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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 SAN DIEGO DIVISION

11 JANE DOE NOS. 1 through 50,  
inclusive, individuals,

12 Plaintiffs,

13 v.

14 MG FREESITES, LTD., dba  
15 "PORNHUB," a foreign entity;  
16 MINDGEEK S.A.R.L. a foreign entity;  
17 MINDGEEK USA INCORPORATED,  
a Delaware corporation; 9219-1568  
18 QUEBEC, INC., dba "MindGeek," a  
foreign entity; and MG BILLING US  
CORP., dba "Probiller.com," a  
Delaware corporation,

19 Defendants.

CASE NO. 3:20-CV-02440-WQH-KSC

Judicial Officer: William Q. Hayes

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION OF DEFENDANTS FOR  
A STAY OF PROCEEDINGS  
PURSUANT TO 18 U.S.C. § 1595(b)**

Hearing Date: June 1, 2021

NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT

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1 **I. PRELIMINARY STATEMENT.**

2 This lawsuit involves serious allegations that Plaintiffs were victimized by  
 3 three men—Michael Pratt, Matthew Wolfe, and Andre Garcia—and their agents,  
 4 collectively doing business as “GirlsDoPorn” (“GDP”). (Am. Compl. (Docket No.  
 5 23), ¶ 69). According to Plaintiffs’ Amended Complaint, Pratt, Wolfe, and Garcia  
 6 used “fraud, coercion, and intimidation to get ... young women to film pornographic  
 7 videos under the false pretense that the videos would remain private, off the  
 8 Internet, and never be seen in North America.” (*Id.*) On October 9, 2019, the  
 9 United States Attorney for the Southern District of California charged Pratt, Wolfe,  
 10 and Garcia with federal sex trafficking and conspiracy to commit sex trafficking  
 11 under 18 U.S.C. § 1591 (“Section 1591”). (Am. Compl., ¶ 71). Wolfe is awaiting  
 12 trial, Garcia is awaiting sentencing, and Pratt is a fugitive from justice, on the FBI’s  
 13 “Most Wanted” list (and presumably being actively pursued by the FBI). (*Id.* ¶¶ 71,  
 14 73).

15 The Amended Complaint in this action alleges that Defendant MindGeek<sup>1</sup>—  
 16 which operates a group of websites that, among other functions, allows producers of  
 17 adult entertainment content to post previews and trailers of that content for public  
 18 viewing—is liable under the Trafficking Victims Protection Reauthorization Act’s  
 19 (“TVPRA’s”) civil provision, 18 U.S.C. § 1595 (“Section 1595”), for hosting GDP’s  
 20 videos on certain websites that it operates. (Am. Compl., ¶¶ 75, 81). Plaintiffs  
 21 apparently recognize, however, that internet service providers (like MindGeek) are  
 22 generally immunized from liability for posting content on their websites under the  
 23 Communications Decency Act (“CDA”).<sup>2</sup> (*Id.* ¶¶ 257-59). In an attempt to come  
 24

25 <sup>1</sup> Defendants are MG Freesites Ltd, MindGeek S.à.r.l., MindGeek USA  
 26 Incorporated, 9219-1568 Quebec Inc., and MG Billing US Corp. (together,  
 27 “Defendants” or “MindGeek”).

28 <sup>2</sup> See Communications Decency Act (“CDA”), 47 U.S.C. § 230. See generally  
*Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242 (S.D. Fla. 2020).

1 within an exception to the CDA’s immunity provision, Plaintiffs seek to tie  
2 MindGeek to the underlying criminal conduct by alleging that MindGeek  
3 “knowingly participated” in GDP’s sex trafficking. (*Id.* at ¶ 266). Indeed, the  
4 Amended Complaint includes more than twenty-five paragraphs detailing the  
5 unlawful, criminal conduct of Pratt, Wolfe, Garcia, and the other GDP operators.  
6 (*Id.* at ¶¶ 114-141).

