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Let this be filed.
JMK/MS/USDJ
1/8/18

January 3, 2018

VIA E-MAIL (TO CHAMBERS) AND U.S. MAIL

The Honorable Trevor N. McFadden
United States District Judge
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Re: Misc. Case No. 1:17-mc-02171-TNM
In Re Third Party Subpoena to Fusion GPS in the underlying case of
*Aleksej Gubarev, XBT Holding S.A., and Webzilla, Inc. v. BuzzFeed, Inc. and
Ben Smith*

Dear Judge McFadden:

Undersigned counsel for third party Fusion GPS (“Fusion”) write to request the Court to consider whether its recusal is required in this case pursuant to 28 U.S.C. § 455(a). Publicly available information about the Court’s prior work as an attorney at Baker & McKenzie LLP (hereinafter “Baker & McKenzie”), the Court’s prior position as Principal Deputy Assistant Attorney General in the Department of Justice’s Criminal Division, and the Court’s prior work on the Trump transition raises issues as to whether in this case the Court’s “impartiality might reasonably be questioned.”

Fusion has brought this action to quash a subpoena issued by the Plaintiffs Aleksej Gubarev, XBT Holdings S.A., and Webzilla, Inc. (referred to herein as “the Gubarev Plaintiffs”) seeking both the production of documents and a Rule 30(b)(6) deposition of Fusion. The discovery sought by the Gubarev Plaintiffs’ subpoena relates to Fusion’s work in connection with the so-called “Trump Dossier”—a series of seventeen intelligence reports created between June and December 2016 by a Fusion contractor, Orbis Business Intelligence. Various intelligence reports in the Trump Dossier contain information about Russian interference in the 2016 Presidential election as well as then-candidate Donald Trump’s alleged business dealings in Russia and his campaign’s alleged contacts with Russia and the Kremlin. The discovery sought by the Gubarev Plaintiffs from Fusion ostensibly relates to their defamation case against BuzzFeed, which published the Trump Dossier in January 2017.

The first matter we wish to bring to the Court’s attention relates to the Court’s prior work at Baker & McKenzie. Public information indicates that the Court represented VimpelCom Ltd.



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in a publicly reported FCPA investigation.¹ VimpelCom, now known as Veon, is controlled by Mikhail Fridman.² As the Court may be aware, Mikhail Fridman, and his business partners Petr Aven and German Khan, in another case pending in this district, Case No. 1:17-cv-02041 (RJL) have sued Fusion and one of its principals, Glenn Simpson, for defamation arising out of one of the intelligence reports in the Trump Dossier. Because the Gubarev Plaintiffs seek discovery from Fusion on matters relating to aspects of the Trump Dossier beyond the December 2016 intelligence report that concerns them, the issues to be decided by the Court in this case are also relevant to Mr. Fridman's case against Fusion.³ It is clearly in Mr. Fridman's interest to have the Court order the discovery sought by the Gubarev Plaintiffs.

As the Court may also be aware, Baker & McKenzie has performed other legal services for the Alfa Group, one of Russia's largest privately owned investment groups. Alfa Group is primarily owned by the plaintiffs suing Fusion in this district, Messrs. Fridman, Aven, and Khan.⁴ Although publicly available information does not indicate that the Court worked on matters relating to the Alfa Group, the firm's fiduciary duties to its clients extended to all lawyers in the firm. Thus, the Court's prior association with Baker & McKenzie is relevant. See 28 U.S.C. § 455(b)(2).

The second matter we wish to bring to the Court's attention regards the Court's service as Principal Deputy Assistant Attorney General in the Department of Justice's Criminal Division.

¹ *Nomination of Trevor McFadden to the U.S. Dist. Ct. for the District of Columbia, Questions for the Record*, Questions from Sen. Feinstein (Submitted July 5, 2017), <https://www.judiciary.senate.gov/imo/media/doc/McFadden%20Responses%20to%20QFRs.pdf> (identifying VimpelCom as a client in an FCPA investigation).

² Fridman's investment vehicle, LetterOne, owns roughly 48 percent of Veon shares and Stichting Administratiekantoor Mobile Telecommunications Investor (the "Stichting"), a foundation controlled by Fridman and incorporated under the laws of the Netherlands, owns an additional approximately 8 percent of Veon shares.

³ As the Court may also be aware, both the Gubarev Plaintiffs and Messrs. Fridman, Aven and Khan have sued BuzzFeed (and various individuals associated with BuzzFeed) for defamation in connection with BuzzFeed's publication of the Trump Dossier. Fridman, Aven and Khan have sued BuzzFeed, its editor in chief, Ben Smith, as well as an investigative reporter and two editors, for defamation allegedly arising from Company Intelligence Report 112 in the Trump Dossier published by BuzzFeed. See *Fridman et al. v. BuzzFeed et al.*, Index No. 154895/2017, Compl. (N.Y. Sup. Ct. May 26, 2017). The Gubarev Plaintiffs have sued BuzzFeed and Smith for defamation allegedly arising from a statement in Company Intelligence Report 166 the Trump Dossier published by BuzzFeed. See *Gubarev et al. v. BuzzFeed et al.*, Compl. for Damages, Case No. 17-cv-60426 (S.D. Fla. Feb. 28, 2017).

