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February 14, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions:

I write to bring to your attention disturbing reports of the arrest of a former Department of Justice attorney who, under your predecessors, led significant False Claims Act (FCA) investigations and prosecutions. The attorney's betrayal of his professional duty of loyalty and his effort to subvert the FCA for personal gain are shocking. His actions raise significant concerns for *qui tam* whistleblowers. It is vitally important to ensure the integrity of the Department's work on False Claims Act cases by getting to the bottom of how much damage may have been done beyond the specific criminal acts for which this attorney has been arrested and charged.

According to news reports, former Department of Justice attorney Jeffrey Wertkin was arrested by the Federal Bureau of Investigation on January 31, 2017, for attempting to sell the details of a sealed *qui tam* False Claims Act complaint to an employee of the defendant for \$310,000. Those articles state that prior to joining a large law firm as a partner in April 2016, Mr. Wertkin "led more than 20 major fraud investigations" at the Department. The case under seal had apparently been pending since January 2016, four months before Mr. Wertkin left the DOJ.

Mr. Wertkin's actions threaten not only to obstruct that particular case, but they are also antithetical to the spirit and purpose of the False Claims Act. In 1986, I co-authored the key modern-day amendments to the Act that empowered whistleblowers who identified and reported fraud on taxpayer-funded government contracts and programs. This law was designed to incentivize and protect whistleblowers, not serve them up for retaliation to the subjects of their complaints. The facts as reported thus far suggest that Mr. Wertkin may have obtained the whistleblower complaint filed under seal—a seal which can only be lifted by court order—either while he worked at the Department or from the Department following his departure. If so, it raises questions about how he was able to remove that non-public information from the Department, whether he also removed additional confidential records that could have exposed other

qui tam whistleblowers and ongoing fraud investigations, and of course whether he ever improperly disclosed such information while working on these cases at the Department.

It would be even more troubling if the Department was aware of any problems with Mr. Wertkin prior to this incident, including whether he had ever been reported to the Office of Professional Responsibility for alleged misconduct. Over the years, I have written letters to the Department of Justice about cases involving allegations of attorney misconduct by Department lawyers¹ and about the Department's oversight of its attorneys generally.² In the past, it seems the Department has not always exercised appropriate authority over these lawyers or held them fully accountable for wrongdoing they may have committed.³

Whistleblowers must have confidence in the Department's handling of their complaints, or they will not come forward. Moreover, whistleblowers and defendants alike should be able to rely on the Act's seal provisions, which protect whistleblowers from exposure while their claims are under investigation and defendants from unnecessary reputational harm should the case not actually proceed. To keep that confidence, it is imperative once again that the Department under new leadership clarify its oversight practices, take clear steps to ensure the integrity of its False Claims Act investigations past, present, and future, and provide reassurance that it takes every precaution to adhere to the Act's seal requirements and safeguard whistleblower information.

Accordingly, please answer the following questions by February 28, 2017. Please number your answers according to their corresponding questions.

1. Please list all False Claims Act cases in which Mr. Wertkin was involved during his employment at the Department.
2. Has Mr. Wertkin ever been the subject of a complaint to the Department's Office of Professional Responsibility? If so, please provide a summary of the allegations, OPR's findings, and any discipline imposed.
3. Has any complaint of attorney misconduct arisen in relation to the False Claims Act cases with which Mr. Wertkin was involved while at the Department?
4. Please provide a copy of any Department guidance related to preserving whistleblower and other confidential information of cases under seal.
5. Please provide a copy of any Department guidance or policy regarding attorney obligations upon their departure from the Department, including the

¹ See, e.g., Letter from Charles E. Grassley, Chairman and Mike Lee, Member, U.S. Sen. Comm. on the Judiciary to Sally Quillian Yates, Acting Deputy Attorney General, U.S. Dep't of Justice (Mar. 27, 2015).

² Letter from Charles E. Grassley, Ranking Member, U.S. Sen. Comm. on the Judiciary to Monty Wilkinson, Director, Executive Office for U.S. Attorneys, U.S. Dep't of Justice (Sept. 17, 2014).

³ *Id.*; Letter from Inspector General Michael E. Horowitz to Ranking Member Charles E. Grassley and Ranking Member Tom Coburn, Jul. 14, 2014, at 6-7.

obligation to preserve whistleblower and other confidential information of cases under seal.

6. Please describe the steps the Department has taken and will take to review the False Claims Act cases with which Mr. Wertkin was involved while at the Department to ensure no attorney misconduct was involved and no whistleblower or other sealed information was compromised.

Please contact DeLisa Lay of my staff at (202) 224-5225 with any questions.
Thank you for your prompt attention to this matter.

Sincerely,



Charles E. Grassley
Chairman

cc: The Honorable Dianne Feinstein
Ranking Member

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice