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9 *Counsel for Defendant*
10 *Robert Hunter Biden*

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

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 ROBERT HUNTER BIDEN

18 Defendant.

Case No. 2:23-cr-00599-MCS

**DEFENDANT’S EX PARTE
APPLICATION FOR AN ORDER TO
MODIFY PRETRIAL MOTIONS
DEADLINE**

*[Filed concurrently with Declaration of Abbe
David Lowell; and [Proposed] Order]*

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Local Rule 7-19, Defendant Robert Hunter Biden, by and through his counsel, respectfully applies to this Court for an Order extending the deadline to file pretrial motions set by the Court during the status conference held on January 11, 2024. (Minute Order, 1/11/2024.) Mr. Biden respectfully requests that the Court (1) grant Mr. Biden’s request to only file pretrial motions that are unique and tailored to the California prosecution and indictment, and allow the Delaware court to rule on the motions to dismiss that are fully briefed and pending in the District of Delaware matter before filing any of those motions with this Court; (2) grant a three-week extension of the deadline to file such unique pretrial motions until Tuesday, March 12, 2024; and (3) schedule a status conference with the parties in April to determine the status of all pending motions. Neither party would be prejudiced by doing so, the requests will conserve both judicial and party resources, and this is Mr. Biden’s first request to modify the schedule for pretrial motions.

This application is based on the attached Memorandum, [Proposed] Order, the Declaration of Abbe David Lowell (“Lowell Decl.”), and the related minute entries in this case. The United States is represented by Office of Special Counsel (the “prosecution”), whose name, address, telephone number, and email address are as follows:

Mr. Leo J. Wise, Special Assistant U.S. Attorney
Mr. Derek E. Hines, Special Assistant U.S. Attorney
Office of Special Counsel David C. Weiss
950 Pennsylvania Avenue, NW, Room B-200
Washington DC 20530
Tel: 771-217-6091
Email: LJW@usdoj.gov
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On February 1, 2024, Mr. Biden’s counsel requested a phone call with the prosecution to discuss the issue of motions and the schedule in this case. When there was no response, Mr. Biden’s counsel again reached out on February 7, 2024 concerning the

1 requested motion. During a call with the prosecution on February 7, 2024 at 2:30 PM
2 EST, Mr. Biden's counsel informed the prosecution of this request and the instant ex
3 parte application. (Lowell Decl., ¶ 3.) On February 8, 2024, at 12:00 PM EST, the
4 prosecution followed up to inform Mr. Biden's counsel that it opposes Mr. Biden's
5 request to file only those pretrial motions unique and tailored to the California prosecution
6 and for a three-week extension of the deadline. (Lowell Decl., ¶ 4.) This application and
7 supporting papers will be served electronically on all counsel of record.

8
9 Dated: February 8, 2024

Respectfully submitted,

10 By: /s/ Angela Machala

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Counsel for Robert Hunter Biden

1 **MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION**

2 **LEGAL STANDARD**

3 “A party seeking ex parte relief must demonstrate: (1) the moving party is without
4 fault in creating the crisis that requires ex parte relief or the crisis occurred as a result of
5 excusable neglect; and (2) the moving party’s cause will be irreparably prejudiced if the
6 underlying motion is heard according to regular noticed motion procedures.” *Altair*
7 *Instruments, Inc. v. Telebrands Corp.*, 2020 WL 6106821, at *2 (C.D. Cal. July 10, 2020)
8 (citing *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal.
9 1995)).

10 **ARGUMENT**

11 The relief requested is necessary to preserve Mr. Biden’s ability to defend
12 himself effectively without suffering prejudice in this matter, will serve the goal of
13 preserving judicial and parties’ resources, and will not prejudice the prosecution.
14 Waiting for the Delaware court to rule on the pending motions before it—before those
15 motions are briefed here—allows the parties to address the Delaware court’s rulings and
16 this Court to benefit from being able to consider the Delaware court’s reasoning. (Lowell
17 Decl., ¶ 7.)