7 MindGeek strongly denies these allegations and maintains that Plaintiffs’  
8 attempt to hold it liable for the misdeeds of GDP and its principals is legally and  
9 factually untenable. But that is an issue for another day. Plaintiffs’ civil suit cannot  
10 proceed at this time because Section 1595 requires that any civil action “*shall be*  
11 *stayed* during the pendency of any criminal action arising out of the same  
12 occurrence in which the claimant is the victim.” 18 U.S.C. § 1595(b)(1) (emphasis  
13 added). A stay is required here: Plaintiffs’ civil lawsuit is brought under the  
14 TVPRA; large swaths of the Amended Complaint are substantively identical to the  
15 alleged criminal conduct of Pratt, Wolfe, and Garcia; and the Plaintiffs in this  
16 lawsuit are also the victims of the criminal activity. The court can thus easily  
17 discern a clear connection or link between the criminal and civil matters, and a stay  
18 is mandatory.

19 A stay also comports with due process. The allegations against MindGeek are  
20 quite serious (albeit false). Plaintiffs seek to hold MindGeek liable for the alleged  
21 harm caused by Pratt, Wolfe, and Garcia’s alleged criminal conduct to the 50  
22 Plaintiffs. As a result, the testimony of these three men may be critical to  
23 MindGeek’s defense. And while Plaintiffs’ counsel has had the opportunity to  
24 depose these people in its prior litigation, MindGeek has not, and will not be able to  
25 do so, until the criminal cases are concluded. As a result, a stay is required to ensure  
26 that MindGeek’s due process rights are preserved. By contrast, the prejudice to  
27 Plaintiffs from such a stay is minimal. Plaintiffs elected not to bring their claims  
28 against MindGeek in 2016 (when many of them sued GDP in state court), and

1 instead waited between six and ten years to bring their claims against MindGeek.  
2 By that point, Pratt, Wolf and Garcia had been criminally charged. Accordingly,  
3 MindGeek respectfully requests that this Court enforce the mandate of 18 U.S.C.  
4 § 1595(b) and stay this case pending the completion of the three ongoing criminal  
5 actions—or, at minimum, until the actions against Wolfe and Garcia are concluded.

6 **II. STATEMENT OF FACTS.<sup>3</sup>**

7 MindGeek is a group of companies whose business includes, in part, the  
8 maintenance and operation of websites that enable third parties (including, at one  
9 time, members of the public) to post and distribute digital media content, primarily  
10 adult-oriented content.

11 Plaintiffs are 50 women who claim to have been victimized by GDP. (*Id.*  
12 ¶¶ 1-50, 114-141); *see also* Ex. 1, Declaration of Anthony Penhale dated April 20,  
13 2021 (“Penhale Decl.”). Plaintiffs allege that GDP’s content was created by three  
14 individuals (Pratt, Wolfe, and Garcia) who coerced and defrauded Plaintiffs into  
15 performing in adult videos. These individuals allegedly engaged in a vast array of  
16 criminal conduct, such as posting deceptive advertisements and sending deceptive  
17 emails (*Id.* ¶¶ 118, 121), lying to the victims over the phone (*Id.* ¶ 123), coaching  
18 and paying fake “references” to create a false sense of security for the victims (*Id.*  
19 ¶ 124), falsely representing the amount of compensation to be paid to the victims  
20 (*Id.* ¶ 127), providing them with drugs and alcohol (*Id.* ¶ 129), coercing them into  
21 signing formal model release agreements (*Id.* ¶ 130), setting up “shell” entities to  
22 disguise the nature of the GDP venture (*Id.* ¶ 131), forcing the victims to pretend on  
23 camera that they were acting voluntarily (*Id.* ¶ 132), and encouraging others to  
24 “dox” the victims (*i.e.*, publicize the victims’ names and other personal information)

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26 <sup>3</sup> Defendants repeat the allegations in Plaintiffs’ Amended Complaint herein only  
27 for the purpose of contextualizing the instant Motion to Stay, and expressly reserve  
28 their rights, without limitation, to present any and all defenses to Plaintiffs’ claims  
and to deny any and all factual allegations against them.

1 (*Id.* ¶¶ 134-40). For all this conduct, Pratt, Wolfe and Garcia have been charged  
2 with federal sex trafficking crimes, including the crime of conspiracy to commit sex  
3 trafficking in violation of 18 U.S.C. § 1591. (*Id.* ¶¶ 68-71).

