

April 9, 2019

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, N.Y. 10007

Re: Disclosure of Liabilities on President Donald J. Trump's 2017 Public Financial Disclosure Report

Dear Deputy Attorney General Rosenstein and Deputy United States Attorney Khuzami,

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") prior requests for the Department of Justice ("DOJ") to investigate whether a surreptitious payment to Stephanie Clifford 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 2017 public financial disclosure report ("2017 OGE 278"),<sup>1</sup> and if President Trump knowingly and willfully failed to report it.<sup>2</sup>

As CREW explained in its prior requests, President Trump failed to disclose any personal loan owed to Mr. Cohen in his 2017 OGE 278 filed on June 14, 2017, although that report covers liabilities he owed through May 2017 and the evidence overwhelmingly indicates that President Trump owed Mr. Cohen more than the \$10,000 that triggers the reporting requirement during the relevant reporting period. Nor has President Trump amended his 2017 OGE 278 to include the personal debt he owed to Mr. Cohen, even after details about the \$130,000 payment to Ms. Clifford became public in 2018.

Additional evidence has come to light that further demonstrates that Mr. Cohen's \$130,000 payment to Ms. Clifford shortly before the 2016 election and additional monies associated with it constituted a liability President Trump was required to report on his 2017 OGE

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<sup>1</sup> See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017, *available at* <https://oge.app.box.com/s/kz4qvbdbsbcfrzq16msuo4zmth6rerh1c>.

<sup>2</sup> See Letter to Deputy Attorney General Rod J. Rosenstein and Deputy United States Attorney Robert Khuzami, May 16, 2018, *available at* <https://bit.ly/2Txp5He>; Letter to Deputy Attorney General Rod J. Rosenstein, Deputy United States Attorney Robert Khuzami and Acting Office of Government Ethics ("OGE") Director David J. Apol, May 3, 2018, *available at* <https://bit.ly/2DwvV65>; Letter to Deputy Attorney General Rod J. Rosenstein and Acting OGE Director David J. Apol, Mar. 8, 2018, *available at* <https://bit.ly/2Th2nPC>; see also Letter to Acting OGE Director David J. Apol, Mar. 2, 2018, *available at* <https://bit.ly/2CV3nQe>.

278 report, and that he knowingly failed to do so in violation of the Ethics in Government Act of 1978 (“EIGA”) and 18 U.S.C. § 1001. Documents associated with Mr. Cohen’s August 2018 guilty plea in the Southern District of New York (“SDNY”)<sup>3</sup> and his February 2019 testimony before the House Committee on Oversight and Government Reform (“House Oversight Committee”)<sup>4</sup> provide new and extensive details regarding his transactions with President Trump which strongly support the conclusion that President Trump had a liability to Mr. Cohen that should have been disclosed on his 2017 OGE 278. In addition, internal notes produced by the Office of Government Ethics (“OGE”) to the House Oversight Committee also suggest that President Trump’s personal attorney and/or a White House ethics lawyer may have misled OGE in March, April, and May 2018 about the \$130,000 payment and other monies owed to Mr. Cohen, apparently in an attempt to avoid their public disclosure.<sup>5</sup>

### **Legal Background**

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.”<sup>6</sup> OGE’s implementing regulations further require that each financial disclosure “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.”<sup>7</sup> The liabilities that must be disclosed include those owed to a “non-commercial source,” such as a “friend.”<sup>8</sup>

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 requirement information.<sup>9</sup> Federal law further prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter

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<sup>3</sup> Press Release, U.S. Attorney’s Office for the Southern District of New York, Michael Cohen Pleads Guilty in Manhattan Federal Court to Eight Counts, Including Criminal Tax Evasion and Campaign Finance Violations, Aug. 21, 2018 (“SDNY Press Release”), available at <https://bit.ly/2OYJuhE>; Information, *United States v. Cohen*, No. 1:18-cr-00602 (S.D.N.Y. Aug. 21, 2018) (“Cohen Information”), available at <https://bit.ly/2FL5RXs>; Plea Agreement, *United States v. Cohen*, No. 1:18-cr-00602 (S.D.N.Y. Aug. 21, 2018) (“Cohen Plea Agreement”), available at <https://bit.ly/2TP4M38>; Sentencing Memorandum, *United States v. Cohen*, No. 18-cr-00602 (S.D.N.Y. Dec. 7, 2018), available at <https://bit.ly/2B1x3Nz>. See also Noah Bookbinder, Conor Shaw, and Gabe Lezra, A Campaign to Defraud: President Trump’s Apparent Campaign Finance Crimes, Cover-up, and Conspiracy, Feb. 25, 2019, available at <https://bit.ly/2StjYCI>.

<sup>4</sup> Testimony of Michael D. Cohen, House Committee on Oversight and Reform, Feb. 27, 2019 (“Cohen Testimony”), available at <https://bit.ly/2J59723>.

<sup>5</sup> See Letter from Chairman Elijah E. Cummings, House Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President, Feb. 15, 2019 (“Chairman Cummings Letter”), available at <https://politi.co/2lfdmYx>.

<sup>6</sup> 5 U.S.C. app. § 102(a)(4).

<sup>7</sup> 5 C.F.R. § 2634.305.

<sup>8</sup> OGE, Public Financial Disclosure Guide, Dec. 2018, at 208, available at <https://bit.ly/2TyVXuu>.

<sup>9</sup> 5 U.S.C. app. § 102(a)(1)-(2).

within the jurisdiction of the executive, legislative, or judicial branch, with violations punishable by up to five years in prison.<sup>10</sup>

### **Additional Evidence Regarding President Trump's Loan from Mr. Cohen**

#### **Mr. Cohen's Guilty Plea in SDNY**

Documents associated with Mr. Cohen's August 21, 2018 guilty plea in SDNY provide extensive details of his transactions with President Trump. In his plea agreement, Mr. Cohen pleaded guilty to several felonies, including two campaign finance violations, one of which involved the \$130,000 payment Mr. Cohen made to Ms. Clifford.<sup>11</sup>

According to the Information filed with the Court, on October 26, 2016, Mr. Cohen drew down \$131,000 from a Home Equity Line of Credit that he personally obtained under fraudulent circumstances and deposited it in a shell corporation bank account.<sup>12</sup> The next day, he wired approximately \$130,000 to Ms. Clifford's attorney and "falsely indicated" that the "purpose of the wire being sent" was a "retainer."<sup>13</sup>

In January 2017, Mr. Cohen sought "reimbursement" for "election-related expenses" by presenting Trump Organization executives with a copy of a bank statement that reflected the \$130,000 payment he had made to Ms. Clifford's attorney – money paid "to keep [her] silent in advance of the election" – and a related \$35 wire fee, on which Mr. Cohen added in handwriting an additional \$50,000 to cover a purported payment for "tech services" provided to the campaign.<sup>14</sup> After receiving the document, Trump Organization executives "'grossed up' for tax purposes" the requested \$180,000 reimbursement to \$360,000, and "then added a bonus of \$60,000 so that Cohen would be paid \$420,000 in total."<sup>15</sup> Trump Organization executives also determined that the \$420,000 owed to Mr. Cohen would be paid to him in monthly installments of \$35,000 each over the course of 12 months based on invoices to be sent by Mr. Cohen for these payments.<sup>16</sup>

On February 14, 2017, Mr. Cohen sent the first of his monthly invoices to the Trump Organization, requesting payment "pursuant to a retainer agreement" for "services rendered" for the months of January and February 2017.<sup>17</sup> Throughout 2017, Mr. Cohen sent monthly invoices "pursuant to the retainer agreement" for services "rendered for" the relevant month.<sup>18</sup> The company then accounted for these payments as "legal expenses" when, in fact, no such retainer

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<sup>10</sup> 18 U.S.C. § 1001(a)(2).

<sup>11</sup> Cohen Information ¶¶ 32-40, 43-44; Cohen Plea Agreement at 1; SDNY Press Release.