⁴ See David Stuckey, *Baker & McKenzie Advises Alfa Group on Acquisition of Bank of Cyprus's Ukrainian Assets*, CEE Legal Matters (Apr. 28, 2014), <http://ceelegalmatters.com/ukraine/418-baker-mckenzie-advises-alfa-group-on-acquisition-of-bank-of-cyprus-s-ukrainian-assets>. See also UBS and Alfa Bank issue CHF 165 million Loan Participation Notes for ABH Financial Limited (Dec. 11, 2017), <http://www.bakermckenzie.com/en/newsroom/2017/12/ubs-and-alfa-bank-issue-loan-participation-notes/>.



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During the time that the Court served as Principal Deputy Assistant General, Fusion was the subject of a request by Senator Grassley that the Department of Justice investigate Fusion's compliance with the Foreign Agent Registration Act.⁵ Although undersigned counsel has no information that the Court was involved in the Department of Justice's response to Senator Grassley, the Department of Justice testified at a hearing held on July 26-27, 2017 regarding FARA compliance issues during the time of this Court's service as a senior official at the Department of Justice.⁶

The third, and perhaps most important matter, we wish to bring to the Court's attention concerns the work the Court performed for President-elect Trump's transition team. Public information indicates that the Court "volunteered as a vetter for President Trump's transition team."⁷ President-elect Trump began making public statements expressing his animosity toward Fusion GPS and its work relating to the Trump Dossier during the transition.⁸ Mr. Trump has continued making such statements on a regular basis as President, until the present day.⁹ Indeed,

⁵ Letter from Sen. Charles Grassley, Chairman, Comm. on the Judiciary, to Dana Boente, Acting Dep. Att'y Gen. (Mar. 31, 2017), [https://www.judiciary.senate.gov/imo/media/doc/2017-03-31%20CEG%20to%20DOJ%20\(Anti-Magnitsky%20FARA%20violations\)%20with%20attachments.pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-03-31%20CEG%20to%20DOJ%20(Anti-Magnitsky%20FARA%20violations)%20with%20attachments.pdf).

⁶ *Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations: Hearings Before the Comm. on the Judiciary, U.S. Senate.*, 115th Cong. (July 26-27, 2017), <https://www.judiciary.senate.gov/meetings/oversight-of-the-foreign-agents-registration-act-and-attempts-to-influence-us-elections-lessons-learned-from-current-and-prior-administrations>; <https://www.judiciary.senate.gov/meetings/oversight-of-the-foreign-agents-registration-act-and-attempts-to-influence-us-elections-lessons-learned-from-current-and-prior-administrations-day-2>.

⁷ Questionnaire for Jud. Nominees, Resp. of Trevor Neil McFadden, U.S. Sen. Comm. on the Judiciary (undated), https://www.judiciary.senate.gov/imo/media/doc/SJO_Trevor%20McFadden.pdf.

⁸ See, e.g., Donald J. Trump, @realDonaldTrump, *Twitter* (Jan. 11, 2017, 7:13 AM), <https://twitter.com/realDonaldTrump/status/819155311793700865> ("Russia just said the unverified report paid for by political opponents is 'A COMPLETE AND TOTAL FABRICATION, UTTER NONSENSE.' Very unfair!"); Donald J. Trump, @realDonaldTrump, *Twitter* (Jan. 14, 2017, 5:14 AM), <https://twitter.com/realDonaldTrump/status/820257714362314753> ("INTELLIGENCE INSIDERS NOW CLAIM THE TRUMP DOSSIER IS 'A COMPLETE FRAUD!'").

⁹ Donald J. Trump, @realDonaldTrump, *Twitter* (Oct. 19, 2017, 4:56 AM), <https://twitter.com/realdonaldtrump/status/920981920787386368?lang=en> ("Workers of firm involved with the discredited and Fake Dossier take the 5th. Who paid for it, Russia, the FBI or the Dems (or all)?"); Donald J. Trump, @realDonaldTrump, *Twitter* (Oct. 21, 2017, 12:59 PM), <https://twitter.com/realdonaldtrump/status/921828280998744066?lang=en> ("Officials behind the now discredited 'Dossier' plead the Fifth. Justice Department and/or FBI should immediately release who paid for it."); Donald J. Trump, @realDonaldTrump, *Twitter* (Oct. 25, 2017, 4:21 AM), <https://twitter.com/realdonaldtrump/status/923147501418446849?lang=en> ("Clinton campaign & DNC paid for research that led to the anti-Trump Fake News Dossier. The victim here is the President.' @FoxNews"); Donald J. Trump, @realDonaldTrump, *Twitter* (Oct. 29, 2017 [four consecutive tweets]),