18 The current deadline for Mr. Biden to file pretrial motions is Tuesday, February 20,
19 2024. As of January 30, 2024, Mr. Biden’s motions to dismiss the three-count
20 indictment against him in Delaware are now fully briefed and pending before that
21 court.¹ The outcome of those motions could very well impact (or even dispose of) the
22 case before Your Honor. Therefore, Mr. Biden requests this Court’s permission to file
23 by the deadline being requested only those pretrial motions that are unique and tailored
24

25 ¹ These motions include: Mr. Biden’s motion to dismiss the indictment based on immunity conferred by
26 his diversion agreement; his motion to dismiss for failure to charge a constitutionally permissible
27 offense; his motion to dismiss because Special Counsel Weiss was unlawfully appointed and the
28 prosecution violates the Appropriations Clause; his motion to dismiss for selective and vindictive
prosecution and breach of separation of powers; and his motion for discovery and an evidentiary hearing
regarding his motions to dismiss the indictment.

1 to the California prosecution and indictment, while the Delaware motions to dismiss
2 remain pending.² “[W]hen cases between the same parties raising the same issues are
3 pending in two or more federal districts, the forum of the first-filed action should
4 generally be favored.” *Heieck v. Federal Signal Corp.*, 2019 WL 1883895, at *2 (C.D.
5 Cal., Mar. 11, 2019). This approach maximizes judicial economy, avoids the possibility
6 of inconsistent judgments, and minimizes any unnecessary burden on the two Courts’
7 or the parties’ resources. *See generally Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)
8 (“[T]he power to stay proceedings is incidental to the power inherent in every court to
9 control the disposition of the causes on its own docket with economy of time and effort
10 for itself, for counsel, and for litigants.”); *Heieck*, 2019 WL 1883895, at *2 (“The first-to-
11 file rule aims to promote judicial efficiency and helps prevent the risk of inconsistent
12 decisions.”) (citing *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir.
13 1991)).³

14 Several additional factors warrant providing additional time. Due to the
15 complexity and enormity of the discovery produced here, Mr. Biden seeks a three-
16 week extension allowing him to file such California-specific motions by Tuesday, March
17 12, 2024. The prosecution recently produced more than 502,000 pages of additional
18 discovery to the defense on January 9, 2024, which counsel is still reviewing. This

19 _____
20 ² This would mean, for instance, that Mr. Biden would not file in California the motions pending in
21 Delaware to dismiss the indictment based on immunity conferred by his diversion agreement, to
22 dismiss the indictment because Special Counsel Weiss was unlawfully appointed, to dismiss the
indictment based on the unconstitutionality of the gun charges, or the exact same motion to dismiss for
selective and vindictive prosecution.

23 ³ In an analogous context in civil procedure, under the “first filed” doctrine, when there are two actions
24 involving the same parties pending concurrently in different judicial districts, the “first filed” case
25 proceeds, and the second-filed case is either dismissed or stayed. *S&E Gourmet Cuts v. Omc*, 2017
26 U.S. Dist. LEXIS 228288, *7 (C.D. Cal. Feb. 14, 2017) (granting defendant’s motion to stay pending
27 Wisconsin court’s adjudication of plaintiff’s motion to dismiss); *see also Merial Ltd. v. Cipla Ltd.*, 681
28 F.3d 1283, 1299 (Fed. Cir. 2012) (first-to-file rule “generally favors pursuing only the first-filed action
when multiple lawsuits involving the same claims are filed in different jurisdictions”). This rule is
based on principles of judicial economy, comity, and an interest in avoiding duplicative litigation.
While Mr. Biden does not seek a total stay or dismissal in this action with this request (and, in fact,
intends to file several motions to dismiss in this Court while the Delaware motions are pending), we
simply note that the same principles are applicable here with respect to this Court waiting for the
Delaware court to rule in the pending motions before it.

1 discovery could implicate a series of complex motions to dismiss that Mr. Biden’s counsel
2 is now weighing concerning charging and procedural defects (e.g., statutes of limitations,
3 venue, and multiplicity) in the tax charges.

