

C A M P A I G N F O R

ACCOUNTABILITY

August 2, 2017

VIA EMAIL

Andrew Weissmann
Chief, Fraud Section
Department of Justice
601 D Street, NW
Washington, DC 20579

Raymond Hulser
Chief, Public Integrity Section
U.S. Department of Justice
10th Street and Constitution Ave., NW
Washington, DC 20530

Dear Mssrs. Weissmann and Hulser:

In January, Campaign for Accountability (“CfA”) wrote to the Fraud Section of the Department of Justice to request an investigation into whether the bank OneWest, FSB violated federal laws by rushing delinquent homeowners out of their homes, by violating notice and waiting period statutes, by illegally backdating documents, and by gaming foreclosure auctions.

CfA’s complaint was based on a previously undisclosed 2013 memo prepared by prosecutors in the California Attorney General’s office that showed OneWest appeared to have engaged in “widespread misconduct.”¹ Deputy attorneys general in the Consumer Law Section reported OneWest had, among other things, “signed and backdated false instruments, acknowledged them to notaries” and then had them recorded with county recorders; “made and directed unlawful credit bids” resulting in the wrong parties winning auctions and the “unlawful evasion of documentary transfer tax obligations”; and failed to comply with legal requirements related to the “execution, timing, and mailing of foreclosure documents.”²

Now, it appears that on more than one occasion, Secretary of the Treasury Steve Mnuchin, the CEO of OneWest Bank at the time of these actions, lied to Congress about the bank’s practices.

Early last year, members of the Senate Finance Committee asked Mr. Mnuchin to respond to questions in reference to his nomination to serve as Secretary of the Treasury. Sen.

¹ David Dayen, *Treasury Nominee Steve Mnuchin’s Bank Accused of “Widespread Misconduct” in Leaked Memo*, *The Intercept*, January 3, 2017 available at <https://theintercept.com/2017/01/03/treasury-nominee-steve-mnuchins-bank-accused-of-widespread-misconduct-in-leaked-memo/>.

² *Id.*

Bob Casey (D-PA) queried, “Did OneWest ‘robo-sign’ documents relating to foreclosures and evictions?” Secretary nominee Mnuchin replied, “OneWest Bank did not ‘robo-sign’ documents, and as the only bank to successfully complete the Independent Foreclosure Review required by federal banking regulators to investigate allegations of ‘robo-signing,’ I am proud of our institution’s extremely low error rate.”³

More recently, on July 27, 2017, Sec. Mnuchin testified before the House Financial Services Committee. Rep. Keith Ellison (D-MN) asked Sec. Mnuchin about robo-signing and the secretary again denied that any robo-signing took place at OneWest under his watch.⁴ Rep. Ellison pressed the issue, asking Sec. Mnuchin about the 2009 deposition testimony of OneWest Vice President Erica Johnson-Seck. In her deposition, Ms. Johnson-Seck had explained that the eight people in her office had signed 6,000 documents – mostly Lost Note Affidavits – a week.⁵ She also testified that she did not, in fact, read the documents she signed,⁶ and that she signed them outside the presence of a notary.⁷

Rep. Ellison asked Sec. Mnuchin if Ms. Johnson-Seck had been under his supervision. Sec. Mnuchin claimed she had not been “directly” under his supervision though admitted she had, in fact, worked at OneWest.⁸ When Rep. Ellison stated that Ms. Johnson-Seck had admitted to robo-signing, Sec. Mnuchin claimed there is no legal definition of the term and disparaged Rep. Ellison, alleging the congressman did not understand what he was talking about.⁹

Sec. Mnuchin’s written and oral testimony also conflicts with the facts as found by the California Office of the Attorney General, and with an analysis by the *Columbus Dispatch* of nearly four dozen foreclosure cases filed by OneWest in Franklin County, Ohio in 2010. The *Dispatch* reported that OneWest frequently used robo-signers.¹⁰ In three cases, “a judge dismissed OneWest foreclosure proceedings specifically based on inaccurate robo-signings.”¹¹

³ Senate Finance Committee, Hearing on Nomination of Steve Mnuchin to be Secretary of the Treasury, Questions for the Record, January 29, 2017, available at <https://www.documentcloud.org/documents/3415447-Mnuchin-QFR-Response-01-22-2017.html>; see also David Dayen, Mnuchin Lied About His Bank’s History of Robo-Signing Foreclosure Documents, *The Intercept*, January 25, 2017, available at <https://theintercept.com/2017/01/25/mnuchin-lied-about-his-banks-history-of-robo-signing-foreclosure-documents/>.

⁴ David Dayen, The Treasury Secretary Just Lied Under Oath, *The Nation*, July 27, 2017, available at <https://www.thenation.com/article/the-treasury-secretary-just-lied-under-oath>.

⁵ *Indy Mac Federal Bank FSB v. Israel A. Machado et al.*, Deposition of Erica Johnson-Seck, July 9, 2009, p.13, Case No. 50 2008 CA 037322XXXX (15th Judicial Circuit, Fla.), available at <http://4closurefraud.org/2009/11/15/full-deposition-of-the-infamous-erica-johnson-seck-re-indymac-federal-bank-fsb-plaintiff-vs-israel-a-machado-50-2008-ca-037322xxxx-mb/>.

⁶ *Id.* at 14.

⁷ *Id.* at 20.

⁸ Dayen, *The Nation*, July 27, 2017.

⁹ *Id.*

¹⁰ Alan Johnson and Jill Riepenhoff, Trump Treasury Pick Mnuchin Misled Senate on Foreclosures, Ohio Cases Show, *Columbus Dispatch*, January 29, 2017, available at <http://www.dispatch.com/news/20170129/trump-treasury-pick-mnuchin-misled-senate-on-foreclosures-ohio-cases-show>.

¹¹ *Id.*

Andrew Weismann, Esq.
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Despite a significant body of evidence: investigations by the California Attorney General and the media, judicial findings, and sworn deposition testimony, Sec. Mnuchin has persistently and willfully denied what is clearly true: that OneWest engaged in robo-signing. Sec. Mnuchin's dissembling was shameful enough when he served as a CEO, but once he began repeating this obvious untruth to Congress, Sec. Mnuchin crossed the line into potentially criminal conduct.

As you know, 18 U.S.C. § 1001(a)(2) makes it a crime to "knowingly and willfully . . . make any materially false, fictitious, or fraudulent statement or representation" to Congress. Further, under 18 U.S.C. § 1505 and § 1515(b), it is a crime to obstruct an inquiry of Congress by making of "a false or misleading statement." By willfully and deliberately attempting to mislead Congress – and by extension the American people – about the unlawful conduct of OneWest under his leadership, Sec. Mnuchin appears to have violated federal law.

Adherence to a rule of law demands that those who deliberately lie or mislead Congress be held accountable. In the current environment, where some of our nation's leaders embrace "alternative facts" and are openly derisive of candor and honesty, it is more important than ever for the Department of Justice – which is charged with seeking just punishment for those guilty of unlawful behavior – to take appropriate action when confronted with conduct that may constitute a criminal false statement. Even today, Americans have a right to expect that those who seek and hold top government positions will not lie to their elected representatives and that if they do, the consequences will be swift and severe. In 1977, when considering another matter involving a government official who lied to Congress, Judge Barrington D. Parker stated, "Public officials at every level, whatever their position, like any other person, must respect and honor the Constitution and the laws of the United States."

CfA looks forward to your prompt investigation of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

cc: The Honorable Bob Casey
The Honorable Keith Ellison