

May 3, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Robert Khuzami
Deputy United States Attorney
United States Attorney's Office for the Southern District of New York
1 St. Andrew's Plaza
New York City, N.Y. 10007

David J. Apol
Acting Director
U.S. Office of Government Ethics, Suite 500
1201 New York Ave., N.W.
Washington, D.C. 20005

Re: Disclosure of Liabilities and Assets on President Donald J. Trump's Public Financial
Disclosure Report

Dear Deputy Attorney General Rosenstein, Deputy United States Attorney Khuzami, and Acting
Director Apol,

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") March 8, 2018 letter requesting that the Department of Justice ("DOJ") and the Office of Government Ethics ("OGE") investigate and determine whether a surreptitious payment made to a third party shortly before the 2016 presidential election by President Donald J. Trump's personal attorney Michael Cohen constituted a loan to President Trump that he should have reported as a liability on his public financial disclosure ("OGE 278") report,¹ and if President Trump knowingly and willfully failed to report it.²

Additional facts have come to light that provide substantial evidence to support a finding that the transaction constituted a liability that President Trump was required to report on his

¹ See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017 ("Trump OGE 278e"), available at <https://oge.app.box.com/s/kz4qvbdscfrzq16msuo4zmth6rerh1c>.

² Letter to Deputy Attorney General Rod J. Rosenstein and Acting OGE Director David J. Apol, Mar. 8, 2018 (attached as Exhibit A). In an earlier letter, dated March 2, 2018, CREW requested that OGE exercise its oversight responsibilities to determine whether President Trump held a beneficial interest in Essential Consultants LLC, the entity through which the payment was made, that should have been reported as an asset on the OGE 278 report he filed in June 2017. Letter to Acting OGE Director David J. Apol, Mar. 2, 2018, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/03/02181742/OGE-letter-Essential-Consultants-3-2-18.pdf>.

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OGE 278 report, and that he may have knowingly failed to do so in violation of 18 U.S.C. § 1001 and the Ethics in Government Act of 1978 (“EIGA”).³

In an interview given by President Trump’s personal attorney Rudolph W. Giuliani last night,⁴ Mr. Giuliani admitted that President Trump reimbursed Mr. Cohen for a \$130,000 payment he made to Stephanie Clifford (whose stage name is Stormy Daniels). According to Mr. Giuliani, the payment to Ms. Clifford was “funneled” through Mr. Cohen with “money . . . paid by his lawyer” and the “president reimbursed” him over a “period of several months.”⁵ While “he didn’t know about the specifics of it,” Mr. Giuliani acknowledged that President Trump “did know about the general arrangement.”⁶

In a follow up interview with the *New York Times*, Mr. Giuliani provided additional details about the loan repayment, including that President Trump reimbursed Mr. Cohen at a rate of \$35,000 a month for a total amount of \$460,000 to \$470,000:

“Some time after the campaign is over, *they set up a reimbursement, \$35,000 a month*, out of his personal family account,” Mr. Giuliani said. He added that over all, *Mr. Cohen was paid \$460,000 or \$470,000 from Mr. Trump through those payments*, which also included money for “incidental expenses” that he had incurred on Mr. Trump’s behalf.⁷

Additional information about the loan is disclosed in a transcript released by the *Washington Post*, in which Mr. Giuliani revealed that the repayments plus expenses took place over a period of time in 2017, beginning in January of last year:

Giuliani: The original payment from Cohen was sometime right before the election. The repayments took place over a period of time, probably in 2017, probably all paid back by the end of 2017.

...

³ 5 U.S.C. app. § 102(a)(4).

⁴ See What Giuliani Said About Cohen’s Payment to Stormy Daniels, *New York Times*, May 2, 2018, available at <https://www.nytimes.com/2018/05/02/us/politics/rudy-giuliani-stormy-daniels-transcript.html>; Samuel Chamberlain and Paulina Dedaj, Giuliani says Trump paid \$130G to Cohen for ‘expenses’ over several months, *Fox News*, May 3, 2018, available at <http://www.foxnews.com/politics/2018/05/03/giuliani-says-trump-repaid-130g-to-cohen-over-several-months.html>.

