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White House Access for Sale: Michael Cohen, Novartis and the Bid to Sell Access to the Trump Administration

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White House Access for Sale:

*Michael Cohen, Novartis and the bid
to sell access to the Trump administration*



Staff Report Prepared By

Senate Committee on Finance, Minority Staff
Sen. Ron Wyden, Ranking Member

Senate Committee on Health, Education, Labor and Pensions, Minority Staff
Sen. Patty Murray, Ranking Member

Staff of Sen. Elizabeth Warren

Staff of Sen. Richard Blumenthal

July 12, 2018

Introduction:

On May 8, 2018, press reports revealed that a shell company managed and controlled by Michael D. Cohen, former personal attorney to President Donald J. Trump and former executive vice president of the Trump Organization, had received payments totaling more than \$4 million in the months following President Trump's election in 2016.¹ Mr. Cohen established the shell company, Essential Consultants LLC, in October 2016.²

The allegations regarding Mr. Cohen were first disseminated via a memo released by Michael Avenatti, an attorney representing Stephanie Clifford, a pornographic film actress known as "Stormy Daniels." Mr. Avenatti has said his client was paid \$130,000 by Essential Consultants LLC shortly before the 2016 election to stay quiet about an alleged affair with Mr. Trump. According to the memo, "from October 2016 through January 2018," Mr. Cohen engaged in "suspicious financial transactions totaling \$4,425,033.46."³ Among them were payments from private equity firm Columbus Nova, an investment company with ties to sanctioned Russian oligarch Viktor Vekselberg; telecommunications company AT&T; Korea Aerospace Industries; and the Swiss pharmaceutical company Novartis.⁴

Mr. Avenatti's memo was widely reported, and press reports independently confirmed the information detailed in the memo.⁵ On May 9, 2018, Novartis confirmed it made payments to

¹ Mike McIntire, Ben Protess & Jim Rutenberg, "Firm Tied to Russian Oligarch Made Payments to Michael Cohen," New York Times, May 8, 2018, <https://www.nytimes.com/2018/05/08/us/politics/michael-cohen-shell-company-payments.html>.

² Joe Palazzolo and Michael Rothfeld, "Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels'," Wall Street Journal, January 18, 2018, <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>

³ Memorandum from Michael Avenatti on Michael Cohen and Essential Consultants, May 8, 2018, <https://www.dropbox.com/s/217qztjakjppcdl/Executive%20Summary.pdf?dl=0>.

⁴ Memorandum from Michael Avenatti on Michael Cohen and Essential Consultants, May 8, 2018, <https://www.dropbox.com/s/217qztjakjppcdl/Executive%20Summary.pdf?dl=0>.

⁵ See, e.g., MJ Lee, Kara Scannell & Marshall Cohen, "Stormy Daniels' lawyer: US company linked to Russian oligarch paid \$500,000 to Cohen," CNN, May 8, 2018, <https://www.cnn.com/2018/05/08/politics/daniels-lawyer-russian-oligarch-payment-cohen/index.html>; Lorraine Woellert and Josh Meyer, "Michael Cohen did business with company linked to Russian oligarch, AT&T," Politico, May 8, 2018, <https://www.politico.com/story/2018/05/08/att-michael-cohen-hired-576213>; Rebecca Davis O'Brien, Drew FitzGerald, Michael Rothfeld, and Rebecca Ballhaus, "Trump Lawyer Received \$500,000 From Firm Linked to Russian Oligarch," Wall Street Journal, May 8, 2018, <https://www.wsj.com/articles/at-t-paid-trump-lawyer-for-insights-on-administration-1525821278>; Victor Reklatis & Emma Court, "Novartis paid Trump 'fixer' Michael Cohen \$1.2 mln to consult on 'certain U.S. healthcare policy matters,'" MarketWatch, May 10, 2018, <https://www.marketwatch.com/story/drugmaker-novartis-plays-down-its-deal-with-trumps-lawyer-tying-it-to-its-former-ceo-2018-05-09>; John Fritze, "Novartis says it paid Trump attorney Michael Cohen more than \$1 million for nothing," USA Today, May 9, 2018, <https://www.usatoday.com/story/news/politics/2018/05/09/novartis-questioned-mueller-ties-trump-attorney-michael-cohen/593732002/>; Dan Mangan, Kevin Breuninger, Ryan Ruggiero, AT&T confirms it paid Trump lawyer Michael Cohen for 'insights' on administration," CNBC, May 8, 2018 <https://www.cnbc.com/2018/05/08/att-confirms-it-paid-trump-lawyer-michael-cohen-for-insights-on-administration.html>.

Mr. Cohen totaling \$1.2 million over the 12-month period ending in February 2018.⁶ Similarly, AT&T, Korea Aerospace, and Columbus Nova have all confirmed the payments to Mr. Cohen.⁷

In response to the reports of these unusual payments to Mr. Cohen, several Senators began investigations into the payments made by Novartis to Mr. Cohen. Sen. Ron Wyden, in his capacity as Ranking Member of the Senate Committee on Finance, and Sen. Patty Murray, in her capacity as Ranking Member of the Committee on Health, Education, Labor, and Pensions, each wrote letters to Novartis on May 11, 2018.⁸ The Senate Committee on Finance has jurisdiction over federal health programs under the Social Security Act, including Medicare and Medicaid, and participation in these programs account for a substantial portion of Novartis's U.S. sales.⁹ The Senate Committee on Health, Education, Labor, and Pensions has jurisdiction over most of the agencies, institutes, and programs of the Department of Health and Human Services (HHS), including the Food and Drug Administration (FDA) and its approval and oversight of pharmaceuticals manufactured by Novartis. Sen. Elizabeth Warren and Sen. Richard Blumenthal wrote jointly in their capacity as United States Senators on May 14, 2018.¹⁰ Novartis provided the Senators with documents reflecting the company's communication with Mr. Cohen, but declined to provide other documents requested by the Senators, including any documents reflecting internal communications regarding Mr. Cohen and his role with the company. A similar letter was sent to AT&T, which did not provide all of the requested information. While AT&T made a number of assertions about their relationship with Mr. Cohen and why he was hired, the company failed to provide any of the requested documents.¹¹

⁶ Novartis, Essential Consultants – Updates, <https://www.novartis.com/essential-consultants>.

⁷ Dan Mangan, Kevin Brueninger, Ryan Ruggiero, "AT&T confirms it paid Trump lawyer Michael Cohen for 'insights' on administration," CNBC, May 8, 2018, <https://www.cnbc.com/2018/05/08/att-confirms-it-paid-trump-lawyer-michael-cohen-for-insights-on-administration.html>; Shawn Boburg, Aaron C. Davis, "South Korean firm paid Michael Cohen \$150,000 as it sought contract from U.S. government," Washington Post, May 9, 2018, https://www.washingtonpost.com/investigations/south-korean-firm-paid-michael-cohen-150000-as-it-sought-contract-from-us-government/2018/05/09/0ae31788-53b7-11e8-abd8-265bd07a9859_story.html; Columbus Nova, Columbus Nova Statement in Response to Inaccurate Media Reports, 2018, <http://www.columbusnova.com/>.

⁸ Senator Wyden also sent a letter to Michael Cohen seeking information about his relationship with Novartis and received a limited response. Letter to Michael Cohen, Steve Ryan from Ranking Member Wyden, May 11, 2018; Letter to Ranking Member Wyden from Steve Ryan on behalf of Michael Cohen, May 31, 2018. In follow-up communications with Senate Finance Committee Minority Staff, Counsel for Mr. Cohen stated he was currently unaware of any meetings between Mr. Cohen and U.S. government officials, but had been unable to conduct a full review on the matter.