4 Additional discovery from the prosecution may be forthcoming. Following review
5 of the prosecution’s oppositions to the motions filed in Delaware and our subsequent
6 filing of a motion to compel discovery there, on February 5, 2024, Mr. Biden’s counsel
7 sent the prosecution a discovery letter requesting the production of many categories
8 of other documents and indictment particulars that had not been provided. In response,
9 the prosecution may produce additional materials that could impact the motions to dismiss
10 Mr. Biden is considering.

11 Mr. Biden also requests this brief extension until March 12, 2024 due to a number
12 of other filing deadlines and hearings scheduled this month in several of Mr. Biden’s other
13 cases and proceedings (as the same attorneys working on this case are the ones involved
14 in Mr. Biden’s other cases and matters). Specifically, oppositions to motions to dismiss
15 two of the civil cases pending in California are due at the end of February, a hearing in
16 Delaware state court on pending dispositive motions in a civil case filed there is
17 scheduled for February 22, and the U.S. House of Representatives has scheduled Mr.
18 Biden’s deposition as part of its impeachment inquiry for February 28.

19 Additionally, one of defense counsel’s team members who was taking the initial
20 responsibilities for the pretrial motions to be filed in the California case suffered an
21 unexpected death in her family late last week. Accordingly, defense counsel would
22 much appreciate a brief scheduling accommodation by the Court.

23 Lastly, on February 7, 2024, Mr. Biden’s counsel reached out to the prosecution by
24 e-mail to request a phone call to discuss the motions and filing schedule in this case.
25 Following a phone call between the prosecution and Mr. Biden’s counsel on February 7, the
26 prosecution notified Mr. Biden’s counsel via e-mail on February 8, 2024 that the prosecution
27 opposes Mr. Biden’s requests contained in the instant Ex Parte Application.

1 For the same reasons, Mr. Biden also requests that the Court adjust other scheduling
2 dates set during the January 11, 2024 status conference to reflect the requested 3-week
3 continuance of the deadline for filing pretrial motions. Mr. Biden requests that the
4 Court hold a status conference with the parties in April 2024 to determine the status of
5 all pending motions, including any that may still be pending in Delaware.

6 Mr. Biden's case will be irreparably prejudiced if this motion is heard according
7 to regular noticed motion procedures, as the current deadline for filing pretrial motions
8 (February 20, 2024) is one day after the 7-day period for the next-available date to hear
9 regularly noticed motions (February 19, 2024).

10 Accordingly, Mr. Biden respectfully request that the Court (1) grant Mr. Biden's
11 request to only file pretrial motions that are unique and tailored to the California
12 prosecution and indictment, and allow the Delaware court to rule on the pending motions
13 to dismiss before it; (2) grant a three-week extension of the deadline to file such pretrial
14 motions until Tuesday, March 12, 2024; and (3) schedule a status conference with the
15 parties in April 2024 to determine the status of all pending motions.

1 Dated: February 8, 2024

Respectfully submitted,

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16 *Counsel for Robert Hunter Biden*

CERTIFICATE OF SERVICE

Case No. 2:23-cr-00599-MCS

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 L Street NW, Washington, DC 20036.

On February 8, 2024, I served the following document(s) described as

DEFENDANT’S EX PARTE APPLIATION FOR AN ORDER TO MODIFY PRETRIAL MOTIONS DEADLINE; DECLARATION OF ABBE DAVID LOWELL IN SUPPORT OF DEFENDANT’S EX PARTE APPLICATION FOR AN ORDER TO MODIFY PRETRIAL MOTIONS DEADLINE; and [PROPOSED] ORDER

SEE ATTACHED LIST

- BY ECF: by electronically filing the document(s) listed above using the Court’s CM/ECF System, in accordance with the applicable Federal Rules of Civil Procedure and the Local Rules of this Court. A Notice of Electronic Filing (NEF) will be automatically generated by the CM/ECF system and sent by e-mail to all attorneys who have appeared in this case.

Executed on February 8, 2024, at Los Angeles, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

P. Waters

Patty Watters

SERVICE LIST

Case No. 2:23-cr-00599-MCS

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