⁵ *Id.*

⁶ *Id.*

⁷ Michael D. Shear and Maggie Haberman, Giuliani Says Trump Repaid Cohen for Stormy Daniels Hush Money, *New York Times*, May 2, 2018, (emphasis added), available at <https://www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html>.

Giuliani: . . . He trusted Michael and Michael trusted him. Michael knew when he laid out the \$135,000 he'd get it back and the president was always going to make sure he got it back — and enough money to pay the taxes.

. . .

Costa: How many payments did it take for the president to settle up with Cohen?

Giuliani: Do the arithmetic, right? \$35,000 a month, probably starting in January or February. By the time you get to \$250,000, it's all paid off. Remember, he also paid for the taxes. Then there probably were other things of a personal nature that Michael took care of, for which the president would have always trusted him as his lawyer, as my clients do with me. And that was paid back out of the rest of the money. And Michael earned a fee out of it.

. . .

Costa: Did the Cohen raid make the president believe this would all come out because the information on the payments was in the files?

Giuliani: He was more focused on how shocked he was that they broke into his lawyer's office. I don't think he even knows what kind of records there are of this payment. He didn't focus on the records. He focused on the fact that he owed Michael money; he trusted Michael implicitly. There was no reason not to. Michael would just take back the amount of money he was owed.⁸

Mr. Giuliani also provided details about President Trump's knowledge of the loan transaction, in which he admitted that President Trump was "aware that Michael incurred expenses to help him" and of an "arrangement so that Michael knew he'd be reimbursed for it."⁹

This newly reported information supports finding that Mr. Cohen made a loan to President Trump for which Mr. Cohen expected to be reimbursed after making a \$130,000 payment on behalf of President Trump to Ms. Clifford as part of a nondisclosure agreement. If it was a loan, President Trump likely violated federal law by failing to disclose it as a liability on his OGE 278 report, filed in June 2017 and covering liabilities incurred in 2016 like this \$130,000 payment.

⁸ Robert Costa, *Transcript: Giuliani interview with The Washington Post*, *Washington Post*, May 3, 2018, available at https://www.washingtonpost.com/politics/transcript-giuliani-interview-with-the-washington-post/2018/05/03/a35c4a3c-4e9b-11e8-af46-b1d6dc0d9bfe_story.html?utm_term=.c755a119d6b2.

⁹ *Id.*

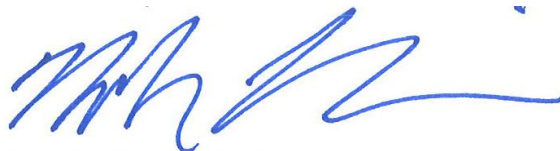
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To maintain public confidence in the integrity of the federal government, EIGA requires public filers such as President Trump to report the “identity and category of value of the total liabilities owed to any creditor . . . which exceed \$10,000 at any time during the preceding calendar year.”¹⁰ The implementing regulations further require that each financial disclosure report “identify and include a brief description of the filer’s liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.”¹¹

Failure to properly disclose information required to be reported on the OGE 278 can result in civil penalties and criminal prosecution. EIGA provides for civil penalties of up to \$50,000, and imprisonment of up to one year for knowingly and willfully failing to report required information.¹² Federal law further prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch, with violations punishable by up to five years in prison.¹³

In light of the emerging evidence, it is even more imperative that you investigate these allegations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a stylized, flowing script.

Noah Bookbinder
Executive Director

A handwritten signature in blue ink, appearing to read 'Norman L. Eisen', with a stylized, flowing script.

Ambassador (Ret.) Norman L. Eisen
Chair

¹⁰ 5 U.S.C. app. § 102(a)(4).

¹¹ 5 C.F.R. § 2634.305.

¹² 5 U.S.C. app. § 104(a)(1)-(2).

¹³ 18 U.S.C. § 1001(a)(2).

