

November 14, 2018

Assistant Attorney General Lee J. Lofthus
Justice Management Division and
Designated Agency Ethics Official
U.S. Department of Justice
950 Pennsylvania Ave., NW, Room 1111
Washington, D.C. 20530

Re: Recusal of Acting Attorney General Matthew G. Whitaker

Dear Mr. Lofthus:

This letter supplements the letter dated November 8, 2018, that Citizens for Responsibility and Ethics in Washington (“CREW”) submitted to request that Acting Attorney General Matthew G. Whitaker be required to recuse from the investigation by the Special Counsel into possible coordination between the Russian government and individuals associated with the campaign of President Trump, and the investigation by the U.S. Attorney for the Southern District of New York into personal income tax, false statement, campaign finance, and other offenses involving Michael Cohen, the Trump Organization and the Trump Campaign.

CREW requested Mr. Whitaker’s recusal from these investigations based on his public statements demonstrating bias and prejudgment, his personal and political relationship with a person substantially involved in the conduct that is the subject of the investigation, and the fact that his appointment is the latest in a series of attempts by the President to interfere with these investigations.¹ Since we submitted our November 8, 2018 letter, new information has come to light raising additional ethics concerns about Mr. Whitaker’s lack of impartiality with respect to these investigations and a separate consumer fraud investigation reportedly by the Federal Bureau of Investigation (“FBI”) into World Patent Marketing, a company that had an advisory board on which Mr. Whitaker served.

Special Counsel and Southern District of New York Investigations

Several new facts bolster the conclusion that Mr. Whitaker’s should recuse from investigations implicating the President and the Trump Campaign. Most alarmingly, Mr. Whitaker appears to have had private conversations with the President’s senior aides at the White House in the months preceding the firing of Attorney General Sessions and the announcement

¹ Letter to Assistant Attorney General Lee J. Lofthus from Noah Bookbinder and Norm Eisen, *Citizens for Responsibility and Ethics in Washington*, Nov. 8, 2018, available at https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/11/08205934/Whitaker-recusal-letter_final.pdf.

that Mr. Whitaker would serve as acting Attorney General.² These conversations reportedly occurred without the knowledge of then-Attorney General Jefferson B. Sessions, Deputy Attorney General Rod Rosenstein, and other Senate-confirmed individuals in the Department of Justice's formal line of succession.³ At the very least, Department of Justice ethics officials should inquire about the topics discussed during these closed-door meetings and any representations Mr. Whitaker made about how he would supervise the investigations. Department ethics officials should also consult any third parties who have knowledge of these conversations. In light of reports that the Special Counsel is close to unveiling new indictments against Trump associates⁴ and the President's glaring dishonesty⁵ about his prior contact with Mr. Whitaker, Mr. Whitaker's contact with the White House prior to his appointment merits extraordinary scrutiny.

There are further troubling facts that have emerged about Mr. Whitaker's relationship with Sam Clovis, a former co-chair of the Trump Campaign. CREW previously stated that Mr. Whitaker's relationship with Clovis represented a potentially disqualifying conflict of interest under 28 C.F.R. § 45.2. New information has emerged about Mr. Whitaker's relationship with Mr. Clovis that seems to satisfy the standard for recusal for a political relationship. Mr. Whitaker appears to have served as an informal adviser to Mr. Clovis about issues relating to the Trump Campaign.⁶ Mr. Clovis told *Reuters* in an interview last week that Mr. Whitaker served as a "sounding board" for Mr. Clovis while Mr. Clovis was working on the campaign.⁷ If Mr. Whitaker did indeed counsel Mr. Clovis about campaign-related issues that are now the subject of investigation, Mr. Whitaker has both a personal and a political relationship that disqualifies him from supervising investigations that implicate the Trump Campaign.

² Evan Perez, Laura Jarrett and Ariane de Vogue, Sessions realized too late that Whitaker was auditioning for his job, *CNN*, Nov. 9, 2018, available at <https://www.cnn.com/2018/11/09/politics/matt-whitaker-jeff-sessions/index.html>.

³ *Id.*

⁴ See, e.g., Rosalind S. Helderman, Manuel Roig-Franzia and Carol D. Leonnig, Conservative author and Stone associate Jerome Corsi said he expects to be indicted by special counsel for allegedly lying, *Washington Post*, Nov. 12, 2018, available at

https://www.washingtonpost.com/politics/conservative-author-and-stone-associate-jerome-corsi-said-special-prosecutors-plan-to-indict-him-for-allegedly-lying/2018/11/12/773e6722-e6c7-11e8-a939-9469f1166f9d_story.html; Alexandra Ma and Sonam Sheth, Mueller reportedly plans to issue new indictments in the Russia investigation as soon as Tuesday, *Business Insider*, Nov. 13, 2018, available at <https://www.businessinsider.com/robert-mueller-to-issue-new-indictments-as-soon-as-tuesday-report-2018-11>.

