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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12 SAN DIEGO DIVISION

13 JANE DOE NOS. 1 through 50,
14 inclusive, individuals,

15 Plaintiffs,

16 v.

17 MG FREESITES, LTD., dba
18 "PORNHUB," a foreign entity;
19 MINDGEEK S.A.R.L. a foreign entity;
20 MINDGEEK USA INCORPORATED,
21 a Delaware corporation; 9219-1568
22 QUEBEC, INC., dba "MindGeek," a
23 foreign entity; and MG BILLING US
24 CORP., dba "Probiller.com," a
25 Delaware corporation,

26 Defendants.

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

Judicial Officer: William Q. Hayes

**REPLY 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

1 **I. PRELIMINARY STATEMENT**

2 Plaintiffs’ Opposition to MindGeek’s Motion to Stay concedes the most
3 critical fact warranting a stay: namely, that by this lawsuit, Plaintiffs seek to hold
4 MindGeek civilly liable in connection with the same conduct, involving the same
5 victims, for which multiple individuals have been criminally charged pursuant to the
6 same federal statute at issue here.¹ These facts alone warrant a stay: “Any civil
7 action filed under [1595(a)] shall be stayed during the pendency of any criminal
8 action arising out of the same occurrence in which the claimant is the victim.” 18
9 U.S.C. § 1595(b)(1).

10 Unable to refute that the statutory prerequisites are all met in this case,
11 Plaintiffs instead provide a lengthy discussion about whether MindGeek was a
12 defendant in the criminal action or has Fifth Amendment rights, whether the
13 Department of Justice has sought a stay, and whether a stay is supported by the
14 legislative history. These arguments are all red herrings. There is no fair reading of
15 the statute that supports imposing an additional requirement that the civil defendant
16 also be the criminal defendant; all that is required is that “any” civil action arise out
17 of the “same occurrence” and involve the same victims. Plaintiffs cannot point to a
18 single case in which a stay was denied under circumstances remotely similar to
19 those here. The Court should therefore stay this case until the related criminal
20 actions are concluded.

21 Even aside from the plain statutory language, there can be little dispute that a
22 stay is logical and warranted. MindGeek must be able to defend against Plaintiffs’
23 claims. It cannot do that without full and unfettered access to and testimony from
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25 ¹ See, e.g., Opposition (“Opp.”) (Dkt. 32) 1 (“In partnership with GirlsDoPorn,
26 MindGeek facilitated the sex trafficking of each of the Plaintiffs”), Opp. 2 (“This
27 case concerns ... the actions MindGeek took to facilitate, support, and assist
28 GirlsDoPorn in carrying out the sex trafficking venture.”), Opp. 3-5 (Statement of
Facts includes an entire two-page sub-section titled “MindGeek’s Partnership with
GirlsDoPorn).

1 the individuals who MindGeek is alleged to have worked in concert with. These
 2 individuals are not merely redundant third-party witnesses; their alleged conduct is
 3 at the center of Plaintiffs' First Amended Complaint. (*See* First Amended
 4 Complaint ("FAC") (Dkt. 23), ¶¶ 69-74.) The present case may very well depend
 5 upon the evidence about the dealings and communications these individuals had
 6 with MindGeek. It would be fundamentally unfair to MindGeek if Plaintiffs were
 7 permitted to use all of the evidence they collected in their prior state court
 8 proceeding, while MindGeek is unable to gather any of its own evidence. A stay
 9 would not be "unjust" or result in an "absurdity and inequity." (Opp. 12.) Plaintiffs
 10 could have included MindGeek in their 2016 state court action and given MindGeek
 11 a fair opportunity to defend itself. They instead chose to wait four years and to
 12 bring their claims only after the bad actors had been criminally charged. Issuing a
 13 brief stay to allow the criminal proceedings to conclude is fair, consistent with the
 14 statute, and would not result in undue prejudice.