EXHIBIT A



**citizens for responsibility
and ethics in washington**

March 8, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

David J. Apol
Acting Director
U.S. Office of Government Ethics, Suite 500
1201 New York Ave., N.W.
Washington, D.C. 20005

Re: Disclosure of Liabilities and Assets on President Donald J. Trump's Public Financial
Disclosure Report

Dear Deputy Attorney General Rosenstein and Acting Director Apol,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Department of Justice ("DOJ") and the Office of Government Ethics ("OGE") investigate and determine whether a surreptitious payment made to a third party shortly before the 2016 presidential election by President Donald J. Trump's personal attorney or a limited liability company ("LLC") the attorney created constituted a loan to President Trump that he should have reported as a liability on his public financial disclosure ("OGE 278") report,¹ and if President Trump knowingly and willfully failed to report it.

On March 2, 2018, CREW requested that OGE exercise its oversight responsibilities to determine whether President Trump held a beneficial interest in the LLC, Essential Consultants LLC, that should have been reported as an asset on the OGE 278 report he filed in June 2017.² The full facts and circumstances about the payment and the LLC remain unknown, and CREW reasserts its request for a review of President Trump's interest in it. Newly reported information, however, now also suggests that President Trump's personal attorney Michael Cohen or Essential Consultants LLC made a loan to President Trump for which Mr. Cohen expected to be reimbursed after making a \$130,000 payment on behalf of President Trump to a third party as part of a nondisclosure agreement.³ If it was a loan, President Trump seemingly violated federal law by failing to disclose it as a liability on his OGE 278.

¹ See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017 ("Trump OGE 278e"), available at <https://oge.app.box.com/s/kz4qvbdshbcfrzq16msuo4zmth6rerh1c>.

² Letter to Acting OGE Director David J. Apol from CREW Executive Director Noah Bookbinder, Mar. 2, 2018 (attached as Exhibit A). CREW also sent the letter to DOJ and requested OGE refer the omission to DOJ if appropriate.

³ Joe Palazzolo and Michael Rothfeld, Trump Lawyer's Payment to Stormy Daniels Was Reported as Suspicious by Bank, *Wall Street Journal*, Mar. 5, 2018, available at <https://www.wsj.com/articles/trump-lawyers-payment-to-porn-star-was-reported-as-suspicious-by-bank-1520273701?tesla=y&mod=e2tw>.

In light of the emerging evidence, we are sending this request for investigation to you. We trust to your discretion as to the appropriate officials in your respective agencies to look into this matter. In making that determination, the Department of Justice may wish to consider that Special Counsel Robert Mueller may be investigating a similar pattern of potential blackmail based on personal matters involving Mr. Trump, and also that Ms. Clifford may have evidence germane to establishing such a pattern.

Background

On October 27, 2016, less than two weeks before the election, Essential Consultants LLC, a company Mr. Cohen had just created, made a \$130,000 wire transfer to Stephanie Clifford, an adult film actress whose stage name is Stormy Daniels.⁴ Ms. Clifford reportedly was owed the payment “in return for signing an agreement that bars her from discussing an alleged sexual encounter with President Trump.”⁵ In February 2018, Mr. Cohen characterized the matter as a “private transaction” in which he used his “own personal funds to facilitate” the payment to Ms. Clifford, and said that “neither the Trump organization nor the Trump campaign” was a “party to the transaction” and “neither reimbursed me for the payment, either directly or indirectly.”⁶

Newly reported information suggests President Trump was aware of the payment and that Mr. Cohen expected President Trump to reimburse him for it. According to the *Wall Street Journal*, Mr. Cohen told a friend “he missed two deadlines earlier that month to make the \$130,000 payment to Ms. Clifford because he couldn’t reach Mr. Trump in the hectic final days of the presidential campaign.”⁷ Furthermore, the *Wall Street Journal* reported that “after Mr. Trump’s victory, Mr. Cohen complained to friends that he had yet to be reimbursed for the payment to Ms. Clifford.”⁸

On March 6, 2018, Ms. Clifford filed a lawsuit against President Trump and Essential Consultants LLC in which she outlined the affair she had with President Trump and the nondisclosure agreement that she was to enter into with President Trump and Essential Consultants LLC.⁹ In the lawsuit, Ms. Clifford alleges that President Trump “at all times has

⁴ Joe Palazzolo and Michael Rothfeld, *Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star ‘Stormy Daniels’*, *Wall Street Journal*, Jan. 18, 2018, available at <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>; Maggie Haberman, *Michael D. Cohen, Trump’s Longtime Lawyer, Says He Paid Stormy Daniels Out of His Own Pocket*, *New York Times*, Feb. 13, 2018, available at <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

⁵ Palazzolo and Rothfeld, *Wall Street Journal*, Mar. 5, 2018.