4 Plaintiffs allege that one of the ways that GDP marketed its content to  
5 members of the public was by uploading trailers and clips to certain MindGeek  
6 websites (*Id.* ¶¶ 144-45). Plaintiffs also allege that, for various reasons, MindGeek  
7 knew or should have known that Pratt, Wolfe, and Garcia were engaged in criminal  
8 conduct. (*Id.* ¶¶ 165-208). While these allegations are baseless, as well as illogical,  
9 Plaintiffs’ case largely, if not entirely, rests on the conduct engaged in by Pratt,  
10 Wolfe, and Garcia, and on the nature of the relationship between MindGeek and  
11 these individuals. Put differently, under Plaintiffs’ theory, without the underlying  
12 conduct of Pratt, Wolfe, and Garcia, there would be no basis for a lawsuit against  
13 MindGeek.

14 In 2016, a group of Plaintiffs filed a lawsuit in San Diego Superior Court (the  
15 “State Action”), naming Pratt, Wolfe, Garcia and their companies as defendants.  
16 (*Id.* ¶ 70 & fn. 3). The Plaintiffs in that action (22 in total) elected *not* to name  
17 MindGeek as a defendant. (*Id.*)

18 In 2019, just before the trial in the State Action concluded, GDP’s principals  
19 were indicted by the Southern District of California for federal sex trafficking and  
20 conspiracy to commit sex trafficking under Section 1591. (*Id.* ¶ 71). Plaintiffs  
21 incorporated the principals’ indictment into their Amended Complaint “as though  
22 set forth fully” therein. (*Id.* ¶ 71, fn. 4). Wolfe and Garcia were arrested on or  
23 about October 9, 2019. (*Id.* ¶ 71). Pratt escaped arrest and is currently a fugitive of  
24 justice on the FBI’s Most Wanted List. (*Id.*)

25 On December 15, 2020, more than a year after the criminal charges were filed  
26 against Wolfe, Garcia, and Pratt, Plaintiffs filed this lawsuit. In this case, Plaintiffs  
27 seek to hold MindGeek liable for acts of sex trafficking engaged in by the  
28 aforementioned three individuals pursuant to 18 U.S.C. § 1595(a). That statute



1 permits civil claims against persons or entities that “knowingly benefit[]... from  
 2 participation in a venture which that person knew or should have known has  
 3 engaged in [sex trafficking].” The “venture” at issue is GDP, and the sex trafficking  
 4 at issue is the conduct engaged in by Wolfe, Garcia, and Pratt. Plaintiffs seek  
 5 compensatory and punitive damages of no less than \$1 million per Plaintiff, as well  
 6 as fees and costs and disgorgement of MindGeek’s alleged profits from Plaintiffs’  
 7 GDP videos. (Am. Compl., at Prayer for Relief). On April 1, 2021, Plaintiffs  
 8 amended their Complaint to add additional plaintiffs and additional allegations  
 9 purporting to tie MindGeek to Wolfe, Garcia, and Pratt.

10 The criminal actions against Wolfe, Garcia, and Pratt were pending when  
 11 Plaintiffs’ Complaint was filed in December 2020 and amended in April 2021, and  
 12 they remain pending today. Specifically:

13 ● As of December 2020, Wolfe was in federal custody in San Diego  
 14 awaiting trial (*id.* ¶ 73), where he still remains, after having lost his appeal with the  
 15 Ninth Circuit of the district court’s decision to detain him pending trial (*see* Docket  
 16 No. 119, dated July 31, 2020, *USA v. Pratt, et al.*, Case No. 19-CR-4488-JLS (S.D.  
 17 Cal.)).

18 ● Garcia pled guilty to sex trafficking under Section 1591 and conspiracy  
 19 to commit sex trafficking and will be sentenced in “the coming months.” (Am.  
 20 Cmplt. ¶ 73). As of this writing, Garcia’s sentencing is set for June 15, 2021. *See*  
 21 Docket No. 175, dated April 1, 2021, *USA v. Pratt, et al.*, Case No. 19-CR-4488-  
 22 JLS (S.D. Cal.).

