the Motion to Compel  
3 Arbitration. (RJN, ECF #30) In the opposition, Plaintiff stated, in pertinent part: “[T]o  
4 meaningfully oppose this motion, Plaintiff requires limited discovery, as set forth in  
5 Plaintiff’s concurrently filed Renewed Motion for Expedited Discovery. Accordingly,  
6 before the Court issues a ruling on the motion, the Court must first allow Plaintiff to  
7 conduct discovery and must conduct the trial.” (*Id.* at p. 2:10-13)

8 Also, on April 9, 2018, Mr. Cohen filed an Anti-SLAPP Motion. (RJN, ECF  
9 #31)

10 That same day, the Federal Bureau of Investigations (“FBI”) raided Mr.  
11 Cohen’s residence, office and hotel room, each of which is located in New York City.  
12 (RJN, ECF #38-1; Blakely Dec., ¶ 4, Ex. C) In the course of this raid, the FBI sought  
13 documents in Mr. Cohen’s possession relating to several topics, including the  
14 payment of \$130,000 to Plaintiff, which is at issue in the *Clifford v. Trump* action.  
15 (*Id.*)

16 On April 13, 2018, the Defendants in *Clifford v. Trump* filed a Joint *Ex Parte*  
17 Application for a stay of the matter (the “Stay Application”). (RJN, ECF #38)  
18 Plaintiff filed her opposition to the Stay Application on April 16, 2018. (RJN, ECF  
19 #39) In the opposition, Plaintiff argued that “less drastic measures, such as ordering  
20 Mr. Cohen to testify and requiring Mr. Cohen to invoke the Fifth Amendment on a  
21 question-by-question basis, are available to the Court than imposing a blanket stay.”  
22 (*Id.*, p. 5:14-16; *see also*, Stay Order, p. 6, RJN, ECF #53) Defendants’ filed their  
23 Reply brief on April 16, 2018. (RJN, ECF #40)

24 The Court conducted a hearing on the Stay Application on April 20, 2018 and  
25 issued the Stay Order on Friday, April 27, 2018, at 2:04 pm. (RJN, ECF #53)

26 Two minutes after the Court issued the Stay Order, at 2:06 p.m. on Friday,  
27 April 27, 2018, Mr. Avenatti announced on Twitter that Plaintiff intended to file an  
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1 appeal of the Stay Order, stating: “While we certainly respect Judge Otero’s 90 day  
2 stay order based on Mr. Cohen’s pleading of the 5th, we do not agree with it. We will  
3 likely be filing an immediate appeal to the Ninth Circuit early next week.” (Blakely  
4 Dec., ¶ 5, Ex. D)

5       Instead of filing an appeal, on the next court day, Monday, April 30, 2018,  
6 Plaintiff and her counsel reversed course and filed the Clifford SDNY Action. (RJN,  
7 ECF #57-3; Blakely Dec., ¶ 3, Ex. B) Plaintiff’s sole claim for defamation against Mr.  
8 Trump in the Clifford SDNY Action falls squarely within the arbitration provision  
9 that is the subject of the Motion to Compel Arbitration. (RJN, ECF # 20) The facts  
10 underlying Plaintiff’s defamation claim against Mr. Trump also heavily overlap with  
11 her defamation claim against Mr. Cohen in the *Clifford v. Trump* action, as they both  
12 arise out of statements that allegedly accuse Plaintiff of lying about circumstances  
13 relating to “her relationship with Mr. Trump.” (RJN, FAC, ECF #14, ¶ 67; Blakely  
14 Dec., Ex. B, ¶¶ 6, 28)

15       On May 24, 2018 Clifford filed a Motion for Reconsideration of the Stay  
16 Order. (RJN, ECF #56) Defendants filed their Opposition on June 1, 2018. (RJN,  
17 ECF #57)

18       Plaintiff filed the present action on June 6, 2018. It was removed to Federal  
19 court the following day, on June 7, 2018. (ECF #1) On June 7, 2018, Mr. Davidson  
20 filed a cross-claim against Mr. Cohen for allegedly violating California Penal Code  
21 § 632 (ECF #7)