⁶ Haberman, *New York Times*, Feb. 13, 2018; Tarini Parti, *Full statement from Trump Lawyer Michael Cohen on his payment to Stormy Daniels*, *BuzzFeed*, Feb. 13, 2018, available at <https://twitter.com/tparti/status/963624434140614656>.

⁷ Palazzolo and Rothfeld, *Wall Street Journal*, Mar. 5, 2018.

⁸ *Id.*

⁹ *Stephanie Clifford a.k.a. Stormy Daniels a.k.a. Peggy Peterson v. Donald J. Trump a.k.a. David Dennison*, *Essential Consultants LLC, and Does 1 through 10*, Complaint, Case No. BC696568, Superior Court of California, County of Los Angeles, filed Mar. 6, 2018, (“Clifford Complaint”), available at <https://www.documentcloud.org/>

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been fully aware of the negotiations with Ms. Clifford, the existence and terms of the Hush Agreement, the payment of \$130,000, [and] the use of [Essential Consultants LLC] as a conduit.”¹⁰

President Trump filed his OGE 278 report with OGE on June 14, 2017, which apparently covers the reporting period January 2016 through April 15, 2017.¹¹ In signing the OGE 278, President Trump certified that the statements he “made in this report are true, complete and correct to the best of my knowledge.”¹² However, President Trump did not report any liability owed to either Mr. Cohen or to Essential Consultants LLC on part 8 (the liability section) of his OGE 278.¹³

After President Trump signed the report, he filed his OGE 278 report with OGE for “certification.”¹⁴ Then-OGE Director Walter M. Shaub Jr. certified the report on June 16, 2017, stating that “[o]n the basis of information contained in this report,” he “conclude[d] that the filer is in compliance with applicable laws and regulations.”¹⁵

Potential Violations

To maintain public confidence in the integrity of the federal government, the Ethics in Government Act of 1978 (“EIGA”) requires public filers such as President Trump to report the “identity and category of value of the total liabilities owed to any creditor . . . which exceed \$10,000 at any time during the preceding calendar year.”¹⁶ The implementing regulations require that each financial disclosure report “identify and include a brief description of the filer’s liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.”¹⁷ Public filers similarly must report assets they hold that exceed \$1,000 and income received in excess of \$200.¹⁸

Failure to properly disclose information required to be reported on the OGE 278 can result in civil penalties and criminal prosecution. EIGA provides for civil penalties of up to \$50,000, and imprisonment of up to one year for knowingly and willfully failing to report required information.¹⁹ Federal law further prohibits anyone from knowingly and willfully

[documents/4403879-Filed-Complaint.html#document/p1](#); Rebecca R. Ruiz and Matt Stevens, *Stormy Daniels Sues, Saying Trump Never Signed ‘Hush Agreement’*, *New York Times*, Mar. 6, 2018, available at <https://www.nytimes.com/2018/03/06/us/stormy-daniels-trump-lawsuit.html>.

¹⁰ Clifford Complaint, ¶ 32.

¹¹ Trump OGE 278e; Jill Disis and Cristina Alesci, *Trump reports hundreds of millions in income*, *CNN*, June 16, 2017, available at <http://money.cnn.com/2017/06/16/news/trump-financial-disclosure-form/index.html>.

¹² Trump OGE 278e.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 5 U.S.C. app. § 102(a)(4).

¹⁷ 5 C.F.R. § 2634.305.

¹⁸ 5 U.S.C. app. § 102(a)(1) and (3).