15 **II. ARGUMENT**

16 **A. Section 1595 Mandates a Stay.**

17 MindGeek's Motion to Stay ("Motion" or "Mot.") (Dkt. 28) is brought
 18 pursuant to a statute that provides: "Any civil action filed under subsection (a) shall
 19 be stayed during the pendency of any criminal action arising out of the same
 20 occurrence in which the claimant is the victim." 18 U.S.C. § 1595(b)(1). Here, these
 21 requirements are met: (1) there is a pending criminal action (Mot. 7), (2) arising out
 22 of the same occurrences as this civil action (Mot. 7-8), and (3) involving the same
 23 victims (Mot. 8-9 & Penhale Decl. Ex. 1). Therefore, a stay is mandatory under
 24 Section 1595(b). (*See* Mot. 6, collecting cases.²)

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 27 ² As set forth in the Motion, Congress's use of "shall" makes the Section 1595(b)
 28 stay mandatory; Congress knew how to use permissive language, had it wanted to,
 and did so elsewhere in the same statute. (Mot. 6.)

1 Plaintiffs do not dispute any of these points – nor could they. The very
2 premise of Plaintiffs’ lawsuit is that MindGeek participated in and facilitated GDP’s
3 sex trafficking venture. Plaintiffs thus seek to hold MindGeek liable for the
4 misdeeds of GDP and its principals, under the same statute under which GDP’s
5 principals are being criminally prosecuted. Plaintiffs’ Opposition underscores this.
6 *See, e.g.*, Opp. 1-5 (quoted *supra*). Indeed, more than 50 paragraphs of Plaintiffs’
7 First Amended Complaint detail GDP’s conduct. (*See* FAC, ¶¶ 68-74, 114-141,
8 178-190.) And, of course, Plaintiffs all affirmatively assert that they were
9 victimized by GDP. Indeed, their own attorney represented to MindGeek that
10 several of the Plaintiffs are named as “Victim 1” in the criminal proceedings. (*See*
11 Mot. 8-9 & Penhale Decl. Ex. 1.)

12 Because MindGeek has satisfied the elements of Section 1595(b), which
13 mandates that this civil case “*shall*” be stayed, Plaintiffs have tried to graft onto the
14 statute the additional requirement that the defendant in the civil case have also been
15 criminally charged. But if that were Congress’s intent, it would not have used the
16 term “*any* criminal action.” *See Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335,
17 341 (2005) (“We do not lightly assume that Congress has omitted from its adopted
18 text requirements that it nonetheless intends to apply”). Plaintiffs’ attempt to
19 rewrite the statute by using the legislative history flies in the face of bedrock
20 principles of statutory construction that when (as here) a statute is clear on its face,
21 the Court should not look beyond its text. *Alvarado v. Cajun Operating Co.*, 588
22 F.3d 1261, 1268 (9th Cir. 2009) (“The starting point for the interpretation of a
23 statute is always its language, and courts must presume that a legislature says in a
24 statute what it means and means in a statute what it says there ... we have long held
25 that where a statute is unambiguous, we need not resort to legislative history in
26 applying the statute.”) (internal citation and quotation marks omitted); *see also, e.g.*,
27 *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (“In statutory
28 interpretation disputes, a court’s proper starting point lies in a careful examination

1 of the ordinary meaning and structure of the law itself. Where, as here, that
 2 examination yields a clear answer, judges must stop. Even those of us who
 3 sometimes consult legislative history will never allow it to be used to ‘muddy’ the
 4 meaning of ‘clear statutory language.’”) (citations omitted).