⁹ For example, in 2015 Medicare spent \$2 billion on three Novartis cancer drugs – Gleevec, Sandostatin, and Afinitor. In the same year, Medicaid programs spent more than \$320 million (prior to any rebates) on Gleevec and respiratory drug Xolair; Centers for Medicare & Medicaid Services, Medicare Spending Dashboard 2015, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Dashboard/2015-Medicare-Drug-Spending/medicare-drug-spending-dashboard-2015-data.html>; Centers for Medicare & Medicaid Services, Medicare Spending Dashboard 2015, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Dashboard/2015-Medicaid-Drug-Spending/2015-Medicaid-Drug-Spending.html>

¹⁰ Together these requestors are referred to as the "Senators."

¹¹ Letter to Randall Stephenson, AT&T, from Sens. Warren, Wyden, and Blumenthal, May 14, 2018; Letter to Sens. Warren, Blumenthal, and Wyden from AT&T, May 25, 2018.

Findings:

1. **Novartis’s relationship with Michael Cohen was longer and more detailed than previously disclosed by the company.**

On May 11, 2018, Novartis issued a misleading public statement minimizing its relationship with Mr. Cohen. Novartis stated that, on March 1, 2017, after signing the agreement with Mr. Cohen and meeting with him one time, company officials determined he would not be able to provide the anticipated services and “decided not to engage with him further.” But documents provided by Novartis reveal that Mr. Cohen and then-Novartis CEO Joe Jimenez had multiple additional communications over the next six months. These documents indicate that Mr. Cohen and Mr. Jimenez – who was still the Novartis CEO at the time – had at least four phone calls, and, between April and September 2017, exchanged multiple emails on substantive issues, including the Trump administration’s drug pricing proposals, Novartis’s potential investment in a small drug company backed by Columbus Nova, and with regard to opioid lawsuits.

2. **Novartis explicitly sought to hire Michael Cohen to provide the company “access to key policymakers” in the Trump administration. Novartis provided Mr. Cohen with drug pricing recommendations for “discussion with ... Trump administration” officials. Mr. Cohen represented that he would provide additional confidential information to Novartis.**

The initial draft contract proposal that Novartis sent to Mr. Cohen – which Mr. Cohen later modified – called explicitly for him to provide “access to key policymakers” in the Trump administration, and he represented that he would do so. In June 2017, Mr. Jimenez sent Mr. Cohen an email – “based on our conversation last week” – transmitting a six-point plan containing Novartis’s list of “ideas to lower drug costs in the U.S.,” which, according to Novartis, was for “discussion with Trump administration” officials. The plan included initiatives championed by the pharmaceutical industry. Mr. Cohen stated he would show the document to an unidentified third party linked to the administration, who would provide feedback on the document. Mr. Cohen promised to provide the third-party feedback to Mr. Jimenez. Several of the Novartis proposals would later appear in the administration’s drug pricing plan released in May 2018.

3. **Documents reveal new details of ties between Michael Cohen and Columbus Nova – the private equity firm tied to sanctioned Russian billionaire Viktor Vekselberg – including an effort by Mr. Cohen to encourage Novartis to invest in a pharmaceutical company closely linked to Columbus Nova.**

The May 2018 reports of payments to Mr. Cohen included a report that he received “about \$500,000 from Columbus Nova, an investment firm in New York whose biggest

client is a company controlled by Viktor Vekselberg, the Russian oligarch. ... who was stopped and questioned at an airport earlier this year by investigators for Robert S. Mueller III, the special counsel examining Russian interference in the 2016 presidential election.” The documents provided by Novartis reveal new details about the relationship between Mr. Cohen and Columbus Nova.

In August 2017, Mr. Cohen sent Mr. Jimenez information on an investment opportunity with the pharmaceutical company Yamo Pharmaceuticals, LLC, a company linked to Columbus Nova. This contact occurred after Andrew Intrater, the CEO of Columbus Nova, advised Yamo to reach out to Mr. Cohen; Mr. Cohen subsequently provided the investment opportunity information to Mr. Jimenez. While Novartis had declined to invest in Yamo after a previous meeting, Mr. Cohen asked Mr. Jimenez to “check to see if it was handled properly.” Within an hour, Mr. Jimenez promised to oversee the issue personally. Key Columbus Nova personnel also serve as Yamo officials, and Columbus Nova provided “Back Office & Finance Services” to the pharmaceutical company.

4. Michael Cohen represented himself as Counsel to President Trump and the Trump Organization while arranging the agreement with Novartis and after it was signed.

Mr. Cohen’s emails to Novartis during the contract negotiation period indicated that he was employed by the Trump Organization or was representing President Trump, with signature lines stating that he was “Executive Vice President and Special Counsel to Donald J. Trump,” “Personal Counsel to President Donald J. Trump,” or “Personal Attorney to President Donald J. Trump.” Mr. Cohen did not establish a dedicated email address for his consulting company until May 2017.

5. Novartis chose to continue to pay Michael Cohen even though the agreement gave Novartis the opportunity to terminate him for lack of “satisfactory performance.”

Novartis may have misled the public when the company stated that it continued to pay Mr. Cohen the full \$1.2 million even after discovering that he could not provide the promised consulting services because “the contract could not be terminated at will.” To the extent this assertion is true, it is because Novartis engaged in extensive negotiations that resulted in weaker and vaguer contract language than the company had initially sought. But the assertion does not appear to be correct. It appears that in fact the company could have terminated Mr. Cohen’s contract.

According to Novartis, after a single meeting, the company determined that “Mr. Cohen had made no effort to learn anything about Novartis, or the policy issues that were of concern to Novartis specifically, or the pharmaceutical industry generally...[he] was not able to provide guidance as to how [the Trump administration] would evaluate and respond to the relevant policy issues. ...[and] was not able to deliver ... substantive consulting advice and insight.”

Mr. Cohen's contract with Novartis explicitly required that he "perform the Services ... with the level of care and skill ordinarily exercised by other professionals in Consultant's field," and required "the satisfactory performance of the Services" as a condition of payment. But Novartis did not choose to invoke these provisions to terminate the agreement.

Discussion of Findings:

1. Novartis's relationship with Michael Cohen was longer and more detailed than previously disclosed by the company.

On May 11, 2018, in response to press reports about Mr. Avenatti's memo, Novartis issued a statement regarding its relationship with Mr. Cohen and Essential Consultants:

In February 2017, shortly after the election of President Trump, we entered into a one-year agreement with Essential Consultants. With the recent change in administration, Novartis believed that Michael Cohen could advise the company as to how the Trump administration might approach certain US healthcare policy matters, including the Affordable Care Act. The agreement was for a fixed term of one year and paid Essential Consultants USD 100,000 per month. In March 2017, we met with Michael Cohen under this agreement. Following this initial meeting, we determined that he would be unable to provide the services that Novartis had anticipated related to US healthcare policy matters and decided not to engage with him further. As the contract unfortunately could not be terminated at will, payments continued to be made until the contract expired by its own terms in February 2018.¹²

In light of additional documents provided by Novartis, this statement mischaracterized the relationship between Novartis and Mr. Cohen. In particular, Mr. Cohen's relationship to the company, and the services he provided, were longer and more detailed than previously disclosed by Novartis.