23 ● Pratt remains at large. (Am. Cmplt. ¶ 73). In September 2020, it was  
 24 reported that the FBI has offered a \$10,000 reward for information leading to Pratt’s  
 25 arrest.<sup>4</sup>

26  
 27  
 28 <sup>4</sup> <https://arstechnica.com/tech-policy/2020/09/fbi-offers-10000-reward-in-search-for-fugitive-girlsdoporn-founder/>

1 **III. SECTION 1595(b)(1) MANDATES A STAY OF THIS CASE.**

2 Plaintiffs' Amended Complaint against MindGeek is brought pursuant to the  
3 TVPRA, which provides, *inter alia*, that trafficking victims “may bring a civil  
4 action” against their perpetrators or “whoever knowingly benefits ... from  
5 participation in a venture which that person knew or should have known has  
6 engaged in an act in violation of this chapter.” 18 U.S.C. § 1595(a). The same  
7 section also states that “[a]ny civil action filed under subsection (a) *shall* be stayed  
8 during the pendency of *any* criminal action arising out of the same occurrence in  
9 which the claimant is the victim.” § 1595(b)(1) (emphases added).

10 When Congress used the term “*shall be stayed*” in Section 1595(b)(1), this  
11 was a deliberate choice. Under established principles of statutory construction, the  
12 term “shall” means that the action described is mandatory. *Lopez v. Davis*, 531 U.S.  
13 230, 231 (2001) (noting that Congress’s use of the mandatory term “shall” imposes  
14 “discretionless obligations”); *Lexecon Inc. v. Milberg Weiss Bershad Hynes &*  
15 *Lerach*, 523 U.S. 26, 27 (1998) (finding that the mandatory term “shall” “normally  
16 creates an obligation impervious to judicial discretion”). This is further confirmed  
17 by the fact that the same statute also includes the permissive term “may,” indicating  
18 that the drafters were well aware of the difference between permissive and  
19 mandatory language. *Compare* 18 U.S.C. § 1595(a) (An individual “*may* bring a  
20 civil action....”).

21 As a result, courts consistently have held that Section 1595(b) creates a  
22 “mandatory stay provision” for civil lawsuits arising out of the same occurrence  
23 during the pendency of a U.S. criminal action. *See Plaintiff A v. Schair*, 744 F.3d  
24 1247, 1254 (11th Cir. 2014) (describing the stay provision in § 1595 as mandatory);  
25 *Lunkes v. Yannai*, 882 F. Supp. 2d 545, 549 (S.D.N.Y. 2012) (same); *cf. Tianming*  
26 *Wang v. Gold Mantis Constr. Decoration (CNMI), LLC*, 2020 WL 5983939, at \*2  
27 (D. N. Mar. I. Oct. 9, 2020) (acknowledging “mandatory” nature of stay pursuant to  
28 Section 1595(b)). Courts have issued stays pursuant to Section 1595 where there

1 has been no government intervention in the civil case, and have treated the  
 2 obligation to stay a civil case as a mandatory requirement, not a discretionary  
 3 choice. *See, e.g., Lunkes*, 882 F. Supp. 2d at 548; *Plaintiff A*, 744 F.3d at 1250-51,  
 4 1254.

5 As detailed below, each prerequisite for imposing a mandatory stay is  
 6 satisfied in this case.

7 **A. The Multiple Criminal Actions at the Core of Plaintiffs’ Amended**  
 8 **Complaint Are Still Pending and Not Concluded.**

9 Section 1595 expressly defines a “criminal action” to mean, in relevant part,  
 10 “investigation and prosecution,” which “is pending until final adjudication in the  
 11 trial court.” 18 U.S.C. § 1595(b)(2). In turn, courts construe the term “final  
 12 adjudication” in this Section to mean the entry of judgment in the criminal matter,  
 13 which occurs when a criminal defendant is sentenced. *Lunkes*, 882 F. Supp. 2d at  
 14 549 (“Final disposition [under § 1595(b)(2)] logically coincides with the entry of the  
 15 judgment in a criminal matter, which in turn occurs when a criminal defendant is  
 16 sentenced.”).

17 Plaintiffs themselves acknowledge that the federal criminal actions in this  
 18 District against GDP’s three principals (Wolfe, Garcia, and Pratt) are still pending.  
 19 (Am. Compl. ¶¶ 71, 73). None of these defendants has been sentenced; indeed, only  
 20 one defendant (Garcia) has a sentencing date. *Id.*; *see also* Docket No. 175, dated  
 21 April 1, 2021, *USA v. Pratt, et al.*, Case No. 19-CR-4488-JLS (S.D. Cal.). The  
 22 “pending” and “not concluded” elements of Section 1595(b) are thus satisfied in this  
 23 case.

