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April 2, 2018

Via Federal Express

Mr. Steven Mnuchin
United States Secretary of the Treasury
United States Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: **Request for Public Release of Suspicious Activity Report (SAR) and Underlying Documentation Relating to $130,000 Payment**

Dear Secretary Mnuchin:

I represent Ms. Stephanie Clifford (a.k.a. Stormy Daniels) in connection with litigation filed against Donald J. Trump (a.k.a. David Dennison), Essential Consultants, LLC, and Mr. Michael Cohen.

At the center of the case is a wire transfer payment of $130,000 allegedly made by Essential Consultants, LLC. Essential Consultants, LLC is an entity formed in October 2016 by Mr. Cohen, Mr. Trump's personal attorney. Mr. Cohen claims that the $130,000 payment came from his own money drawn on his home equity line of credit for which he was never reimbursed. In the suit, our client contends that this was a hush payment for the purpose of benefiting Mr. Trump's 2016 presidential campaign and, therefore, constituted an "in-kind" campaign contribution under the Federal Election Campaign Act (FECA) and federal regulations adopted pursuant thereto. This sum, however, exceeded contribution limits under FECA and was not reported as required by law. Accordingly, it is our contention that the "Hush Agreement" that is claimed to restrict our client's right to speak openly was made for the purpose of circumventing federal election law. The alleged agreement is thus without lawful object or purpose, and void.

Given the illicit and shadowy nature of the $130,000 payment, it is not surprising that as reported in the *Wall Street Journal,* First Republic Bank, the bank used by Mr. Cohen to send the payment, filed a suspicious activity report (SAR) with the Department of Treasury regarding this transaction. https://www.wsj.com/articles/trump-lawyers-payment-to-porn-star-was-reported-as-suspicious-by-bank-1520273701. This SAR was filed with the Financial Crimes Enforcement Network (FinCEN), which is a bureau of the Department of the Treasury

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that collects and analyzes information about financial transactions in order to combat domestic and international money laundering, terrorist financing, and other financial crimes.

A SAR could not have been filed by the bank unless the bank conducted a thorough internal investigation of the transaction and the source of the funds, and had a good faith basis to determine that the $130,000 transaction was "suspicious." Under federal regulations, this means that the bank's investigation revealed a basis to suspect that:

> (i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;
>
> (ii) The transaction is designed to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or
>
> (iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

31 C.F.R. § 1020.320(a)(2).

As a result of the above, we request that you publicly release the SAR, along with any and all underlying facts, transactions, and documents in your control upon which the SAR is based. *To be clear, the source of the funds used to pay the hush money to our client is of critical importance not only to our case, but also involves a matter of great public concern to millions of citizens of the United States.* And as Secretary of the Treasury, it is well within your authority to release the requested SAR information to allow the public to learn critical information relating to the payment. *Indeed, if the payment was made as innocently as Mr. Cohen has suggested, there should be no objection to the prompt release of the SAR.*

Although a SAR, including the very existence of a SAR, ordinarily is entitled to confidential treatment, any confidentiality protection has disappeared with the public disclosure of the SAR months ago by the *Wall Street Journal.* In fact, to the extent there was any interest in keeping the SAR confidential in order to prevent suspects being "tipped off,"

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no such interest can possibly justify further suppression of the SAR now that its existence has been made public.

Moreover, it is clear that federal law "shall not be construed as prohibiting . . . [the disclosure of] [t]he underlying facts, transactions, and documents upon which a SAR is based . . ." 31 C.F.R. § 1020.320(e)(1)(ii)(A). Accordingly, courts have repeatedly held that "the underlying factual documents' [and information] that led the bank to file a SAR" may be disclosed. See, e.g., Toader v. J.P. Morgan Chase Bank, N.A., No. 09 C 6684, 2011 WL 3796705, at *3 (N.D. Ill. Aug. 23, 2011) aff'd sub nom. Toader v. J.P. Morgan Chase Bank, 482 F. App'x 180 (7th Cir. 2012); see also In re Whitley, No. 10-10426C-7G, 2011 Bankr. LEXIS 4793, at *3-4, 13 (Bankr. M.D.N.C., Dec. 13, 2011) (explaining that the SAR privilege "does not apply to the supporting documentation" and holding that various categories of documents relating to the bank's investigation of suspicious activity of debtor accused of engaging in Ponzi scheme "are not shielded by the SAR privilege."); Freedman & Gersten, LLP v. Bank of Am., N.A., No. CIV.A. 09-5351 SRC, 2010 WL 5139874, at *5, 10 (D.N.J., Dec. 8, 2010) (granting motion to compel bank to produce "memoranda or documents drafted in response to the suspicious activity at issue in this case" including documents related to bank's "internal investigation in anticipation of filing a SAR"); United States v. Holihan, 248 F.Supp.2d 179, 187 (W.D.N.Y. 2003) ("any supporting documentation [concerning SAR] remains discoverable").

As such, "internal reports and memoranda" may not be cloaked "with a veil of confidentiality simply by claiming they concern suspicious activity or concern a transaction that resulted in the filing of a SAR." Union Bank of California, N.A. v. Superior Court, 130 Cal.App.4th 378, 392, 29 Cal.Rptr.3d 894, 903 (Cal. Ct. App. 2005). Indeed, as other courts have acknowledged, "detecting fraud is a part of a bank's ordinary course of business." First Am. Title Ins. Co. v. Westbury Bank, No. 12-CV-1210, 2014 WL 4267450, at *3 (E.D. Wis. Aug. 29, 2014). "Thus, documents generated as part of this standard business practice of investigating potential fraud or other irregularities are discoverable." Id.

The case of Branch Banking & Trust Co. v. FDIC, No. 1:08cv194, 2009 U.S. Dist. LEXIS 23822 (W.D.N.C., Jan. 28, 2009), is instructive. Branch Banking involved an employee's claim against a bank alleging she was "terminated by [the bank] and was subject to retaliation in violation of the whistle blower protection provision of the Sarbanes-Oxley Act as a result of [the bank's] intention to suppress her findings in connection with a fraud investigation" of a bank customer. Id. at *5-6. The bank sought disclosure from the FDIC of information concerning a SAR on the ground that it needed to defend itself against the employee in her civil case. The Court found that the "limitation on use or mentioning of SARs *does not impact documents created in the ordinary course of the bank's business, which are discoverable*. [Citation]. [The bank] can use in its defense many other sources of information in defending against the claims of its former employee, *including the report prepared by her that contains facts and narratives similar to those that could be stated in a SAR*." Id. at 21-22 (emphasis added).

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For all of the above reasons, we request that you publicly release the aforementioned SAR no later than April 11, 2018, along with any and all underlying facts, transactions, and documents upon which the SAR was based.

In the event you have any questions or concerns regarding the foregoing, please do not hesitate to contact me. Thank you in advance for your anticipated professionalism on this matter of significant public concern.

Sincerely,

Michael J. Avenatti
Avenatti & Associates, APC

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