The relationship between Mr. Jimenez and Mr. Cohen began in November 2016 and lasted until at least September 2017. According to Novartis, Mr. Cohen was first introduced to Mr. Jimenez over the telephone by businessman Irwin Simon on November 29, 2016.¹³ Mr. Cohen was introduced as "someone who previously had worked for President Trump but had decided he was not going to join the Trump administration and planned to open a consulting firm."¹⁴ Novartis did not provide any documentation regarding the November meeting; but, in response to questions asked by the Senators, Novartis indicated that Mr. Simon and Mr. Jimenez were having dinner together on November 29th, and that:

Mr. Simon called Mr. Cohen from the dinner, and Mr. Jimenez and Mr. Cohen spoke briefly. ... Mr. Jimenez told Mr. Cohen that they should schedule another call to discuss the scope and terms of a potential engagement in more detail.¹⁵

¹² Novartis, Essential Consultants – Updates, <https://www.novartis.com/essential-consultants>.

¹³ Irwin Simon is the founder and CEO of Hain Celestial, a company based in New York that markets, manufactures and sells organic and natural foods and personal care products.

¹⁴ June 5, 2018 letter from Novartis to Senator Wyden, page 3.

¹⁵ June 5, 2018 letter from Novartis to Senator Warren & Senator Blumenthal, page 3.

The communication between Mr. Cohen and Mr. Jimenez continued in early 2017. According to documents provided to the Senators, on January 16, 2017, Mr. Cohen forwarded Mr. Simon a blog post written by David Gorski in *Science-Based Medicine* titled “Donald Trump and Peter Thiel vs. the FDA: Be afraid. Be very afraid.”¹⁶ Mr. Simon forwarded Mr. Cohen’s email to Mr. Jimenez on January 25, 2017.¹⁷

In the days between receiving this email from Mr. Cohen and subsequent communications, Mr. Jimenez and a group of other pharmaceutical executives representing the industry association Pharmaceutical Research and Manufacturers of America (PhRMA) met on January 31st with President Trump to discuss drug pricing initiatives.¹⁸ Three days after this meeting, on February 3, 2017, Mr. Jimenez arranged a phone call with Mr. Cohen.¹⁹ Although Mr. Cohen’s initial email to Mr. Simon was sent from Mr. Cohen’s trumporg.com email address, Mr. Jimenez responded to a different email address for Mr. Cohen, a gmail.com address. It is unclear how Mr. Jimenez was made aware of this second email address.²⁰

According to Novartis, during the February call, Mr. Cohen “represented to Mr. Jimenez that he was knowledgeable about the individuals President Trump was likely to appoint and could provide the Company with information as to how these individuals would approach the healthcare-related issues Novartis was focused on.”²¹ The company stated, “because this was precisely the type of information and guidance Novartis was seeking, and in light of the fact that the Company’s other consultants were unable to provide such information and guidance, Mr. Jimenez decided to retain Mr. Cohen on behalf of the company.”²² Novartis declined to provide any company documents or communications related to its internal deliberations regarding what the company expected to achieve through this contract.

Ten days after the call, on February 13, 2017, Mr. Cohen sent Mr. Jimenez his “pro forma consulting agreement,”²³ which Mr. Jimenez then forwarded to Felix Ehrat, General Counsel for Novartis International AG, and Barry Rosenfeld, U.S.-based Vice President and General Counsel of Novartis Finance Corporation, in order to “finalize the consulting relationship” they

¹⁶ Novartis Document Tab 1, January 25, 2017 email from Jimenez to Jimenez EA. See also, David Gorski, “Donald Trump and Peter Thiel vs. the FDA: Be afraid. Be very afraid,” January 16, 2017, *Science-Based Medicine*, <https://sciencebasedmedicine.org/donald-trump-vs-the-fda-be-afraid-be-very-afraid-of-the-loosening-of-drug-approval-standards/>.

¹⁷ Id.

¹⁸ Stephen J. Ubl, “PhRMA CEO Statement Following Meeting With President Trump,” PhRMA, January 31, 2017, <https://catalyst.phrma.org/phrma-ceo-statement-following-meeting-with-president-trump>.

¹⁹ Novartis Document Tab 2, February 3, 2017 email from Jimenez EA to Cohen.

²⁰ Gmail services allow users to host multiple aliases from the same account.

²¹ June 5, 2018 letter from Novartis to Senator Wyden, page 3.

²² Id.

²³ Novartis Document Tab 3, February 10, 2017 Calendar Appointment, “TC w. Michael Cohen”; Novartis Document Tab 4, February 13, 2017 email from Cohen to Jimenez.

discussed.²⁴ Mr. Cohen, Mr. Ehrat, and Mr. Rosenfeld negotiated a Services Agreement and Statement of Work over the next few days and executed a final version on February 17, 2017.²⁵ Mr. Jimenez and Mr. Ehrat, on behalf of Novartis's Swiss parent company, cosigned the agreement with Mr. Cohen.

On March 1, 2017, following execution of the agreement, Novartis had the previously disclosed meeting with Mr. Cohen. Attendees for Novartis included Mr. Ehrat, Tom Kendris, U.S. Country President, and Dan Casserly, head of U.S. Government Affairs.²⁶ According to Novartis's public statement, the company determined during this meeting that Mr. Cohen would not be able to provide the anticipated services and decided not to engage with him further. Novartis declined to provide any internal communications or documents related to, or memorializing, the outcome of this meeting. But contrary to Novartis's statement that it did not have further engagement with Mr. Cohen, the documents Novartis provided to the Senators show that Mr. Cohen maintained regular contact with Mr. Jimenez until at least September 2017. Novartis' current CEO Vasant Narasimhan never communicated with Mr. Cohen.²⁷

Additional Communications between Mr. Cohen and Novartis CEO:

Communications about drug pricing initiatives

A calendar appointment provided to the Senators indicates Mr. Jimenez was scheduled to call Mr. Cohen on April 4, 2017.²⁸ Another call between the two men was scheduled for April 7, 2017.²⁹ Novartis did not provide any further information regarding these calls.

Email records also indicate that there was an additional call between Mr. Cohen and Mr. Jimenez at the end of May or in early June 2017, which resulted in additional communications.³⁰ On June 5, 2017, Mr. Jimenez emailed Mr. Cohen a document titled "Drug Pricing Initiatives" with the note "[b]ased on our conversation last week, I am forwarding you some ideas to lower drug costs in the US."³¹

The following week, on June 12, 2017, Mr. Cohen responded to Mr. Jimenez's email on drug pricing and told him, "I am expecting to receive in a few days their version and will scan to you

²⁴ Novartis Document Tab 7, February 14, 2017 email from Rosenfeld to Cohen, 2:59 PM, "Re Novartis Consulting Agreement."

²⁵ Novartis Document Tab 19, February 17, 2017 email from Rosenfeld to Cohen, "RE: Document Received – Thanks!" The effective date of the agreement was March 1, 2017.

²⁶ Novartis Document Tab 27, February 24, 2017 email from Ehrat to Cohen, 5:31 AM, "Novartis Consulting Agreement."

²⁷ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 2.

²⁸ Novartis Document Tab 31, April 4, 2017 Calendar Appointment, "TC w. Michael Cohen – You will call him on his cell..."

²⁹ Novartis Document Tab 32, April 7, 2017 Calendar Appointment, "TC w. Michael Cohen."

³⁰ Novartis Document Tab 34, June 5, 2017 email from Cohen to Jimenez.

³¹ Id.

under privileged and confidential communication.” Mr. Jimenez responded, “[t]hank you Michael.”³² Novartis subsequently stated it did not know who the source was for “their version” to which Mr. Cohen was referring, and the company told the Senators it had not identified “the scanned” document to which Mr. Cohen was referring.³³

On June 28, 2017, Mr. Cohen again emailed Mr. Jimenez: “Now may be a good time to start getting our previous conversations tee’d up. I am getting the report on Friday and will send to you by Monday. We should find a time to speak thereafter.” Mr. Jimenez responded: “Okay Thank you Michael.”³⁴ Novartis stated that it had no knowledge of such a report ever being transmitted to Mr. Jimenez.³⁵ The context of these drug pricing conversations is discussed below.