24 **B. The Pending Criminal Actions Arise Out of the Same Occurrences**  
 25 **As Those Alleged in the Amended Complaint.**

26 Section 1595 does not define the term “arising out of the same occurrence.”  
 27 However, one district court in this Circuit indicated that a pending criminal action  
 28 “aris[es] out of the same occurrence” as a civil action under Section 1595(b) where

1 the court can “easily discern” a “clear connection” or “link” between the criminal  
2 and civil matters. *See Tianming Wang*, 2020 WL 5983939, at \*3-4.

3 The “connection” or “link” between the criminal and civil matters is obvious  
4 and manifest from the face of the Amended Complaint. This entire action is  
5 *premised* upon the criminal conduct engaged in by Wolfe, Garcia, and Pratt, and  
6 Plaintiffs seek to hold MindGeek liable as an active and knowing participant in the  
7 conduct engaged in by these three men. That apparently is why Plaintiffs dedicated  
8 pages and pages of their Amended Complaint to allegations concerning Wolfe,  
9 Garcia, and Pratt’s nefarious conduct. In fact, the Amended Complaint explicitly  
10 incorporates the criminal indictment against the GDP principals, and devotes more  
11 than twenty-five numbered paragraphs solely to describing: (i) GDP’s sex  
12 trafficking activities; (ii) GDP’s origins; (iii) the methods used by GDP to produce  
13 videos; (iv) GDP’s methods of distribution; and (v) the harm GDP and its criminal-  
14 defendant principals caused Plaintiffs in violation of Section 1595. (*See Am.*  
15 *Compl.* ¶¶ 114-141).

16 Perhaps most notably, Plaintiffs’ own counsel has recognized and  
17 acknowledged the link between this civil action and the pending criminal action,  
18 stating in an email to MindGeek that “five of the plaintiffs are anonymously named  
19 as ‘Victim 1’ in the ongoing criminal matter against GirlsDoPorn’s principals in this  
20 same court.” Ex. 1, Penhale Decl. In other words, not only is the conduct at issue  
21 the same, but the victims are also the same.<sup>5</sup> That fact is dispositive because where,  
22 as here, a Section 1595 civil action alleges the *same conduct*, perpetrated by the

23 \_\_\_\_\_  
24 <sup>5</sup> That MindGeek is not a criminal defendant in the pending cases against GDP’s  
25 principals is of no moment. Section 1595(b)’s text does not require identity of civil  
26 and criminal defendants. *See Lunkes*, 882 F. Supp. 2d at 550 (“[I]t is most  
27 appropriate for a Section 1595 stay to encompass all defendants in a case.”). All  
28 that is required is that the same *victims* be involved in both actions. *See* 18 U.S.C.  
§ 1595(b)(1) (“[a]ny civil action filed under subsection (a) shall be stayed during the  
pendency of any criminal action arising out of the same occurrence in which the  
claimant is the *victim*”) (emphasis added).

1 *same criminal defendants* against the *same victims*, such civil action “aris[es] out  
2 of the same occurrence” and a stay is appropriate and warranted. *See, e.g., Plaintiff*  
3 *A*, 744 F.3d at 1250 (observing that “[b]ecause the U.S. Department of Justice was  
4 conducting a criminal investigation into the same conduct alleged in the plaintiffs’  
5 complaint, the district court stayed this civil action pursuant to 18 U.S.C.  
6 § 1595(b)(1)”)”; *see also Lunkes*, 882 F. Supp. 2d at 546-48 (finding Section 1595(b)  
7 mandated stay where plaintiffs brought civil TVPRA claim and tort claims against  
8 two defendants for enslaving and sexually abusing them after luring them to the  
9 U.S. with false promises of employment, and government had commenced criminal  
10 prosecution against one defendant for “inducing women to travel to the United  
11 States for the purpose of committing sexual abuse, attempted forced labor, forced  
12 labor, fraud in labor contracting, importing aliens for immoral purposes, inducing  
13 aliens to illegally enter and reside in the United States, and unlawful employment of  
14 aliens”).