22       On June 7, 2018, Clifford filed her Reply Re Motion for Reconsideration in  
23 *Clifford v. Trump*. (RJN, ECF #59) On June 19, 2018, this Court denied Clifford’s  
24 Motion for Reconsideration. (RJN, ECF #63)

25       On June 20, 2018, counsel for Mr. Cohen sent Plaintiff’s counsel a letter  
26 requesting that the parties meet and confer regarding Mr. Cohen’s anticipated Motion  
27 to Stay, among other issues. (ECF #24-1, Blakely Dec., ¶ 6, Ex. E) On June 26, 2018,  
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1 the parties met and conferred at Cohen’s counsel’s office. Plaintiff’s counsel did not  
 2 agree with Cohen’s position and would not stipulate to a stay of this action. (Blakely  
 3 Dec., ¶ 7)

4 That same day, counsel for Mr. Cohen also met and conferred with Mr.  
 5 Davidson, who indicated that he would not oppose the present motion. (Blakely Dec.,  
 6 ¶ 8)

### 7 **III. GOOD CAUSE EXISTS TO GRANT THE REQUESTED STAY**

#### 8 **A. Mr. Cohen’s Fifth Amendment Rights Are Heavily Implicated**

9 The roadmap to a stay in this case is already set forth in this Court’s Stay Order  
 10 issued in *Clifford v. Trump*. (RJN, ECF #53) Where, as here, the facts underlying civil  
 11 and criminal proceedings overlap, the civil case implicates Fifth Amendment rights.  
 12 *Neman Fin., L.P. v. Citigroup Glob. Markets, Inc.*, 2015 WL 12837640, at \*4 (C.D.  
 13 Cal. Apr. 17, 2015) (“That this case involves factual circumstances related to those  
 14 underlying the criminal charges suggests that Plaintiffs Fifth Amendment rights may  
 15 be adversely affected if this matter proceeds.”). As this Court has already held:

16 [W]hile the exact scope and breadth of the criminal  
 17 investigation remains unclear, both the government and Mr.  
 18 Cohen have indicated that the subject matter of the criminal  
 19 investigation, and the documents seized, in some part  
 20 reference the \$130,000 payment made to Ms. Clifford  
 21 pursuant to the Agreement.... Furthermore, Ms. Clifford has  
 22 specifically requested testimonial discovery from Mr. Cohen  
 23 on his role and conduct in relation to the payment, EC, and  
 24 that Agreement. Given these circumstances, the Court finds  
 25 that there is a large potential factual overlap between the civil  
 26 and criminal proceedings that would heavily implicate Mr.  
 27 Cohen’s Fifth Amendment Rights.

28 (*Id.* at p. 4)

Here, in *Clifford v. Davidson*, Clifford is suing Cohen for allegedly aiding and  
 abetting Davidson into a scheme to breach Davidson’s fiduciary duty to Clifford in  
 connection with the Confidential Settlement Agreement. Specifically, in an ill-



1 disguised collateral attack on the validity of the Agreement, which is the subject of  
 2 *Clifford v. Trump*, Clifford alleges that various communications between Cohen and  
 3 Davidson are evidence of collusion. Additionally, Davidson has alleged that Cohen  
 4 taped conversations without his consent in violation of Penal Code § 632. As with  
 5 *Clifford v. Trump*, Cohen would be required to assert his Fifth Amendment rights in  
 6 connection with all proceedings in this case due to the ongoing criminal investigation  
 7 by the FBI and U.S. Attorney for the Southern District of New York. (*See e.g.*,  
 8 *generally*, Cohen’s Answer to Complaint, ECF #19; RJN, ECF #50)

9 **B. The Five Keating Factors Weigh in Favor of Granting a Stay**

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

12 (1) the interest of the plaintiffs in proceeding expeditiously  
 13 with this litigation or any particular aspect of it, and the  
 14 potential prejudice to plaintiffs of a delay; (2) the burden  
 15 which any particular aspect of the proceedings may impose  
 16 on defendants; (3) the convenience of the court in the  
 17 management of its cases, and the efficient use of judicial  
 18 resources; (4) the interests of persons not parties to the civil  
 19 litigation; and (5) the interest of the public in the pending  
 20 civil and criminal litigation.