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the President's adversity to Fusion has been repeatedly expressed by his spokesperson¹⁰ and has become an element of his political agenda.¹¹

Given the Court's prior work at Baker & McKenzie, the Court's prior work at the Department of Justice, and the Court's prior work on President Trump's transition team, undersigned counsel respectfully suggest that disqualification is required under 28 U.S.C. § 455(a). In evaluating its obligations under 28 U.S.C. § 455(a), the Court may also wish to consider its contributions, financial or otherwise, to the Trump for President campaign. We are prepared to brief the question of disqualification in a motion if the Court requests.

<https://twitter.com/realDonaldTrump/status/924635359480303616>; ("Never seen such Republican ANGER & UNITY as I have concerning the lack of investigation on Clinton made Fake Dossier (now \$12,000,000?),....") (6:53 AM); <https://twitter.com/realDonaldTrump/status/924637600094326784> ("...the Uranium to Russia deal, the 33,000 plus deleted Emails, the Comey fix and so much more. Instead they look at phony Trump/Russia,....") (7:02 AM); <https://twitter.com/realDonaldTrump/status/924639422066384896> ("... 'collusion,' which doesn't exist. The Dems are using this terrible (and bad for our country) Witch Hunt for evil politics, but the R's...") (7:09 AM); <https://twitter.com/realDonaldTrump/status/924641278947622913> ("...are now fighting back like never before. There is so much GUILT by Democrats/Clinton, and now the facts are pouring out. DO SOMETHING!") (7:17 AM); Donald J. Trump, @realDonaldTrump, *Twitter* (Oct. 30, 2017, 4:37 AM), <https://twitter.com/realDonaldTrump/status/924963492645437441> ("Report out that Obama Campaign paid \$972,000 to Fusion GPS. The firm also got \$12,400,000 (really?) from DNC. Nobody knows who OK'd!"); Donald J. Trump, @realDonaldTrump, *Twitter* (Dec. 26, 2017, 8:24 AM), <https://twitter.com/realDonaldTrump/status/945646491955290113> ("WOW, @foxandfriends [sic] 'Dossier is bogus. Clinton Campaign, DNC funded Dossier. FBI CANNOT (after all of this time) VERIFY CLAIMS IN DOSSIER OF RUSSIA/TRUMP COLLUSION. FBI TAINTED.' And they used this Crooked Hillary pile of garbage as the basis for going after the Trump Campaign!").

¹⁰ See e.g., Glenn Kessler, *Fact Checker, Analysis: Trump, Russia and the opposition research firm run by ex-journalists*, Wash. Post, Aug. 9, 2017 (quoting Sarah Huckabee Sanders, White House News Briefing (Aug. 1, 2017) ("The Democrat-linked firm Fusion GPS actually took money from the Russian government while it created the phony dossier that's been the basis for all of the Russia scandal fake news."), http://wapo.st/2vKRjBi?tid=ss_tw&utm_term=.cf26bd37b433); Charles Fein Lehman, *Huckabee Sanders Hits Press for Not Covering New Russia Dossier Testimony*, Wash. Free Beacon (July 27, 2017) ("Often, we have a lot of media with Russia first, but today, there was public testimony that further discredited the phony dossier that's been the source of so much of the fake news and conspiracy theories, and we learned that the firm that produced it was also also [sic] being paid by the Russians."), <http://freebeacon.com/politics/sanders-hits-press-dossier/>.

¹¹ On November 30, the New York Times reported that President Trump had personally urged a Republican Senator to "begin an investigation into Hillary Clinton's connection with the intelligence-gathering firm Fusion GPS, which produced a dossier of allegations about Mr. Trump's ties to Moscow." Jonathan Martin, Maggie Haberman, & Alexander Burns, *Trump Pressed Top Republicans to End Senate Russia Inquiry*, N.Y. Times, Nov. 30, 2017, <https://www.nytimes.com/2017/11/30/us/politics/trump-russia-senate-intel.html>. Trump's personal lawyer has even called for a special counsel investigation of Fusion GPS. See *Trump lawyer wants separate special prosecutor to probe DOJ-Fusion conflicts*, Fox News, Dec. 12, 2017, <http://www.foxnews.com/politics/2017/12/12/trump-lawyer-wants-separate-special-prosecutor-to-probe-doj-fusion-conflicts.html>.



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Respectfully submitted,

A handwritten signature in black ink, appearing to read "William W. Taylor, III".

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