15 Finally, the mandatory stay provision of 18 U.S.C. § 1595(b) serves an  
16 important practical purpose that is directly applicable here. Criminal defendants  
17 may invoke their rights under the Fifth Amendment, which provides, “no person ...  
18 shall be compelled in any criminal case to be a witness against himself[.]” (U.S.  
19 Const. Amend. V). Section 1595(b)’s mandatory stay provision thus solves both the  
20 Constitutional and practical problems posed by the Plaintiffs’ decision to bring this  
21 case before the GDP principals’ criminal cases have concluded. Where, as here,  
22 there is significant risk that discovery in this case will interfere with the discovery  
23 required for the prosecutions of the GDP principals—including the possibility of  
24 infringing on the Fifth Amendment rights of criminal defendants—application of the  
25 mandatory stay mitigates that risk. *See Lunkes*, 882 F. Supp. 2d at 550 (ordering  
26 stay under Section 1595(b) of all civil claims against civil defendant, even those not  
27 alleging TVPRA violations, in part because “[d]iscovery with respect to those civil  
28 defendants not facing criminal charges ... will frequently overlap significantly with

1 the discovery relating to criminally charged defendants”). *See also Israel Antonio-*  
 2 *Morales v. Bimbo’s Best Produce, Inc.*, 2009 WL 1591172, at \*1-2 (E.D. La.  
 3 April 20, 2009) (staying all civil proceedings pursuant to Section 1595(b)); *Ara v.*  
 4 *Khan*, 2007 WL 1726456, at \*1-2 (E.D.N.Y. June 14, 2007) (same).

5 Here, the overlap between discovery in the civil and criminal cases is likely to  
 6 be substantial. (Am. Compl. ¶¶ 71, 73, 266). For example, if this case moves  
 7 forward, MindGeek will require discovery into GDP’s underlying deceit,  
 8 manipulation, and coercion of Plaintiffs, including to assess the veracity of  
 9 Plaintiffs’ claims and to prove that GDP’s fraud was so pervasive and sophisticated  
 10 that even those that it did business with could not have known how its videos were  
 11 produced or that the release agreements Plaintiffs signed were procured by fraud. In  
 12 addition, discovery will be necessary to determine what, if anything, GDP’s  
 13 principals, employees, representatives or affiliates communicated to MindGeek  
 14 about GDP’s business practices. Depositions of the GDP principals and other key  
 15 GDP employees and affiliates therefore will be necessary for MindGeek to mount a  
 16 meaningful defense to Plaintiffs’ allegations against it in this case. That discovery  
 17 will be hampered or tainted by the criminal proceedings, since Wolfe, Garcia, and  
 18 Pratt (if he is located) almost certainly would assert their Fifth Amendment rights  
 19 against self-incrimination or, to the extent they gave any testimony, it would be  
 20 colored by their pending criminal proceedings.

#### 21 **IV. A STAY IS IN THE INTEREST OF JUSTICE.**

22 Alternatively, this Court could and should also stay the instant civil case in  
 23 the interest of justice, pursuant to its inherent discretionary powers. “The decision  
 24 whether to stay civil proceedings while a parallel criminal case is pending is left to  
 25 the sound discretion of the district court.” *Sec. & Exch. Comm’n v. Cole*, 2013 WL  
 26 12149683, at \*2 (C.D. Cal. Mar. 21, 2013) (citation and quotation marks omitted).  
 27 The court’s determination turns upon the “particular circumstances and competing

1 interests involved in the case.” *Keating v. Off. of Thrift Supervision*, 45 F.3d 322,  
2 324 (9th Cir. 1995) (citation and quotation marks omitted).

3 To determine whether a stay is warranted, the Court should consider “the  
4 extent to which the defendant’s fifth amendment rights are implicated” by a parallel  
5 civil proceeding. *Keating*, 45 F.3d at 324 (citation and quotation marks omitted).  
6 The court should then consider the following *Keating* factors: “(1) the interest of the  
7 plaintiffs in proceeding expeditiously” with the civil litigation and the potential  
8 prejudice to the plaintiff caused by a delay; “(2) the burden which any particular  
9 aspect of the proceedings may impose on the [criminal] defendants; (3) the  
10 convenience of the court in the management of its cases and the efficient use of  
11 judicial resources; (4) the interests of persons [or entities] not parties to the civil  
12 litigation; and (5) the interest of the public in the pending civil and criminal  
13 litigation.” *Id.* at 325. Of these, “the most important factor [in ruling on a motion to  
14 stay] is the degree to which the civil issues overlap with the criminal issues.” *S.E.C.*  
15 *v. Nicholas*, 569 F. Supp. 2d 1065, 1070 (C.D. Cal. 2008) (alteration in original).