⁵ For instance, on November 9, 2018, President Trump has falsely claimed, "I don't know Matt Whitaker" even though he met Mr. Whitaker more than a dozen times and last month told *Fox News*, "Matt Whitaker is a great guy. I mean, I know Matt Whitaker." Scott Horsley, Trump Falsely Claims Not To Know The Man He Hand-Picked As Acting Attorney General, *NPR*, Nov. 9, 2018, available at <https://www.npr.org/2018/11/09/666235157/trump-falsely-claims-not-to-know-the-man-he-hand-picked-as-acting-attorney-general>.

⁶ See Ryan Goodman, Whitaker's Unofficial Role as Adviser to Trump Campaign is a Clear Red Line, *Just Security*, Nov. 12, 2018, available at <https://www.justsecurity.org/61438/whitakers-unofficial-role-adviser-trump-campaign-clear-red-line/>.

⁷ Ginger Gibson and Julia Harte, Whitaker's friendship with Trump aide reignites recusal debate, *Reuters*, Nov. 8, 2018, available at <https://www.reuters.com/article/us-usa-trump-whitaker/whitakers-friendship-with-trump-aide-reignites-recusal-debate-idUSKCN1ND2SN>.

Finally, Mr. Whitaker's past statements about Special Counsel Robert Mueller's probe also continue to raise questions about the propriety of giving him authority to supervise investigations that potentially implicate the President. For instance, it emerged last week that Mr. Whitaker is on record giving credence to widely discredited claims that Special Counsel Mueller's investigation is biased — even going so far as to claim that the investigative team's purported bias could give rise to claims of prosecutorial misconduct.⁸ These claims are significant not because they have been resoundingly rebutted⁹ but rather because they provide yet another example of Mr. Whitaker articulating standards that, if applied to him, would require his recusal from investigations of the President and the Trump Campaign.

Mr. Whitaker's Service on the Advisory Board of World Patent Marketing and Related Investigations

Mr. Whitaker's prior affiliation with World Patent Marketing ("WPM") raises new ethics concerns because of a reported FBI investigation into that company. To the extent that WPM is the subject of an ongoing investigation Mr. Whitaker should also recuse himself from supervising that matter.

From 2014 to 2017, before joining the Department of Justice, Mr. Whitaker served as a paid member of WPM's advisory-board.¹⁰ He appeared in at least two promotional videos that the company posted on its website and accepted \$9,375 in compensation for his services.¹¹ In August 2015, Mr. Whitaker reportedly invoked his former position as U.S. Attorney for the Southern District of Iowa in a threatening email to a dissatisfied customer. Mr. Whitaker accused the customer of an "apparent attempt at possible blackmail or extortion" and threatened "serious civil and criminal consequences" if the customer were to file a "complaint with the Better Business Bureau" or "smear" WPM's online reputation.¹²

Mr. Whitaker's threatening email appears to be part of an effort by WPM to "suppress consumer complaints" and "hide their deceptive acts from potential customers, consumer groups,

⁸ Andrew Kaczynski, Sessions replacement Matthew Whitaker called Mueller's appointment 'ridiculous' and 'a little fishy', *CNN*, Nov. 8, 2018, available at <https://www.cnn.com/2018/11/08/politics/kfile-matthew-whitaker-mueller-comments/index.html>.

⁹ See, e.g., Noah Bookbinder, Norman Eisen, Caroline Fredrickson, and Kristin Amerling, The Smear Campaign Against Mueller: Debunking the Nunes Memo and The Other Attacks on the Russia Investigation, *American Constitution Society and Citizens for Responsibility and Ethics in Washington*, Jan. 31, 2018, available at <https://www.citizensforethics.org/thesmearecampaign/>.

¹⁰ Mark Maremont and James V. Grimaldi, FBI Is Investigating Florida Company Where Whitaker Was Advisory-Board Member, *Wall Street Journal*, Nov. 9, 2018, available at <https://www.wsj.com/articles/fbi-is-investigating-florida-company-where-whitaker-was-advisory-board-member-1541799564>.