21 *Keating v. Office of Thrift Supervision*, 45 F. 3d 322, 324 (9<sup>th</sup> Cir. 1989) citing *Fed.*  
 22 *Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9<sup>th</sup> Cir. 1989). These factors  
 23 weigh in favor of granting the requested stay.

24 **1. Plaintiff Will Not be Substantially Prejudiced by a Stay**

25 The first Keating factor requires the Court to consider “the interest of the  
 26 plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it,  
 27 and the potential prejudice to plaintiffs of a delay.” *Keating*, 45 F. 3d at 325. As this  
 28 Court has already held, “[w]hile it is undeniable that Plaintiff has a valid interest in  
 the prompt resolution of her claims, where Cohen’s Fifth Amendment rights are  
 heavily implicated and the potential impact on the criminal investigation substantial,



1 Plaintiff's interests do not outweigh the necessity of a stay." (Stay Order, p. 7)

2       2. The Burden on Cohen is Significant

3       Under the second Keating factor, the Court analyzes "the burden which any  
4 particular aspect of the proceedings may impose on defendants." *Keating*, 45 F. 3d at  
5 325. Cohen's Fifth Amendment rights are heavily implicated within the context of  
6 the current proceedings. Compelling Cohen to sit for a deposition or otherwise  
7 provide testimony that bears heavily on these rights would cause undue prejudice.  
8 Cohen would have to choose between his Fifth Amendment privilege and his ability  
9 to defend himself on almost every major aspect of the newly filed proceeding. "The  
10 adverse inference drawn from the invocation of his privilege, if he so chose to  
11 maintain it, would undeniably impact the case." *See Keating*, 45 F. 3d at 326. (RJN,  
12 ECF #53; Stay Order, pp. 7-9)

13       3. The Efficient Use of Judicial Resources Weigh Toward Staying the Case

14       The third *Keating* factor permits the court to determine whether a stay will  
15 impact "the convenience of the court in the management of its cases, and the efficient  
16 use of judicial resources." *Keating* 45 F. 3d at 325. As this Court has already held, "it  
17 is unlikely that compelling testimony from Mr. Cohen on the issues cited by Plaintiff  
18 would lead to an efficient outcome. The majority of questions brought forth under  
19 Plaintiff's [complaint] relate to topics on which Cohen has indicated he is entitled to  
20 invoke his Fifth Amendment privilege, and are likely to cause a number of disputes  
21 related to discovery, procedure, and timing. It is also quite possible that the outcome  
22 of the criminal investigation will benefit the parties and the Court by streamlining the  
23 issues and questions presented in this action." (RJN, ECF #53, Stay Order, p. 8)

24       4. The Interests in the Public in the Pending Civil and Criminal Litigation

25       This *Keating* factor directs a court to analyze "the interest of the public in the  
26 pending civil and criminal litigation. *Keating* 45 F. 3d at 325. As this Court has  
27 already held:

1 [W]here, as here, the civil litigation has just commenced, and  
2 there is significant public attention given to both  
3 proceedings, the public interest is best served by ensuring the  
4 integrity of the criminal process and strict adherence to the  
5 rule of law. And, as the Ninth Circuit recognized in *Keating*,  
6 in such high visibility situations, it is especially necessary to  
7 guard the rights of defendants, and concern for the public  
8 deterrence value of an enforcement proceeding must not be  
9 allowed to override the individual defendant's due process  
10 rights.

11 (RJN, ECF #53; Stay Order, p. 9 (quotations and citations omitted))

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

14 **IV. CONCLUSION**

15 For the foregoing reasons, Defendant Michael Cohen respectfully requests that  
16 the Court grant the instant Motion and issue an order staying the case for a period of  
17 90 days or to an alternative date suitable to the Court, and permitting Defendant to  
18 request a further stay, if necessary.

19 Dated: July 9, 2018

BLAKELY LAW GROUP

By: /s/ Brent H. Blakely

Brent H. Blakely

*Attorneys for Defendant Michael Cohen*