16 All of the *Keating* factors support imposition of a stay here. As noted above,  
17 the civil issues directly overlap (and, in fact are dependent on) the criminal issues.  
18 As a result, any defense to Plaintiffs’ allegations in this case would be hamstrung by  
19 the inability to compel deposition testimony from witnesses such as the GDP  
20 principals, as well as key employees who may be asked to testify in a criminal trial  
21 or may be under investigation. The GDP principals’ Fifth Amendment rights are  
22 thus plainly “implicated” by this civil proceeding. *See Nicholas*, 569 F. Supp. 2d. at  
23 1070 (finding “[t]he specter of parties and witnesses invoking their Fifth  
24 Amendment rights” as a basis for imposing discretionary stay of civil proceedings  
25 because, *inter alia*, “civil discovery [would be rendered] largely one-sided”); *see*  
26 *also Nesbitt v. Bemmer*, 2018 WL 5619716, at \*1, 5 (D. Conn. Oct. 30, 2018)  
27 (granting motion to stay based on the court’s inherent power, where plaintiff had  
28 brought a civil action alleging that defendant paid him for sex while he was a minor,

1 and there was an ongoing criminal action against defendant for paying minors for  
2 sex; reasoning “[plaintiff’s] claim that [defendant] engaged in misconduct with other  
3 individuals for financial gain will be greatly hampered by [defendant’s] inevitable  
4 invocation of his Fifth Amendment right against incrimination.”).

5 By contrast, Plaintiffs would not be meaningfully prejudiced by a stay of this  
6 case until the GDP principals’ criminal cases are completed. The events Plaintiffs  
7 allege in the Amended Complaint occurred many years ago, yet they elected not to  
8 bring their claims until 2020—after Pratt, Wolfe, and Garcia were indicted, and  
9 knowing that documentary evidence was likely to be scarce. After so many years,  
10 an additional brief delay will not cause any undue hardship. As for any non-  
11 monetary harm that was suffered by Plaintiffs, a stay will not cause additional harm  
12 since all GDP content has been removed from MindGeek’s websites and MindGeek  
13 has no current or ongoing relationship with GDP. (Am. Compl. ¶¶ 212-13, 216-17).  
14 Additionally, MindGeek has a digital fingerprinting tool available that would enable  
15 Plaintiffs to ensure that any GDP content that has been fingerprinted can be  
16 identified when it is uploaded by a third party, before the content becomes available  
17 to the public. (*Id.* ¶ 242). As for third parties, MindGeek is unaware of any third  
18 parties to this litigation who would be impacted by the requested stay.

19 Finally, the public interest in ensuring the integrity of criminal prosecutions  
20 of TVPRA violations is “equally strong” as its interest in related civil cases. *Sec. &*  
21 *Exch. Comm’n*, 2013 WL 12149683, at \*3 (noting public interest factor was “served  
22 by staying the civil suit” concerning securities fraud that was already the subject of  
23 criminal proceedings). A stay is in the public interest here because it will ensure  
24 that this case progresses in a fair and efficient manner, at a time when MindGeek is  
25 able to fully access all the testimony and discovery it will need to defend against  
26 Plaintiffs’ claims.



1 **V. CONCLUSION.**

2 The plain language of 18 U.S.C. § 1595(b) mandates a stay in the  
3 circumstances present here. Accordingly, for the reasons stated herein, MindGeek  
4 respectfully requests that this Court issue an order staying this case pursuant to  
5 Section 1595(b). MindGeek is prepared to provide updates on a regular basis as to  
6 the status of the criminal proceeding, and will notify the Court immediately after  
7 sentencing is concluded in the cases filed against Wolfe and Garcia.

8  
9 DATED: April 23, 2021

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By: /s/ Marc E. Mayer \_\_\_\_\_  
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