¹⁹ 5 U.S.C. app. § 104(a)(1)-(2).

making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch, with violations punishable by up to five years in prison.²⁰

The statements that the *Wall Street Journal* reported were made by Mr. Cohen to “friends” shortly after the election, if true, strongly suggest a loan arrangement between Mr. Cohen and President Trump. Taken together with the Mr. Cohen’s earlier statements, the new information indicates that Mr. Cohen twice delayed making the payment to Ms. Clifford in order to obtain clearance from his client President Trump, and that after Mr. Cohen obtained clearance he acted to “facilitate” payment using his own money with the expectation he would be reimbursed by President Trump sometime after the election. As a result, the \$130,000 payment appears to be a liability that President Trump owed to Mr. Cohen or Essential Consultants LLC that should have been reported on President Trump’s OGE 278.²¹

The statements the *Wall Street Journal* reported and Ms. Clifford’s lawsuit also suggest that Mr. Cohen likely notified President Trump about the loan arrangement before he made the payment. Mr. Cohen is subject to the New York Rules of Professional Conduct, which require him to keep his client President Trump fully informed of all material developments in a matter, including settlements, and to reasonably consult with his client about the means by which the client’s objective are to be accomplished.²² To be in compliance with his professional obligations, Mr. Cohen should have notified President Trump about the settlement and payment arrangement, and presumably did so. Ms. Clifford’s lawsuit also alleges President Trump was fully aware of the negotiations, settlement, and \$130,000 payment to her, further suggesting he was aware of the arrangement. If President Trump had knowledge of a loan arrangement but failed to report it on his OGE 278, he seemingly made a false statement when he certified that the OGE 278 was “complete and correct to the best of [his] knowledge.”

President Trump’s failure to report the liability also may have been done willfully to avoid embarrassing questions about the underlying basis of the loan – that is, that the payment was made to Ms. Clifford shortly before the election pursuant to a nondisclosure agreement in exchange for her silence about the purported affair. The parties involved in the transaction apparently took extreme measures to ensure that their identities would not be disclosed by using pseudonyms in the nondisclosure agreement and entering into a side agreement in which their true identities were disclosed.²³ These facts suggest President Trump’s failure to report the loan may have been done both knowingly and willfully.

²⁰ 18 U.S.C. § 1001(a)(2).

²¹ A complaint has been filed with Federal Election Commission alleging that the \$130,000 payment made in the weeks before the 2016 presidential election constituted an “in-kind contribution” that exceeded campaign contribution limits and was not properly reported. *Common Cause and Paul S. Ryan v. Donald J. Trump for President, Inc., The Trump Organization, and John Doe*, Complaint, MUR ____ (Jan. 22, 2018), available at <http://www.commoncause.org/policy-and-litigation/litigation/fec-complaint-trump-january-22-2018-no-cover.pdf>.

²² New York Rules of Professional Conduct, Rule 1.4, Communication.

²³ Clifford Complaint, Exs. 1-2; Palazzolo and Rothfeld, *Wall Street Journal*, Jan. 18, 2018.

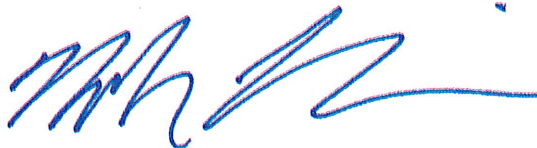
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Even with the recently reported information, the extent of President Trump's involvement in Essential Consultants LLC is not fully known. As set forth in CREW's March 2, 2018 letter, there is substantial evidence that President Trump held a beneficial interest in that entity and thus should have disclosed it as an asset on his OGE 278. CREW hereby incorporates the March 2, 2018 letter by reference and reasserts the request that DOJ and OGE conduct an investigation into President Trump's involvement in Essential Consultants LLC to determine whether it should have been reported and if President Trump violated EIGA and/or other federal laws.

Conclusion

The purpose of the public financial disclosure reporting process is to ensure public confidence in the integrity of the federal government by demonstrating that high-level government officials are able to carry out their duties without compromising the public trust.²⁴ Recent news reports indicate President Trump may have violated federal law by failing to disclose the \$130,000 payment made by Mr. Cohen or Essential Consultants LLC to Ms. Clifford shortly before the 2016 presidential election as a liability on his OGE 278 report, and by failing to disclose Essential Consultants LLC as an asset due to his beneficial interest in the company. If President Trump failed to meet his public financial disclosure reporting requirements, he will have undermined the public trust that these laws are designed to protect. An investigation into this matter is important to safeguard that public trust.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder".