Communications about Yamo Pharmaceuticals

In late August 2017, Mr. Cohen contacted Mr. Jimenez in reference to a therapy to treat autism in development by Yamo Pharmaceuticals, LLC, a privately held company closely connected to Columbus Nova, another client of Mr. Cohen’s.

On August 24, 2017, Mr. Cohen emailed Mr. Jimenez about an investment pitch Yamo had previously made to the Novartis U.S. team: “As per our conversation, it appears there have been some communication with Novartis regarding the autism product... (see attached communication). Can you check to see if it was handled properly because I have seen real time video showing amazing success.”³⁶

Mr. Cohen followed up this email with a Yamo pitch book seeking \$5 million in investments from Novartis and others.³⁷ Within an hour, Mr. Jimenez responded, “I will look into this. Our key champion for autism is not on this list, so I will discuss with him personally.”³⁸ The next day Mr. Jimenez again emailed Mr. Cohen, “I spoke to [redacted], and he would be happy to connect with the CEO and learn more about the data and the molecule. Please connect him to [redacted email].”³⁹ Novartis stated it “never took action with respect to Yamo Pharmaceuticals following the August 2017 emails from Mr. Cohen,” and the context of the Yamo conversations and the relationship with Columbus Nova is discussed below.⁴⁰

³² Novartis Document Tab 35, June 13, 2017 email from Jimenez to Cohen.

³³ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 3.

³⁴ Novartis Document Tab 37, June 28, 2017 email from Jimenez to Cohen.

³⁵ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 3.

³⁶ Novartis Document Tab 38, August 24, 2017 email from Cohen to Jimenez, “Fwd:.” [sic] in original.

³⁷ Novartis Document Tab 39, August 24, 2017 email from Cohen to Jimenez, “August 2017 Non-Confidential Short Yamo Presentation.pptx.”

³⁸ Novartis Document Tab 41, August 24, 2017 email from Jimenez to Cohen, “Re: Fwd:.”

³⁹ Novartis Document Tab 42, August 25, 2017 email from Jimenez to Cohen.

⁴⁰ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 4.

Communications about Opioid Lawsuits

On September 15, 2017, a calendar appointment provided to the Senators indicates that Mr. Jimenez was again scheduled to call Mr. Cohen.⁴¹ On September 22, 2017, Mr. Cohen forwarded Mr. Jimenez an article from the *Kentucky Herald-Leader* entitled, “Beshear hires Morgan & Morgan, three other law firms to go after pain pill industry,” which described the Kentucky Attorney General’s efforts to investigate and potentially sue manufacturers of opioids.⁴² In his email, Mr. Cohen said of the article: “An example of what we spoke about.”⁴³

These communications are plainly inconsistent with Novartis’s statement that they “decided not to engage with [Mr. Cohen] further” following the March 1 meeting. In a June 5, 2018 narrative response to investigators, Novartis also stated that “[u]ltimately, Mr. Cohen did not provide information or guidance regarding how the Trump administration would approach healthcare issues.”⁴⁴ However, the communications appear to indicate repeated attempts on the part of Mr. Jimenez to engage with Mr. Cohen. When asked about the communications, Novartis stated the post-March 1, 2017, communications occurred when Mr. Cohen contacted Mr. Jimenez by telephone “to ask about matters of interest to Mr. Cohen,” and providing the drug pricing information to Mr. Cohen was “a courtesy.”⁴⁵

2. Novartis explicitly sought to hire Michael Cohen to provide the company “access to key policymakers” in the Trump administration. Novartis provided Mr. Cohen with drug pricing recommendations for “discussion with ... Trump administration” officials. Mr. Cohen represented that he would provide additional confidential information to Novartis.

In June 2017, three months after Novartis represented it had ceased to engage Mr. Cohen, Mr. Jimenez sent Mr. Cohen a document containing “ideas to lower drug costs.”⁴⁶ This document contained a six-point plan to “lower the cost of healthcare in the US, while protecting this crown jewel industry and maintaining US leadership.” The six recommended policy initiatives were: (1) fostering value/outcomes based contracting for drug reimbursement, (2) requiring insurers and pharmacy benefit managers to provide point of sale rebates to reduce cost-sharing, (3) removing the prohibition in Medicare Part D to allow drug manufacturers to provide financial assistance to beneficiaries, (4) providing regulatory relief to the FDA approval process, (5)

⁴¹ Novartis Document Tab 43, September 15, 2017 calendar appointment, “TC w. Michael Cohen – We will call him on his cell.”

⁴² Novartis Document Tab 44, September 22, 2017 email from Cohen to Jimenez; Daniel Desrochers, “Beshear hires Morgan & Morgan, three other law firms to go after pain pill industry,” *Lexington Herald-Leader*, September 22, 2017, <http://www.kentucky.com/news/politics-government/article174832491.html>.

⁴³ *Id.*

⁴⁴ June 5, 2018 letter from Novartis to Senator Wyden, page 3.

⁴⁵ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden.

⁴⁶ Novartis Document Tab 34, June 5, 2017 email from Cohen to Jimenez.

providing further regulatory and financial incentives to accelerate approval of generic drugs, and (6) pursuing trade agreements that protect pharmaceutical manufacturers.⁴⁷

After receiving Novartis's drug pricing initiatives from Mr. Jimenez, Mr. Cohen responded he would forward "suggestions" from an unidentified third party.⁴⁸ A week later, Mr. Cohen told Mr. Jimenez, "I am expecting to receive in a few days their version and will scan to you under privileged and confidential communication."⁴⁹ Two weeks after that email, Mr. Cohen again represented to Mr. Jimenez, "I am getting the report on Friday and will send to you by Monday."⁵⁰ The identity of the third party to whom Mr. Cohen was referring remains unclear, as is what he was planning to provide Mr. Jimenez.

The Senators asked Novartis about these emails in follow-up questions sent to the company on June 9, 2018. Novartis again reiterated that Mr. Cohen "was never asked to perform any services for Novartis under the contract," and claimed that the only communication following the March 1, 2017, meeting "occurred when Mr. Cohen contacted Mr. Jimenez by telephone on a few occasions to ask about matters of interest to Mr. Cohen," further noting that the June drug pricing communications were such an occasion. (As noted above, after March 1, 2017, calendar appointments indicate at least three scheduled calls between Mr. Jimenez and Mr. Cohen, two of which indicated Mr. Jimenez would originate the calls).⁵¹

Novartis further stated in their follow-up letter to the Senators, "in late May/early June 2017, Mr. Cohen called Mr. Jimenez and told him that a friend with experience in the pharmaceutical industry was putting together ideas on how to lower drug prices for discussion with persons in the Trump Administration."⁵² Mr. Cohen asked Mr. Jimenez if he had any thoughts to lower drug prices in the U.S. that Mr. Cohen could share with his friend."⁵³ According to Novartis, in response to this request Mr. Jimenez provided Mr. Cohen with the drug pricing initiatives document as "a courtesy."⁵⁴

Novartis characterizes these interactions as outside the scope of their agreement with Mr. Cohen. However, the statement of work agreed to by the parties specifies that Mr. Cohen will provide consulting and advisory services on "any other issues mutually agreeable to the Consultant and

⁴⁷ Id., attachment.

⁴⁸ Id., attachment.

⁴⁹ Novartis Document Tab 35, June 13, 2017 email from Jimenez to Cohen.