5 Nor is Plaintiffs’ position supported by the case law. While Plaintiffs
 6 concede that “cases addressing Section 1595 are scant” (Opp. 6), they nonetheless
 7 purport to extract the “rule” that a stay requires the civil and criminal defendant to
 8 be the same. (*See, e.g.*, Opp. 9, 11, 12.) However, not one of the cases cited by
 9 Plaintiffs involved a fact-pattern even remotely analogous to this one – where the
 10 criminal and civil actions arise from the same underlying conduct and involve the
 11 same victims. Accordingly, there is no basis to conclude that an identity of
 12 defendants is a **requirement** for a stay, particularly in the face of the clear statutory
 13 language to the contrary. In any event, the cases cited by Plaintiffs not only fail to
 14 support their “identity of defendants” theory, but they are so readily distinguishable
 15 that they compel the opposite conclusion:

16 First, Plaintiffs cite a Western District of Arkansas case, *Kolbek v. Twenty*
 17 *First Century Holiness Tabernacle Church, Inc.*, 2011 WL 5188424 (W.D. Ark.
 18 Oct. 31, 2011), which they claim supports their argument that there must be a
 19 criminal action against **MindGeek** in order for the Court to issue a Section 1595(b)
 20 stay. (Opp. 7-8.) But in *Kolbek*, not only was there no active criminal prosecution
 21 against the civil defendant, but there was also no active criminal prosecution
 22 **whatsoever**. 2011 WL 5188424, at *2.

23 Second, Plaintiffs make much of the District of Northern Mariana Islands’
 24 decision in *Tianming Wang v. Gold Mantis Constr. Decoration (CNMI), LLC*, 2020
 25 WL 5983939 (D. N. Mar. I. Oct. 9, 2020). However, while Plaintiffs focus on the
 26 *Wang* court’s initial discussion of the lack of a criminal action against the civil
 27 defendant moving for a Section 1595(b) stay, that was not the crux of the decision.
 28 As the court noted, “Plaintiffs filed their opposition to the motion primarily

1 highlighting that the case involves different defendants and *different victims*, the
 2 criminal indictment has *no TVPRA claim*, and that the alleged conduct in the
 3 indictment concerns a specific occurrence not involving the plaintiffs.” *Wang*, 2020
 4 WL 5983939, at *2 (emphases added). Thus, it was the ultimately the facts that the
 5 criminal and civil claims did not arise out of the same occurrence, and the criminal
 6 and civil claims did not involve the same victims – *i.e.*, the elements set forth in
 7 Section 1595(b) – that drove the court’s decision. *Id.* at * 4 (finding criminal
 8 charges were based on defendants defrauding the U.S. government to get Chinese
 9 workers into the territory, whereas the civil complaint was based on trafficking and
 10 worker exploitation, and “[t]he seven plaintiffs clearly are not the victims in the
 11 criminal action.”).

12 Finally, Plaintiffs attempt to downplay the Southern District of New York’s
 13 decision in *Lunkes v. Yannai*, 882 F. Supp. 2d 545, (S.D.N.Y. 2012), as a case where
 14 the court “stayed the civil case against the unindicted wife as well as against the
 15 criminal defendant husband” (Opp. at 11) – giving the impression the “wife” was
 16 just along for the ride. Not so. It was the non-criminally indicted civil defendant
 17 (Fusillo) who brought the Section 1595(b) motion to stay, which the criminally
 18 indicted civil defendant (Yanni) then joined. *Lunkes*, 882 F. Supp. 2d at 546-47.³
 19 Moreover, the court did not simply lump together the defendants; it carefully
 20 considered whether the claims against Fusillo should be stayed, and concluded that
 21 staying claims against an unindicted defendant “comports with the ordinary meaning
 22 of Section 1595’s command that ‘[a]ny civil action’ brought under the TVPRA be
 23 stayed during the pendency of ‘any criminal action arising out of the same
 24 occurrence of which the claimant is the victim.’” *Id.* at 550, quoting 18 U.S.C. §
 25 1595(b)(1). The court similarly concluded that all the causes of action in the *Lunkes*

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28 ³ Nor is there any indication in the *Lunkes* decision that Fusillo and Yanni were
 married, only that they lived together. 882 F. Supp. 2d at 547.

1 case should be stayed – not just the TVPRA claims – because “Section 1595
2 requires the stay of ‘[a]ny civil action’ to which it is applicable[.]” *Id.*

3 As in *Lunkes*, the ordinary meaning of Section 1595(b) dictates that this civil
4 action should be stayed until the conclusion of the pending criminal actions against
5 Wolfe and Garcia, which arise from the same occurrences and involve the same
6 victims.

