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October 1, 2020

The Honorable William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Dear Attorney General Barr:

In the early days of the opioid crisis, a Department of Justice (DOJ) investigation revealed that several of Purdue Pharma's top executives had intentionally misled the public about the health effects of their product, and recommended filing felony charges. In 2006, several former DOJ officials negotiated on their behalf for significantly lower penalties. On July 30, 2020, DOJ filed a Proof of Claim in Purdue Pharma's bankruptcy proceeding reportedly seeking as much as \$18.1 billion in criminal and civil penalties. We are concerned that once again DOJ will settle the United States' claims against Purdue Pharma without obtaining appropriate recompense for the widespread suffering the company knowingly caused in communities across America.

We have previously requested information about DOJ's earlier investigation of Purdue Pharma and whether the Department was inappropriately influenced by the targets of the investigation. In 2006, after a four-year investigation of Purdue's opioid marketing and other business practices, career prosecutors at DOJ drafted a memo recommending that Purdue and its executives be indicted for mail fraud, wire fraud, money laundering and conspiracy in pushing opioids. Then-Deputy Chief of the Fraud Section of DOJ's Criminal Division, Paul Pelletier, described the document as the "most detailed prosecution memo he had ever seen" and argued that "[t]here [was] no justification for which you shouldn't prosecute those individuals."

Purdue Pharma, however, hired several former DOJ officials—including former U.S. Attorney Rudy Giuliani, former U.S. Attorney for the Southern District of New York Mary Jo White, and former General Counsel of the Federal Bureau of Investigation Howard Shapiro—to represent them in negotiations with senior DOJ officials. Because of those negotiations, Purdue Pharma executives walked away with lesser charges and lower fines, instead of possible jail time.

DOJ's recent filings in the Purdue bankruptcy case show how the company continued its deceptive marketing practices after DOJ declined to prosecute—practices which contributed to

millions of people becoming addicted to opioids. DOJ claims that Purdue Pharma induced healthcare providers and pharmacies to submit medically unnecessary prescriptions to federal healthcare programs. They also claim that Purdue Pharma paid kickbacks to doctors to reduce and reward opioid prescriptions; to an electronic health records vendor to create alerts that would prompt doctors to prescribe more opioids; and to specialty pharmacies that filled opioid prescriptions that were rejected by other pharmacies. The company then transferred assets to other companies that were owned by the Sackler family in order to “hinder a recovery by creditors or without receiving reasonably equivalent value for these transfers.”

We have heard through credible sources that negotiations to resolve the United States’ current claims are underway. It is unclear whether these negotiations include discussions of other potential civil or criminal liability, including claims against the Sackler family or other culpable individuals. DOJ’s history of leniency with Purdue Pharma give us pause that the Department will once again let connected lawyers obtain a settlement that does not adequately address the harms caused by the company. So we and the millions of Americans who have been touched by the opioid crisis can have confidence that DOJ has represented their interests, we request that DOJ assure us that it will:

1. Ensure that any settlement receives the required approvals, including, if necessary, by the Attorney General. *See* 28 C.F.R. § 0.160, et seq.; DOJ Justice Manual 4-3.110, 4-3.120;
2. Make public the written settlement agreement, *see id.* 4-3.400, as well as any referral memoranda seeking approval of the settlement, *id.* 4-3.320, and the compromising or closing memorandum fully explaining the basis for the settlement, *id.* 4-3.310. If the Department makes the extraordinary decision to enter into a confidential settlement agreement in contravention of normal DOJ procedure, please provide an explanation of why such an exception is permitted and which DOJ official(s) authorized it. 28 C.F.R. § 50.23; DOJ Justice Manual 1-18.200; 4-3.410;
3. Ensure that the final settlement does not bargain away DOJ’s ability to pursue related civil or criminal claims against culpable individuals by resolving its claims against the company. *See id.* 4-3.100; 4-3.400; *cf.* 9-16.050; and
4. Ensure that the scope of the settlement does not foreclose civil or criminal claims by other government entities or individuals against the corporation or culpable individuals, and adequately accounts for those parties’ right to obtain relief.

We also respectfully renew our August 2018 and September 2019 requests for the 2006 prosecution memo and for additional information and documents related to DOJ’s decision to settle this matter for misdemeanor charges. In addition, we specifically request any communications between DOJ, Rudy Giuliani and Giuliani Partners, Mary Jo White, and Howard Shapiro in their capacity as representatives of the Defendants in *United States v. Purdue Frederick Company Inc.*

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheldon Whitehouse".

Sheldon Whitehouse
United States Senator

A handwritten signature in blue ink, appearing to read "Margaret Wood Hassan".

Margaret Wood Hassan
United States Senator