<sup>12</sup> Cohen Information ¶ 34.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ¶ 37.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* ¶ 38.

<sup>18</sup> *Id.* ¶ 39.

agreement existed and the monthly invoices were not in connection with “legal services” Mr. Cohen provided in 2017.<sup>19</sup>

In 2017, Mr. Cohen received a total of \$420,000 in monthly reimbursement checks.<sup>20</sup>

Mr. Cohen’s February 2019 Congressional Testimony

Mr. Cohen subsequently testified before Congress in February 2019 to correct the record about false statements he made to Congress that were the subject of a cooperation agreement he entered into with Special Counsel Robert S. Mueller III.<sup>21</sup> That testimony provides further details of Mr. Cohen’s transactions with President Trump, including evidence of President Trump’s knowledge of his liability to Mr. Cohen.

In his testimony to the House Oversight Committee, Mr. Cohen asserted that he was personally reimbursed by President Trump for the \$130,000 payment to Ms. Clifford.<sup>22</sup> According to Mr. Cohen, President Trump “directed” him to use his “own personal funds from a Home Equity Line of Credit to avoid any money being traced back to him that could negatively impact his campaign,”<sup>23</sup> then repaid him for the payment.

Mr. Cohen testified that in February 2017, while visiting President Trump in the Oval Office, President Trump acknowledged that he owed a debt to Mr. Cohen by saying “something to the effect of . . . Don’t worry, Michael, your January and February reimbursement checks are coming. They were Fed-Exed from New York and it takes a while for that to get through the White House system.”<sup>24</sup> And President Trump delivered on his commitment, Mr. Cohen testified: “As he promised, I received the first check for the reimbursement of \$70,000 not long thereafter.”<sup>25</sup> Mr. Cohen later released to the *New York Times* what appears to be copy of this payment – a check signed by Donald J. Trump Jr. and Allen Weisselberg for the Donald J. Trump Revocable Trust Account on February 14, 2017 in the amount of \$70,000.<sup>26</sup>

Mr. Cohen also told the House Oversight Committee about other payments from President Trump to resolve the debt he incurred as a result of Mr. Cohen’s payment to Ms. Clifford. Mr. Cohen testified that President Trump “wrote a personal check for the payment of hush money as part of a criminal scheme to violate campaign finance laws,” noting that “this

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 40

<sup>21</sup> Cooperation Agreement, *United States v. Cohen*, No. 1:18-cr-00850 (S.D.N.Y. Nov. 29, 2018), available at <https://www.justice.gov/file/1115566/download>.

<sup>22</sup> Cohen Testimony at 13-14. Mr. Cohen also produced a copy of the \$130,000 wire transfer from him to Ms. Clifford’s attorney made during the “closing days of the presidential campaign” that was “demanded by Ms. Clifford to maintain her silence about her affair with Mr. Trump.” *Id.* at 13; Exhibit 4 to Cohen Testimony, available at <https://bit.ly/2Nlmzrr> and <https://wapo.st/2YvKJdQ>.

<sup>23</sup> Cohen Testimony at 13.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.*

<sup>26</sup> Peter Baker and Maggie Haberman, In the Middle of His Official Business, Trump Took the Time to Send Checks to Michael Cohen, *New York Times*, Mar. 5, 2019, available at <https://nyti.ms/2NLnnvM>.

\$35,000 check was one of 11 check installments that was paid throughout the year – while he was President.”<sup>27</sup> In support of that testimony, Mr. Cohen produced to the committee a copy of a \$35,000 check signed “personally” by President Trump on August 1, 2017 from his personal bank account – evidence that Mr. Cohen was “reimbursed” for the “hush money payments” made to “cover up” President Trump’s “affair with an adult film star and prevent damage to the campaign.”<sup>28</sup> Mr. Cohen also later released to the *New York Times* copies of four additional checks issued in 2017 and personally signed by President Trump, including one dated May 23, 2017, just weeks before President Trump submitted his 2017 personal financial disclosure.<sup>29</sup> Further supporting his testimony that President Trump owed him a debt and that he received a series of repayments from President Trump, Mr. Cohen also produced to the House Oversight Committee a copy of a \$35,000 check signed by Mr. Trump Jr. and Mr. Weisselberg for the Donald J. Trump Revocable Trust Account on March 17, 2017.<sup>30</sup>