¹¹ *Id.*

¹² Brittany Shammass, Trump's Acting Attorney General Was Part of Miami-Based Invention Scam Company, *Miami New Times*, Nov. 7, 2018, available at <https://www.miaminewtimes.com/news/trumps-acting-attorney-general-matthew-whitaker-was-part-of-world-patent-marketing-a-miami-based-invention-scam-company-10893091>.

and law enforcement,” as the Federal Trade Commission (“FTC”) described WPM’s conduct.¹³ The FTC further alleged that the company and its lawyers “threatened consumers with lawsuits and even criminal charges and imprisonment for making any kind of complaint about Defendants”¹⁴ The FTC brought an enforcement action against WPM that resulted in a settlement worth approximately \$26 million.¹⁵ WPM reportedly is now being investigated by the FBI and the U.S. Postal Inspection Service. Potential victims of WPM’s scams were reportedly notified by the FBI in July 2017 that the FTC’s “civil” case is separate from any “criminal case” that may result from the Miami Field Office’s investigation.¹⁶

It is not known whether Mr. Whitaker has a financial interest under 18 U.S.C. § 208 in the FBI investigation involving WPM. If, for example, his conduct sending threatening emails on behalf of the company is under FBI scrutiny, he would presumably incur attorney fees in connection with that investigation. Under those circumstances, a financial interest under 18 U.S.C. § 208 would mandate his recusal.¹⁷ Recusal is also required under 28 C.F.R. § 45.2 in any case in which his personal conduct or that of his former employer WPM is the subject of the investigation.

In addition, the Standards of Conduct for Employees of the Executive Branch (“Standards of Conduct”) impose fundamental duties to “act impartially and not give preferential treatment to any private organization or individual” and to avoid even the appearance of a violation.¹⁸ The Standards also provide that “public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.”¹⁹ The Standards require him as a federal employee to recuse from any specific party matter, including the reported FBI investigation involving WPM, in which his former employer or client is or represents a party to the matter.²⁰ Not only would Mr. Whitaker’s participation cause a reasonable person to question his impartiality in the WPM investigation, his connection to that entity raises serious questions about whether Mr. Whitaker can more broadly uphold his fundamental obligation as acting Attorney General to place loyalty to the Constitution, the laws and ethical principles above all other interests.²¹

¹³ See Amended Complaint For Permanent Injunction and other Equitable Relief, *Fed. Trade Comm’n v. World Patent Mktg., Inc.*, No. 17-cv-20848 (S.D. Fl. May 25, 2017), available at <https://www.ftc.gov/system/files/documents/cases/1723010complaint.pdf>

¹⁴ *Id.*; Receiver’s First Interim Report, *Fed. Trade Comm’n v. World Patent Mktg., Inc.*, No. 17-cv-20848 (S.D. Fl. Apr. 5, 2017), available at <http://www.worldpatentmarketingreceivership.com/docs/DE045RecInterimReportWoExhibits.pdf>.

¹⁵ Stipulated Order for Permanent Injunction and Monetary Judgment, *Fed. Trade Comm’n v. World Patent Mktg., Inc.*, No. 17-cv-20848 (S.D. Fl. May 16, 2018), available at https://www.ftc.gov/system/files/documents/cases/149-final_order.pdf.

¹⁶ Maremont and Grimaldi, *Wall Street Journal*, Nov. 9, 2018.

¹⁷ 18 U.S.C. § 208(a) prohibits a federal employee from participating personally and substantially in any particular matter that would have a direct and predictable effect on his financial interest or those imputed to him under the statute.

¹⁸ 5 C.F.R. § 2635.101(b)(8).

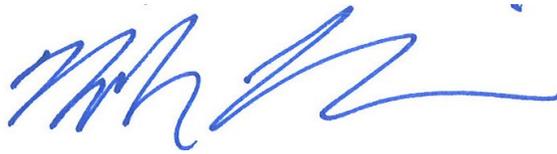
¹⁹ 5 C.F.R. § 2635.101(b)(1).

²⁰ See 5 C.F.R. § 2635.502(a).

²¹ As a member of the Iowa State Bar Association since 2002, see Lawyer Database, *Iowa Judicial Branch Office of Processional Regulation*, available at <https://www.iacourtcommissions.org/icc/ViewLawyer.do?id=15068>, Mr.

For these reasons and for those laid out in CREW's November 8, 2018 letter, we respectfully request that Mr. Whitaker recuse from the Special Counsel and Southern District of New York investigations as well as the FBI's investigation of World Patent Marketing.

Sincerely,



Noah Bookbinder
Executive Director



Ambassador (Ret.) Norman L. Eisen
Chair

cc: The Honorable Matt G. Whitaker

Whitaker's conduct also raises potential bar issues if Mr. Whitaker's threatening email is determined to be part of a practice of deception undertaken by World Patent Marketing. Iowa State Bar Rule 32:8.4 makes it professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." See Iowa Rules of Professional Conduct, Oct. 2015, available at <https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/04-28-2017.32.pdf>.