⁵⁰ Novartis Document Tab 36, June 28, 2017 email from Cohen to Jimenez.

⁵¹ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden; Novartis Document Tab 31, April 4, 2017 Calendar Appointment, "TC w. Michael Cohen – You will call him on his cell..."; Novartis Document Tab 32, Novartis Document Tab 32, April 7, 2017 Calendar Appointment, "TC w. Michael Cohen"; Novartis Document Tab 43, September 15, 2017 Calendar Appointment, "TC w. Michael Cohen – We will call him on his cell."

⁵² Id.

⁵³ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden.

⁵⁴ Id.

Novartis.”⁵⁵ Furthermore, the proposed statement of work prepared by Novartis included two provisions: (1) to “[p]rovide access to key policymakers in the US Government,” (2) to “assess the reaction of the US Government to certain options to improve affordability of medicines.”⁵⁶ This item was removed by Mr. Cohen and replaced with the broader language found in the final agreement.⁵⁷

Novartis described the document as “a list of ideas that Novartis and other pharmaceutical companies had been discussing, including publicly.”⁵⁸ Although the document does contain many common pharmaceutical industry policy initiatives, there is no indication on the document that it is public or contains input from other companies.⁵⁹ Many of the policies in this document were eventually adopted in the administration’s drug pricing plan, although the relationship between the administration’s actions and this document is unclear.

With regard to Mr. Cohen’s references to third parties, Novartis stated that Mr. Cohen never told Mr. Jimenez the name of his “friend” or any other person with whom his friend was working.⁶⁰ Nor did Mr. Cohen ever send Mr. Jimenez any “suggestions” or any other responses to the list of drug pricing initiatives.⁶¹ According to Novartis, Mr. Cohen never sent the “report” mentioned in the June 28, 2017 email.⁶² The company also said that Mr. Cohen never identified to who he was speaking, or who was supposedly creating a report, and that Mr. Jimenez and Mr. Cohen never discussed the topic further.⁶³

The communications regarding drug pricing occurred during a period of significant uncertainty in the U.S. health care industry. Republicans in Congress were working to repeal or significantly alter the Affordable Care Act and make radical changes and draconian cuts to the traditional

⁵⁵ Novartis Document, Final Contract Services Agreement, Exhibit A, Statement of Work.

⁵⁶ Novartis Document Tab 7, February 14, 2017 2:59 PM email from Rosenfeld to Cohen, Ehrat, attachment 2.

⁵⁷ In his communications with Novartis, Mr. Cohen touted his access to other prominent officials. In a February 23, 2017 email to Felix Ehrat, Mr. Cohen is describing his availability for a March 1st meeting with Novartis officials. In the email, Mr. Cohen tells Mr. Ehrat “I am scheduled at 9am to be with PM Tony Blair until 10:00am and can meet thereafter.” The fact of his meeting with Mr. Blair appears to have been irrelevant to the meeting with Novartis being discussed. According to a representative to the office of Tony Blair, Mr. Blair and Mr. Cohen were first introduced by a mutual friend and had three informal conversations about President Trump from late 2016 to 2017. Mr. Blair remains active in the Middle East peace process and other global issues and was interested in what those who knew the President could tell him about the President’s way of working. According to the representative, Mr. Cohen did not represent himself as acting on behalf of the Trump administration, and there was no paid relationship between the two. Novartis Document Tab 23, February 23, 2017 email from Cohen to Ehrat, 12:41 PM, “Re: Novartis Consulting Agreement.”

⁵⁸ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 3.

⁵⁹ Novartis Document Tab 34, Attachment to June 5, 2017 email from Cohen to Jimenez. The Senators requested Novartis internal communications to understand any internal deliberations in response to Cohen’s emails, including how the Drug Pricing Initiatives document was created or selected. According to Novartis, no such documents exist on this topic. June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 3.

⁶⁰ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 3.

⁶¹ Id.

⁶² Id.

⁶³ Id.

Medicaid program. At the same time, the Trump administration was reportedly in the process of drafting an executive order on drug pricing, which was characterized as “giv[ing] the pharmaceutical industry much of what it has asked for.”⁶⁴

According to press reports from the time, Mr. Jimenez had at least two meetings with administration officials to discuss drug pricing. On January 31, 2017, Mr. Jimenez and other members of PhRMA met with President Trump and were asked to develop ideas for reducing the out-of-pocket costs for patients buying pharmaceutical drugs. After the meeting, Mr. Jimenez told reporters, “[o]bviously, we would love to in the coming months be able to sit down and talk with the administration about how we can be helpful in what is happening in the U.S. around the Affordable Care Act and also show him some of what we have done in terms of outcomes-based pricing and being a leader in that space.”⁶⁵

Following up on their earlier meeting with the President, Mr. Jimenez and other PhRMA members met with administration officials again in May 2017 to share their ideas to reform drug pricing.⁶⁶ One idea reportedly discussed during the meeting was the outcomes-based pricing that Mr. Jimenez mentioned in the January meeting, a model supported by new FDA Commissioner Scott Gottlieb, and the first bullet on the “Drug Pricing Initiatives” document discussed above that Mr. Jimenez provided to Mr. Cohen. (Mr. Cohen had forwarded an article through Irwin Simon to Mr. Jimenez about possible FDA Commissioner nominees in a January email).⁶⁷

Following the May meeting with the administration, Mr. Jimenez spoke publicly about the need for the drug industry to work with the HHS and then-Secretary of Health and Human Services Tom Price to “get very aggressive around ensuring that discounts get passed through to patients at the point-of-sale.”⁶⁸ Mr. Jimenez also said that he expected the White House to announce its drug pricing proposal in the next three months, and that he was confident the solution would “preserve how we innovate and research and develop.”⁶⁹ On November 11, 2017, the Centers for Medicare and Medicaid Services released a request for information on “potential policy approaches for applying some manufacturer rebates and all pharmacy price concessions to the

⁶⁴ Shelia Kaplan, Katie Thomas, “Draft Order on Drug Prices Proposes Easing Regulations,” New York Times, June 20, 2017, <https://www.nytimes.com/2017/06/20/health/draft-order-on-drug-prices-proposes-easing-regulations.html>.

⁶⁵ Tracy Staton, “Trump’s pharma CEO confab: Get prices ‘way down,’ get ‘better innovation’ and get back to U.S.,” FiercePharma, January 31, 2017, <https://www.fiercepharma.com/pharma/novartis-pharma-ceos-to-face-trump-and-his-drug-pricing-vows-at-tuesday-meeting>.

⁶⁶ Joe Jimenez optimistic on outcome of US drug pricing debate,” The Pharma Letter, June 1, 2017. <https://www.thepharmaletter.com/article/joe-jimenez-optimistic-on-outcome-of-us-drug-pricing-debate>.

⁶⁷ Id.; Novartis Document Tab 1, January 25, 2017 email from Jimenez to Jimenez EA.

⁶⁸ “Joe Jimenez optimistic on outcome of US drug pricing debate,” The Pharma Letter, June 1, 2017. <https://www.thepharmaletter.com/article/joe-jimenez-optimistic-on-outcome-of-us-drug-pricing-debate>.

⁶⁹ Id.

price of a drug at the point of sale.”⁷⁰ In February 2018, the President released the administration’s FY2019 budget, which included a similar proposal.⁷¹

In a letter sent to the Senators, Novartis stated that the May 2017 meeting between administration officials and pharmaceutical industry leadership “was unrelated to the request from Mr. Cohen several weeks later for a list of drug pricing initiatives being discussed by pharmaceutical companies to share with his friend.” The company further stated, “Mr. Jimenez and Mr. Cohen never themselves discussed these pricing initiatives.”⁷²

In May 2018, the President released “American Patients First: The Trump Administration Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs,” which laid out the administration’s interests and priorities related to the rising costs of prescription drugs.⁷³ Several of the suggestions in the “Drug Pricing Initiatives” document provided by Mr. Jimenez to Mr. Cohen are similar to the policies included in the administration’s “Blueprint.”