Noah Bookbinder
Executive Director

A handwritten signature in blue ink, appearing to read "Norman L. Eisen".

Ambassador (Ret.) Norman L. Eisen
Chair

Encl.

²⁴ 5 C.F.R. § 2634.104.

EXHIBIT A

CREW | citizens for responsibility and ethics in washington

March 2, 2018

David J. Apol
Acting Director
Office of Government Ethics
Suite 500
1201 New York Ave., N.W.
Washington, D.C. 20005

Re: Disclosure of Essential Consultants LLC on President Donald J. Trump's Public
Financial Disclosure Report

Dear Acting Director Apol,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Office of Government Ethics ("OGE") exercise its oversight responsibilities to determine whether President Donald J. Trump held a beneficial interest in a limited liability company ("LLC") that was used by his personal lawyer to make a surreptitious payment to a third party in the weeks before the 2016 presidential election. If he did, the LLC should have been reported as an "interest in property" on the public financial disclosure report ("OGE 278") President Trump filed with OGE in June 2017.¹

President Trump's personal lawyer Michael D. Cohen recently issued a statement in which he acknowledged his personal involvement in a \$130,000 payment to adult film actress Stephanie Clifford, whose stage name is Stormy Daniels.² The payment reportedly was made using a bank account linked to Delaware limited liability company Essential Consultants LLC, which was created by Mr. Cohen in October 2016.³

Mr. Cohen characterized the payment as a "private transaction" in which he used his "own personal funds to facilitate" the payment to Ms. Clifford.⁴ Mr. Cohen indicated that

¹ See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017 ("Trump OGE 278e"), available at <https://oge.app.box.com/s/kz4qybdscfrzq16msuo4zmth6rerh1c>.

² Maggie Haberman, Michael D. Cohen, Trump's Longtime Lawyer Says He Paid Stormy Daniels Out of his Own Pocket, *New York Times*, Feb. 13, 2018, available at <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

³ Joe Palazzolo and Michael Rothfeld, Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels', *Wall Street Journal*, Jan. 18, 2018, available at <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>.

⁴ Haberman, *New York Times*, Feb. 13, 2018; Tarini Parti, Full statement from Trump lawyer Michael Cohen on his payment to Stormy Daniels, *BuzzFeed*, Feb. 13, 2018, available at <https://twitter.com/tparti/status/963624434140614656>.

“neither the Trump organization nor the Trump campaign” was a “party to the transaction” and “neither reimbursed me for the payment, either directly or indirectly.”⁵ Notably, he did not rule out the use of President Trump’s funds to reimburse him or President Trump’s involvement in the matter, and concluded his statement by saying, “I will always protect Mr. Trump.”⁶

Mr. Cohen issued his statement in response to a complaint filed by Common Cause with the Federal Election Commission (“FEC”) alleging that the \$130,000 payment made in the weeks before the 2016 presidential election constituted an “in-kind contribution” that exceeded campaign contribution limits and was not properly reported.⁷ The FEC complaint alleges that there is reason to believe that the Trump presidential campaign accepted the \$130,000 payment to Ms. Clifford as an in-kind contribution from the Trump Organization or “John Doe” as part of an agreement “by which Ms. Clifford would be precluded from publicly discussing alleged sexual encounters between her and Mr. Trump” that purportedly occurred in 2006.⁸

If, as Mr. Cohen contends, the payment does not constitute an “in-kind contribution,” the payment raises questions about whether President Trump has met his financial disclosure reporting obligations. As a public filer, President Trump is required by the Ethics in Government Act of 1978 to report the value of “any interest in property held during the preceding calendar year in a trade or business or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year.”⁹ Failure to knowingly and willfully report information required to be reported may subject the filer to civil penalties not to exceed \$50,000 and possible criminal liability.¹⁰