Mr. Cohen also testified that President Trump urged him to cover up President Trump’s knowledge of these transactions. In February 2018, Mr. Cohen testified, after public reports disclosed the payments, President Trump called him and “told him to say that Mr. Trump ‘was not knowledgeable of these reimbursements and he wasn’t knowledgeable of’ Mr. Cohen’s actions.”<sup>31</sup>

*Alleged Attempts to Mislead OGE About Monies Owed to Mr. Cohen*

Other new evidence further suggests that President Trump’s personal and White House attorneys also may have tried to mislead OGE about President Trump’s liability to Mr. Cohen. According to a February 2019 letter House Oversight Chairman Cummings sent to White House Counsel Pat Cipollone, President Trump’s personal attorney, Sheri Dillon, made “false claims” to OGE in March and April 2018 when she represented that President Trump owed no money to Mr. Cohen in 2016 and 2017.<sup>32</sup> In discussions with OGE between March 22, 2018 and April 26, 2018, Ms. Dillon allegedly was asked about whether President Trump owed money to Mr. Cohen in 2016 and 2017.<sup>33</sup> OGE’s internal notes indicate that Ms. Dillon responded “she does not believe he did” and “not that I am aware of.”<sup>34</sup> When asked to confirm if he did not owe Mr. Cohen money, Ms. Dillon subsequently represented that she “confirmed that with filer,”<sup>35</sup> suggesting that President Trump may have been aware of her misleading statement.

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<sup>27</sup> Cohen Testimony at 14.

<sup>28</sup> *Id.* at 3 and 13; Exhibit 5 to Cohen Testimony.

<sup>29</sup> Baker and Haberman, *New York Times*, Mar. 5, 2019.

<sup>30</sup> Exhibit 5 to Cohen Testimony.

<sup>31</sup> Peter Baker and Nicholas Fandos, *Michael Cohen Accuses Trump of Expansive Pattern of Lies and Criminality*, *New York Times*, Feb. 27, 2019, available at <https://nyti.ms/2TtW1A>.

<sup>32</sup> Chairman Cummings Letter at 3. In the letter, Chairman Cummings indicated that the House Oversight Committee obtained from OGE “internal notes taken by OGE officials describing their interactions with the President’s personal attorneys and White House lawyers regarding the President’s payments and debts to Michael Cohen.”

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

Public disclosures about President Trump’s transactions with Mr. Cohen led to further questions from OGE. In May 2018, President Trump’s personal attorney Rudy Giuliani admitted on national television that President Trump reimbursed Mr. Cohen for the payment to Ms. Clifford, but he claimed “it’s not campaign money. No campaign finance violation.”<sup>36</sup> The next day, President Trump confirmed on Twitter that he made “monthly retainer” payments to Mr. Cohen, but he also claimed that it had nothing to do with the campaign.<sup>37</sup>

Following these disclosures, Ms. Dillon allegedly made another “false claim” when she was asked by OGE about the new admission and the new retainer claim, according to House Oversight Chairman Cummings’ letter.<sup>38</sup> Ms. Dillon allegedly represented to OGE that President Trump “reimbursed” Mr. Cohen for “expenses” he incurred for “legal services.”<sup>39</sup> Then-Deputy White House Counsel for Compliance and Ethics, Stefan Passantino, made similar false claims to OGE by representing that Mr. Cohen “outlay[ed]” expenses for “legal services” under a “retainer agreement.”<sup>40</sup>

Apparently, OGE was “skeptical” of these new claims and requested to see the purported “retainer agreement,” but Ms. Dillon refused to show it to them based on “privilege” considerations.<sup>41</sup> Federal prosecutors subsequently confirmed that “in truth and in fact, there was no such retainer agreement and the monthly invoices Cohen submitted were not in connection with any legal services he had provided in 2017.”<sup>42</sup>