For instance, both the Novartis document and the administration’s Blueprint push for the removal of barriers inhibiting value or outcome based pricing for drugs in Medicare and private markets. Likewise, just as item (6) of the Novartis document is critical of foreign governments “that artificially undervalue innovative biopharmaceutical products,”⁷⁴ the Blueprint calls to fix “Global Freeloading” and requests information on, “what can be done to reduce the pricing disparity and spread the burden for incentivizing new drug development more equally between the U.S. and other developed countries.”⁷⁵

The Blueprint also reiterated that the administration has included in the President’s FY2019 budget a policy similar to what is described in item 2 of the Novartis drug-pricing document that would require health plans or pharmacy benefit managers to provide point of sale rebates to reduce cost-sharing for prescription drugs.⁷⁶ And just as the Novartis document recommends, the Blueprint discusses multiple ways FDA could speed the market entry of a limited number of generic drugs.⁷⁷

⁷⁰ CMS Proposes Policy Changes and Updates for Medicare Advantage and the Prescription Drug Benefit Program for Contract Year 2019 (CMS-4182-P), November 16, 2017, <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-11-16.html>

⁷¹ Office of Management and Budget, Executive Office of the President, Budget of the U.S. Government, Fiscal Year 2019 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

⁷² June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden at page 3-4.

⁷³ U.S. Department of Health & Human Services, “American Patients First, The Trump Administration Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs,” May 2018, <https://www.hhs.gov/sites/default/files/AmericanPatientsFirst.pdf>, hereinafter “The Blueprint.”

⁷⁴ Novartis Document Tab 34, Attachment to June 5, 2017 email from Cohen to Jimenez, page 2.

⁷⁵ The Blueprint at 31.

⁷⁶ Novartis Document Tab 34, Attachment to June 5, 2017 email from Cohen to Jimenez, page 2.

⁷⁷ See, e.g. The Blueprint at 19. The FDA Reauthorization Act of 2017, which received wide bipartisan support, also contained incentives to improve access to generic drugs.

3. Documents reveal new details of ties between Michael Cohen and Columbus Nova – the private equity firm tied to sanctioned Russian billionaire Viktor Vekselberg – including an effort by Mr. Cohen to encourage Novartis to invest in a pharmaceutical company closely linked to Columbus Nova.

The May 2018 reports of payments to Mr. Cohen included a report that he received “about \$500,000 from Columbus Nova, an investment firm in New York whose biggest client is a company controlled by Mr. Vekselberg, the Russian oligarch. ... who was stopped and questioned at an airport earlier this year by investigators for Robert S. Mueller III, the special counsel examining Russian interference in the 2016 presidential election”⁷⁸ The documents provided by Novartis reveal new details about the relationship between Mr. Cohen and Columbus Nova.

On August 24, 2017, Mr. Cohen sent an email to Mr. Jimenez with information on an investment opportunity with Yamo Pharmaceuticals, a drug maker closely tied to Columbus Nova developing a therapy intended to treat autism.⁷⁹ In his email, Mr. Cohen stated: “As per our conversation, it appears here have been some communication with Novartis regarding the autism product... (see attached communication).”⁸⁰ The attached communication reported that Novartis investment officials had declined to provide funding for ongoing and future clinical trials, and had asked Yamo to come back after the “current trial data is complete.”⁸¹ Mr. Cohen asked Mr. Jimenez: “Can you check to see if it was handled properly because I have seen real time video showing amazing success.”⁸²

Mr. Cohen’s attachment was a screenshot of an email from an unidentified individual at Yamo who described a presentation the company had made to the Novartis US team on August 2, 2017.⁸³ In the email, the Yamo representative stated that the company was seeking \$5 million in investments from Novartis and others, but Novartis had told them they were not interested at this point and to come back after the current trial was completed.⁸⁴

Immediately after sending the first email, Mr. Cohen forwarded a deck of presentation slides from Yamo titled “Investment Opportunity Discussion.”⁸⁵ The presentation contained a slide titled “Yamo Organizational Structure” that identified several key Yamo personnel, including Eugene Prahin, who is both the Chief Financial Officer of Yamo and Senior Vice President of

⁷⁸ Mike McIntire, Ben Protess & Jim Rutenberg, “Firm Tied to Russian Oligarch Made Payments to Michael Cohen,” New York Times, May 8, 2018, <https://www.nytimes.com/2018/05/08/us/politics/michael-cohen-shell-company-payments.html>.

⁷⁹ Novartis Document Tab 38, August 24, 2017 email from Cohen to Jimenez, “Fwd:.”

⁸⁰ Id., [sic] in original.

⁸¹ Id., attachment.

⁸² Id.

⁸³ Novartis Document Tab 38, August 24, 2017 email from Cohen to Jimenez, “Fwd:,” attachment.

⁸⁴ Novartis Document Tab 38, August 24, 2017 email from Cohen to Jimenez, “Fwd:.”

⁸⁵ Novartis Document Tab 39, August 24, 2017 email from Cohen to Jimenez, “August 2017 Non-Confidential Short Yamo Presentation.pptx,” attachment.

Finance for Columbus Nova.⁸⁶ Yamo also lists as an investor and business advisor Andrew Intrater, Columbus Nova's Chief Executive Officer and Mr. Vekselberg's cousin.⁸⁷ The slide deck also stated that Columbus Nova was providing "Back Office and Finance Services" for Yamo.⁸⁸

An hour after Mr. Cohen sent the Yamo slides, Mr. Jimenez responded to Mr. Cohen: "I will look into this. Our key champion for autism is not on this list, so I will discuss with him personally."⁸⁹ The next day Mr. Jimenez followed up with Mr. Cohen, writing, "I spoke to [redacted] and he would be happy to connect with the CEO and learn more about the data and the molecule. Please connect him to [redacted]."⁹⁰

In a letter to the Senators, Novartis stated that the company "never took any action with respect to Yamo Pharmaceuticals following the August 2017 emails from Mr. Cohen." The letter further noted that Mr. Cohen's emails "did not change Novartis's views" on the investment with Yamo, and that no investment was made.⁹¹

According to Yamo Pharmaceuticals, the company's CEO was unaware of Mr. Cohen's connection to President Trump, Novartis, or even to Columbus Nova.⁹² The company's contact with Novartis occurred after Mr. Intrater "appraised Mr. Cohen of the Yamo project and asked him if he knew anyone who would be interested in partnering with the company."⁹³

Yamo provided additional information regarding its relationship with Mr. Cohen in response to questions the Senators sent the company.⁹⁴ The response stated that there was no contractual relationship between Yamo and Mr. Cohen; that Yamo did not pay Mr. Cohen for any services; and that Mr. Cohen's contacts with Novartis about Yamo were the only activity he conducted on behalf of Yamo.⁹⁵

Finally, Yamo provided further details on the "Back Office and Finance Services" provided to the company by Columbus Nova. According to Yamo:

⁸⁶ Id.

⁸⁷ Id. For information on Mr. Intrater's relationship with Mr. Vekselberg, see, e.g., Mike McIntire, Ben Protes & Jim Rutenberg, "Firm Tied to Russian Oligarch Made Payments to Michael Cohen," New York Times, May 8, 2018, <https://www.nytimes.com/2018/05/08/us/politics/michael-cohen-shell-company-payments.html>

⁸⁸ Novartis Document Tab 39, August 24, 2017 email from Cohen to Jimenez, "August 2017 Non-Confidential Short Yamo Presentation.pptx," attachment.