7 **B. The Court Also Has Grounds to Grant a Discretionary Stay.**

8 If the Court enforces the mandatory stay provision of Section 1595(b), it need
9 not reach the issue of whether a discretionary stay is warranted. That said, the
10 *Keating* factors favor a stay of this case, too.

11 ***First***, Plaintiffs’ assertion that they “have great interest in proceeding
12 expeditiously with this litigation” (Opp. 13), is belied by the fact that they waited to
13 sue MindGeek until December 2020 – ***more than four years*** after Plaintiffs sued
14 GDP and its principals in San Diego state court. Plaintiffs could have included
15 MindGeek in the initial lawsuit they brought in June 2016, but chose not to. Instead,
16 they waited until after a judgment was entered in that lawsuit – and after the GDP
17 principals had been criminally indicted – to sue MindGeek. Plaintiffs’ claims that a
18 delay will “allow evidence to be destroyed” and “provide more opportunity for
19 MindGeek to liquidate assets[.]” are unsupported and unsupportable. (Opp. 13.)
20 MindGeek is well aware of its information preservation obligations, and there is no
21 basis to believe it would “allow evidence to be destroyed.” As for Plaintiffs’ claim
22 that MindGeek will try to liquidate its assets – which is pure speculation based on
23 hearsay rumors contained in a BusinessInsider.com article (Holm Decl. Ex. B) –
24 Plaintiffs have no grounds for this baseless and bad faith assertion.

25 ***Second***, Plaintiffs try to downplay the burden on the criminal defendants by
26 claiming that Wolfe has waived his Fifth Amendment privilege against self-
27 incrimination. (Opp. 14-15.) Plaintiffs claim that because Wolfe testified
28 extensively in the San Diego state court action against GDP and its principals, he

1 made a blanket waiver of his privilege, which carries forward. But “a waiver of the
2 Fifth Amendment privilege is limited to the particular proceeding in which the
3 waiver occurs.” *U.S. v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979) (no waiver from
4 voluntary testimony to grand jury); *see also, Sec. & Exch. Comm’n v. Cole*, 2013
5 WL 12149683, at *3 (C.D. Cal. Mar. 21, 2013) (no waiver in civil action based on
6 testimony during adversary proceeding in bankruptcy court or from statements made
7 to SEC investigating officers). Thus, Wolfe’s privilege against self-incrimination is
8 indeed a relevant factor in the *Keating* analysis.

9 **Third**, there is no prejudice to the Court in staying this case. This litigation is
10 at an early stage. And because MindGeek is not necessarily seeking to stay this case
11 pending the prosecution of Michael Pratt – who is a fugitive from justice – the
12 pending criminal actions will be completed within a reasonable timeframe.

13 **Fourth**, there are third parties whose rights are implicated because, in
14 addition to the GDP principals (whose Fifth Amendment rights Plaintiffs seek to
15 minimize), there are also former GDP employees whose rights are implicated. (*See*
16 *Mot. 11.*)

17 **Fifth**, while there may be a public interest in the private enforcement of sex-
18 trafficking cases (Opp. 16-17), that interest is not served here. There already has
19 been a high-profile lawsuit against GDP and its principals, in which Plaintiffs were
20 awarded nearly \$13 million. (FAC ¶ 72.) Any additional deterrence from a second
21 lawsuit arising from GDP’s wrongdoing would be marginal.

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1 **III. CONCLUSION**

2 For the foregoing reasons, and those set forth in MindGeek’s Motion,
3 MindGeek respectfully requests that the Court issue an order staying this case
4 pursuant to Section 1595(b).

5 DATED: MAY 25, 2021

RESPECTFULLY SUBMITTED,

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9
10 By: /s/ Marc E. Mayer
11 Marc E. Mayer
12 Attorneys for Defendants