These allegedly misleading responses may have contributed to OGE taking steps to call attention to President Trump’s repayment of his loan to Mr. Cohen. In his 2018 public financial disclosure report (“2018 OGE 278”) filed on May 15, 2018, President Trump ultimately disclosed a liability that he owed to Mr. Cohen in the amount of \$100,001 to \$250,000, but only as a footnote while claiming it was “not required to be disclosed.”<sup>43</sup> On May 16, 2018, then-Acting OGE Director Apol certified President Trump’s 2018 OGE 278, but pointedly noted that “the information related to the payment made by Mr. Cohen is required to be reported and that information provided meets the disclosure requirement for a reportable liability.”<sup>44</sup>

That same day, Acting OGE Director Apol also sent a letter to DOJ in connection with CREW’s March 8, 2018 complaint requesting DOJ investigate whether the \$130,000 payment should have been reported as a liability on his 2017 OGE 278.<sup>45</sup> Acting OGE Director Apol

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<sup>36</sup> Samuel Chamberlain, Paulina Dedaj, Giuliani says Trump paid \$130G to Cohen for ‘expenses’ over several months, *Fox News*, May 3, 2018, available at <https://fxn.ws/2U0no5a>.

<sup>37</sup> Donald J. Trump (@realDonaldTrump), *Twitter*, May 3, 2018, 3:46 AM, available at <https://bit.ly/2Ts03Fo>.

<sup>38</sup> Chairman Cummings Letter at 3.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 4-5.

<sup>42</sup> Cohen Information ¶ 39.

<sup>43</sup> Donald J. Trump, Public Financial Disclosure Report, May 15, 2018, at 45, available at <https://oge.app.box.com/v/Trump2018Annual278>.

<sup>44</sup> *Id.* at 1.

<sup>45</sup> Letter from OGE Acting Director David J. Apol to Deputy Attorney General Rod J. Rosenstein, May 16, 2018, available at <https://bit.ly/2FBjNR4>.

informed DOJ that he had concluded that the payment made by Mr. Cohen was required to be reported as a liability on his 2018 OGE 278 and this disclosure may be relevant to any inquiry being pursued by DOJ regarding the 2017 OGE 278.<sup>46</sup>

### **Potential Violations**

As discussed above and in CREW's prior requests, EIGA and OGE regulations require government officials who file OGE 278s to report liabilities, including those owed to a non-commercial source such as a friend, that exceeded \$10,000 at any time during the reporting period.<sup>47</sup> The evidence overwhelmingly indicates that Mr. Cohen's \$130,000 payment to Ms. Clifford in October 2016, shortly before the election, not only violated campaign finance laws,<sup>48</sup> but also constituted a non-commercial loan from Mr. Cohen that President Trump was required to report on his 2017 OGE 278.

The reporting period for liabilities on President Trump's 2017 OGE 278 was January 1, 2016 through May 31, 2017.<sup>49</sup> The evidence clearly indicates that President Trump personally owed Mr. Cohen for the \$130,000 payment made to Ms. Clifford's attorney starting in October 2016. As described in CREW's prior requests and in this letter, President Trump was aware of the October 2016 transaction involving Mr. Cohen and acknowledged Mr. Cohen would need to be reimbursed for his expenses.<sup>50</sup> Then, in January 2017, Mr. Cohen came to agreement on the terms for his repayment. Mr. Trump Jr. and Mr. Weisselberg, apparently acting on behalf of President Trump, agreed to reimburse Mr. Cohen in the amount of \$420,000, which covered the initial \$130,000 outlay, a gross up for taxes, a bonus, and other expenses. They also agreed Mr. Cohen would be paid back in 12 monthly installments of \$35,000 each based on monthly invoices. Accordingly, President Trump almost certainly owed to Mr. Cohen a debt greater than \$10,000 during the reporting period for his 2017 OGE 278.