⁸⁹ Novartis Document Tab 41, August 24, 2017 email from Jimenez to Cohen "Re: Fwd:."

⁹⁰ Novartis Document Tab 42, August 25, 2017 email from Jimenez to Cohen "Re:."

⁹¹ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 4.

⁹² Telephone call with Chuck Bramlage, Yamo Pharmaceuticals CEO, and staff of Ranking Member Wyden, Ranking Murray, Sen. Warren, and Sen. Blumenthal, July 11, 2018.

⁹³ Letter to Democratic Staff, U.S. Senate Committee on Finance, from Alfred E. Mottur, Brownstein, Hyatt, Farber Schreck, July 11, 2018.

⁹⁴ Id.

⁹⁵ Id.

Columbus Nova has a Services Agreement between its management company, Renova U.S. Management, and Yamo Pharmaceuticals through which Columbus Nova provides day-to-day finance, accounting and legal support to Yamo, including payment settlement, cash and bank account reconciliation, documentation, record keeping, accounting, bookkeeping, human resource management and legal advisory services. It is important for Yamo, which does not have any product-related income, to partner with someone to provide these back offices services because it allows them to focus all their time, attention, and limited resources on the development, testing, and approval of this promising autism therapy. To this end, Yamo's Chief Financial Officer, Eugene Prahin, is also Chief Operating Office of Columbus Nova.⁹⁶

4. Michael Cohen represented himself as Counsel to President Trump and the Trump Organization while arranging the agreement with Novartis and after it was signed.

During Mr. Cohen's early correspondence with Novartis, all of which appear to have occurred after the 2016 presidential election, he repeatedly invoked a close relationship with President Trump. Mr. Cohen's emails during the contract negotiation period represented that he was "Executive Vice President and Special Counsel to Donald J. Trump," "Personal Counsel to President Donald J. Trump," or "Personal Attorney to President Donald J. Trump."

For example, in the earliest email Novartis provided to the Senators, dated January 16, 2017, Mr. Cohen used the email address "mcohen@trumporg.com," and his signature block represents he is "Executive Vice President and Special Counsel to Donald J. Trump, with an office located in Trump Tower."⁹⁷ Mr. Jimenez responded to Mr. Cohen's initial email by replying to a personal Gmail address rather than Mr. Cohen's @trumporg.com address.⁹⁸ While he replied from his personal Gmail in February 2017, Mr. Cohen's signature block stated he was "Personal Counsel to President Donald J. Trump."⁹⁹

While negotiating the terms of his consulting agreement with Novartis legal staff, Mr. Cohen continued to represent a relationship with President Trump. For example, on February 15, 2017, Mr. Cohen responded to an email from Novartis from his personal Gmail address using a signature block that again states he was "Executive Vice President and Special Counsel to Donald J. Trump."¹⁰⁰ In several other emails, Mr. Cohen used the signature block indicating he was "Personal Counsel to President Donald J. Trump."¹⁰¹ A week later, in a series of emails to

⁹⁶ Letter to Democratic Staff, U.S. Senate Committee on Finance, from Alfred E. Mottur, Brownstein, Hyatt, Farber Schreck, July 11, 2018.

⁹⁷ Novartis Document Tab 1, January 25, 2017 email from Jimenez to Jimenez EA.

⁹⁸ Novartis Document Tab 2, February 3, 2017 email from Jimenez EA to Cohen.

⁹⁹ Novartis Document Tab 4, February 13, 2017 email from Cohen to Jimenez.

¹⁰⁰ Novartis Document Tab 10, February 15, 2017 email from Cohen to Rosenfeld.

¹⁰¹ See, e.g., Novartis Document Tab 9, February 15, 2017 email from Cohen to Rosenfeld, 8:45 AM, "Re: Novartis Consulting Agreement," at page 3.

Mr. Ehrat, Novartis's general counsel, regarding his contract with the company, Mr. Cohen's signature line describes him as "Personal Attorney to President Donald J. Trump."¹⁰²

It is not until May 5, 2017, when Mr. Cohen sent an email to undisclosed recipients, including Novartis, with the subject "New Contact Information for Clients Only," that Mr. Cohen stopped including the President's name in his email signature.¹⁰³ In the email, Mr. Cohen stated, "[d]ue to the overwhelming volume of phone calls and e-mails coming into my previous cellular number and e-mail address, I have elected to create for Clients Only the following." Mr. Cohen attached a signature file from Essential Consultants LLC and Michael D. Cohen & Associates. The signature also used the email address "Michael@mdcpc.com" and listed an address in the Squire Patton Boggs New York office.¹⁰⁴

5. Novartis chose to continue to pay Michael Cohen even though the agreement gave them the opportunity to terminate him for lack of "satisfactory performance."

According to Novartis's official statements, Mr. Cohen was retained to provide consulting and advisory services on health care policy issues, including the repeal and replacement of the Affordable Care Act. In addition to these services, the statement of work attached to the agreement between Novartis and Mr. Cohen also stated that Mr. Cohen would provide consulting and advisory services on "any other issues mutually agreeable to the Consultant and Novartis."¹⁰⁵

Novartis has asserted that the company could not terminate the \$1.2 million contract despite finding that it was unsatisfied with Mr. Cohen's preparation and ability to conduct the work. To the extent this assertion is true, it is because Novartis engaged in extensive negotiations that resulted in weaker and vaguer contract language than the company had initially sought. But the assertion does not appear to be correct – even the negotiated language could have allowed Novartis to walk away from the contract based on Mr. Cohen's inability to meet the terms. It remains unclear why Novartis did not do so and decided to pay Mr. Cohen the full \$1.2 million.

Following the conversation between Mr. Cohen and Mr. Jimenez on February 10, 2017, Mr. Cohen sent a copy of his "pro forma consulting agreement" to Mr. Jimenez.¹⁰⁶ The pro forma agreement, among other things, provided that the contract "shall renew automatically [] for

¹⁰² Novartis Document Tab 23, February 23, 2017 email from Cohen to Ehrat, 12:41 PM, "Re: Novartis Consulting Agreement." During this period, Mr. Cohen was also publicly advertising his relationship to President Trump via Twitter. On February 8, 2017, White House correspondent Hunter Walker tweeted that he "[j]ust spotted Trump Organization executive Michael Cohen at the White House." Mr. Cohen responded "I am no longer affiliated with the Trump Organization, I am personal counsel to President Donald J. Trump." <https://twitter.com/MichaelCohen212/status/829494951251689474>. Mr. Cohen's LinkedIn profile still maintains he is "Personal Attorney to President Donald J. Trump." <https://www.linkedin.com/in/michaelcohen3/>.

¹⁰³ Novartis Document Tab 33, May 5, 2017 email from Cohen to Cohen.

¹⁰⁴ Id.

¹⁰⁵ Novartis Document, Final Contract Services Agreement, Exhibit A.