Despite Mr. Cohen’s attempt to claim that only he was involved with Essential Consultants LLC and the payment to Ms. Clifford, the true facts about the transaction and the LLC’s ownership remain unknown. Some public information, however, indicates President Trump may have been involved. Mr. Cohen’s statement that he was “protect[ing] Mr. Trump” suggests that he was acting on behalf of President Trump when he made the payment to Ms. Clifford.¹¹ Mr. Cohen also did not actually say he used his personal funds to “make” the payment, but only to “facilitate” it, implying that a third party was involved. Mr. Cohen’s use of Essential Consultants LLC’s bank account to make the payment, which allowed greater secrecy, further raises the possibility that someone else may have held a beneficial interest in the LLC and put up the funds for the payment. By using a Delaware-based LLC to make the

⁵ *Id.*

⁶ *Id.*

⁷ *Common Cause and Paul S. Ryan v. Donald J. Trump for President, Inc., The Trump Organization, and John Doe*, Complaint, MUR ____ (Jan. 22, 2018), available at <http://www.commoncause.org/policy-and-litigation/litigation/fec-complaint-trump-january-22-2018-no-cover.pdf>.

⁸ *Id.*, ¶ 12.

⁹ 5 U.S.C. app. § 102(a)(3).

¹⁰ 5 U.S.C. app. § 104(a).

¹¹ Parti, *BuzzFeed*, Feb. 13, 2018.

payment, which would shield the identity of its beneficial owners, Mr. Cohen may have acted to facilitate a distribution from the LLC that was attributable to someone else as a beneficial owner. While we don't know who else may have been a beneficial owner and contributed funds, President Trump, as the person who benefitted from the transaction, seems like a logical possibility. In addition, had Mr. Cohen in fact used \$130,000 of his own monies to pay Ms. Clifford in connection with this "private transaction," it would raise the same concerns about possible campaign finance violations that are the subject of the FEC complaint, and his denial of those violations raises the possibility that a different approach, which more directly involved the President, had been used.

President Trump is expected to be held to the highest standards of ethical conduct. Based on newly-reported information about the \$130,000 payment, it is incumbent upon OGE to determine whether President Trump included all reportable information on his OGE 278 report when he filed it in June 2017. It will be important to determine whether President Trump held a beneficial interest in Essential Consultants as of December 31, 2016, and if so whether the company held assets or made payments that should have been disclosed.

If under these circumstances President Trump held a beneficial interest in Essential Consultants LLC at the end of 2016, it should have been disclosed on his OGE 278 report based on the value of its assets, yet it was not.¹² The nondisclosure agreement alone is worth at least \$130,000, and possibly much more based on recent media interest. Very little is known about the other business activities of Essential Consultants LLC except that Mr. Cohen has used it for purposes of a consulting arrangement he entered into with "4C Health Solutions, a Midlothian, Va.-based company that focuses on detecting fraudulent health-care billings" and for which he serves on the board of directors.¹³

The Director of OGE is charged with monitoring and investigating compliance with public financial disclosure reporting obligations.¹⁴ Since Essential Consultants LLC was the vehicle used by President Trump's personal lawyer to make the \$130,000 payment in the weeks before the election, and use of Mr. Cohen's own funds may be a violation of campaign finance law, it is incumbent upon OGE to make the necessary inquiries to determine whether President Trump held a beneficial interest in Essential Consultants LLC that would have required him to disclose it as an asset on his OGE 278 report. If so, President

¹² Trump OGE 278e.

¹³ Joe Palazzolo and Michael Rothfeld, Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels', *Wall Street Journal*, Jan. 18, 2018, available at <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>.

¹⁴ 5 U.S.C. app. § 402(b)(3).

Acting Director David Apol
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Trump should amend the report to reflect this omission and OGE should consider whether a referral to the Department of Justice would be appropriate.¹⁵

Sincerely,



Noah Bookbinder
Executive Director



Ambassador (Ret.) Norman L. Eisen
Chair



Richard Painter
Vice Chair

cc: The Honorable Jeff Sessions
Attorney General

¹⁵ See 5 U.S.C. app. § 104(a).