The evidence also indicates that President Trump had personal knowledge of the \$130,000 payment that he owed to Mr. Cohen. At the outset, President Trump "directed" Mr. Cohen to use his "own personal funds from a Home Equity Line of Credit to avoid any money being traced back to him that could negatively impact his campaign." President Trump also personally acknowledged to Mr. Cohen that his "January and February reimbursement checks are coming," and shortly thereafter, Mr. Cohen received his first check covering those months. At least five checks to Mr. Cohen were personally signed by President Trump. In particular, the May 23, 2017 check evidences that President Trump had personal knowledge of the loan both during the reporting period and prior to June 14, 2017, the date on which he filed his 2017 OGE 278.

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<sup>46</sup> *Id.*

<sup>47</sup> 5 U.S.C. app. § 102(a)(4); 5 C.F.R. § 2634.305; OGE Public Financial Disclosure Guide, at 208.

<sup>48</sup> SDNY Press Release; Cohen Information. *See also* Bookbinder, Shaw, and Lezra, [A Campaign to Defraud: President Trump's Apparent Campaign Finance Crimes, Cover-up, and Conspiracy](#), Feb. 25, 2019.

<sup>49</sup> *See* 2017 OGE 278, at 50 (note for Part 8, Liabilities, reads: "Reporting date for liabilities is May 31, 2017 per 5 CFR 2634.308(b)(3)").

<sup>50</sup> *See, e.g.*, Letter to Deputy Attorney General Rod J. Rosenstein and Deputy United States Attorney Robert Khuzami, May 16, 2018, at 2-3.

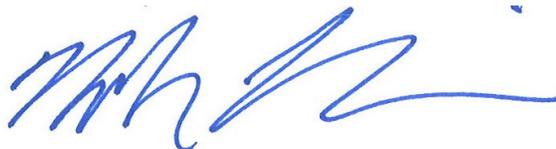
The omission of the loan from the 2017 OGE 278 also appears to have been made knowingly and willfully so as to avoid public detection. From the outset, President Trump and Mr. Cohen went to extraordinary lengths to conceal their personal involvement in the \$130,000 payment to Ms. Clifford's attorney, including drawing the payment from Mr. Cohen's Home Equity Line of Credit and transmitting the payment through a shell corporation bank account to Ms. Clifford's attorney. The evidence obtained by the House Oversight Committee further suggests that President Trump's personal attorney Ms. Dillon and his White House attorney Mr. Passantino misled OGE in March, April, and May 2018 about monies owed to Mr. Cohen in an apparent attempt to keep the transaction hidden from public view. Its disclosure would have exposed President Trump and Mr. Cohen to legal jeopardy, as evidenced by Mr. Cohen subsequently pleading guilty to two counts of campaign finance violations and personally implicating President Trump in the transaction as "Individual-1."<sup>51</sup>

Accordingly, President Trump appears to have violated EIGA and 18 U.S.C. § 1001 by failing to disclose his liability to Mr. Cohen on his 2017 OGE 278.

### **Conclusion**

The purpose of the public financial disclosure system is to ensure confidence in the integrity of the federal government and to demonstrate that government officials are able to carry out their official duties without compromising the public trust. The evidence accumulated over the last two years overwhelmingly indicates that President Trump should have disclosed his liability to Mr. Cohen his 2017 OGE 278. Yet he failed to disclose it when it was initially filed – despite certifying that the statements made in his report were “true, complete and correct to the best of his knowledge” – and he has failed to amend it since. President Trump's transactions and conduct strongly suggest this was knowingly and willfully done so as to avoid public detection. These actions are jeopardizing the public's trust in his office. CREW therefore again respectfully requests that DOJ conduct an investigation into President Trump's failure to report the \$130,000 payment and additional monies associated with it on his 2017 OGE 278 report, including whether he knowingly failed to do so in violation of EIGA and 18 U.S.C. § 1001.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>51</sup> SDNY Press Release; Cohen Information ¶¶ 24-44.