¹⁰⁶ Novartis Document Tab 4, February 13, 2017 email from Cohen to Jimenez.

successive one (1) year periods, unless terminated by ‘Consultants’,” and stated that Mr. Cohen would be reimbursed for “first class travel and hotel arrangements” incurred while performing the agreement.¹⁰⁷

The agreement with Mr. Cohen was personally directed by Mr. Jimenez, bypassing typical company protocols. On February 14, 2017, Mr. Ehrat, Novartis’s general counsel, responded to Mr. Cohen, stating that Mr. Jimenez “has asked me to finalize the consulting relationship which you discussed.”¹⁰⁸ Mr. Ehrat added Mr. Rosenfeld from the Novartis U.S. legal team to facilitate the matter.¹⁰⁹ According to Novartis's internal approval process, a documented competitive bidding process is typically required of all third-party contracts.¹¹⁰ However, this process provides for an exception if there are “[s]pecific instructions received via a directive of the Executive Committee Novartis to use a specific supplier.”¹¹¹ In this instance, the agreement with Mr. Cohen was authorized by the Novartis CEO and therefore the standard competitive due diligence process was not conducted.

Later on February 14th, Mr. Rosenfeld responded to Mr. Cohen, “[u]nfortunately, it is our policy to use our standard form agreements when we retain consultants. I have attached a copy for your review, together with a first draft of the Statement of Work.”¹¹² The statement of work proposed by Novartis included four provisions to (1) “[p]rovide access to key policymakers in the US Government,” (2) “[a]ssess the reaction of the US Government to certain options to improve affordability of medicines,” (3) “[p]rovide feedback to planned actions of Novartis in the U.S. that may impact our standing there,” and (4) “[a]dvise on any other issues Novartis may face with the U.S. government.”¹¹³

¹⁰⁷ Id., attachment at page 2.

¹⁰⁸ Novartis Document Tab 5, February 14, 2017 email from Rosenfeld to Cohen, 4:24 AM, “Novartis Consulting Agreement.”

¹⁰⁹ Novartis Document Tab 5, February 14, 2017 email from Rosenfeld to Cohen, 4:24 AM, “Novartis Consulting Agreement.”

¹¹⁰ June 18, 2018 letter from Novartis to Senators Blumenthal, Murray, Warren and Wyden, page 6.

¹¹¹ Id., Tab 2.

¹¹² Novartis Document Tab 7, February 14, 2017 email from Rosenfeld to Cohen, 2:59 PM, “Re Novartis Consulting Agreement.”

¹¹³ Id.,” attachment.

**EXHIBIT A TO SERVICES AGREEMENT
STATEMENT OF WORK**

Objective

With the process underway to repeal and replace the Affordable Care Act in the US, and the continued debate over drug pricing, there is considerable uncertainty around the US healthcare system and how it will evolve in the coming years. In this context, it is imperative that Novartis remain abreast of policy matters that could impact our business in the US, and ensure that our business actions in the US reinforce our good standing in that market.

This Statement of Work sets forth the Services to be performed pursuant to the agreement ("Agreement") between Novartis International AG ("Novartis") and Essential Consultants, LLC (the "Consultant"). The Agreement will be effective as of March 1, 2017 (the "Effective Date").

Scope of Work

The Consultant will provide consulting and advisory services to Novartis on US policy matters that have the potential to impact Novartis, and on issues pertaining to Novartis' positioning in the US market.

Specifically, the Consultant will:

- Provide access to key policymakers in the US Government to facilitate constructive discussions about policy matters impacting Novartis;
- Assess the reaction of the US Government to certain options to improve the affordability of medicines;
- Provide feedback to planned actions of Novartis in the US that may impact our standing there; and
- Advise on any other issues Novartis may face with the US Government.

Deliverables

Novartis and the Consultant will communicate regularly about all relevant matters within the Scope of Work.

The draft maintained the provision for Mr. Cohen's "first class" travel and hotel accommodations, but removed the automatic renewal provision.¹¹⁴

Mr. Cohen was able to make significant changes to the Novartis standard agreement without objection from the company. For example, Mr. Cohen removed a clause that stated, "[c]onsultant shall perform the Services to Novartis' reasonable satisfaction," as well as a provision that would have given Novartis the right to review Essential Consultants' accounts.¹¹⁵

Mr. Cohen removed the four specific examples of services he would provide under the agreement and replaced them with a catch-all provision to provide services related to "matters that relate to the repeal and replacement of the Affordable Care Act in the U.S. and any other issues mutually agreeable to the Consultant and Novartis."¹¹⁶

¹¹⁴ Novartis Document Tab 7, February 14, 2017 email from Rosenfeld to Cohen, 2:59 PM, "Re Novartis Consulting Agreement," attachment.

¹¹⁵ Novartis Document Tab 13, February 16, 2017 email from Cohen to Rosenfeld, 11:24 AM, "Essential Consultants Agmt (17-02-14c BR clean).docx," attachment.

¹¹⁶ Novartis Document Tab 14, February 16, 2017 email from Cohen to Rosenfeld, 11:25 AM, "Michael Cohen SOW (17092014 draft BR Clean).docx," attachment.

**EXHIBIT A TO SERVICES AGREEMENT
STATEMENT OF WORK**

This Statement of Work sets forth the Services to be performed pursuant to the agreement ("Agreement") between Novartis International AG ("Novartis") and Essential Consultants, LLC (the "Consultant"). The Agreement will be effective as of March 1, 2017 (the "Effective Date").

Scope of Work

The Consultant will provide consulting and advisory services to Novartis on matters that relate to the repeal and replacement of the Affordable Care Act in the US and any other issues mutually agreeable to the Consultant and Novartis.

Deliverables

Novartis and the Consultant will communicate regularly about all relevant matters within the Scope of Work.

Deleted: Objective
 ¶ With the process underway to repeal and replace the Affordable Care Act in the US, and the continued debate over drug pricing, there is considerable uncertainty around the US healthcare system and how it will evolve in the coming years. In this context, it is imperative that Novartis remain abreast of policy matters that could impact our business in the US, and ensure that our business actions in the US reinforce our good standing in that market. ¶

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Deleted: Specifically, the Consultant will:
 <#>Provide access to key policymakers in the US Government to facilitate constructive discussions about policy matters impacting Novartis.¶
 <#>Assess the reaction of the US Government to certain options to improve the affordability of medicines.¶
 <#>Provide feedback to planned actions of Novartis in the US that may impact our standing there; and¶
 <#>Advise on any other issues Novartis may face with the US Government.¶

This final version of the contract – which “accepted all the changes” suggested by Mr. Cohen – was agreed to by Novartis’s Mr. Rosenfeld and signed on February 17, 2017.¹¹⁷

The broad language Mr. Cohen added to the Statement of Work was more difficult for Novartis to escape than the one that the company had initially proposed. But the contract still required that Mr. Cohen “perform the Services in a professional manner, in conformance with the level of care and skill ordinarily exercised by other professionals in Consultant’s field,”¹¹⁸ and required “the satisfactory performance of the Services” as a condition of payment.¹¹⁹

According to Novartis officials, after one meeting it became clear that “Mr. Cohen had made no effort to learn anything about Novartis, or the policy issues that were of concern to Novartis specifically, or the pharmaceutical industry generally...it was also clear that he was not able to provide guidance as to how those individuals [in the Trump administration] would evaluate and respond to the relevant policy issues. ... [and that] Mr. Cohen was not able to deliver the substantive consulting advice and insight that was the basis for Mr. Jimenez’s decision to retain him.”¹²⁰

Despite these findings, Novartis chose to continue to pay Mr. Cohen the full \$1.2 million rather than invoke the contract clauses that would have allowed them to terminate payment based on his inadequate performance.

¹¹⁷ Novartis Document Tab 15, February 17, 2017 Email from Barry Rosenfeld to Michael Cohen, “Essential Consultants Agmt.”

¹¹⁸ Novartis Document, Final Contract Services Agreement, paragraph 11(a).

¹¹⁹ Novartis Document, Final Contract Services Agreement, paragraph 3.

¹²⁰ June 5, 2018 letter from Novartis to Senator Murray, page 3.