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April 8, 2019

The Honorable Jessie K. Liu  
U.S. Attorney for the District of Columbia  
United States Attorney's Office  
555 4<sup>th</sup> Street, NW  
Washington, D.C. 20530

Dear Ms. Liu:

I write today to request your office thoroughly investigate potential civil and criminal violations of the Lobbying Disclosure Act of 1995 (LDA) by the lobbying firm Brownstein Hyatt Farber Schreck (Brownstein) as well as Brownstein's one-time lobbyist and current nominee to be Secretary for the Department of the Interior, David Bernhardt. This request follows public reporting that indicates Mr. Bernhardt may have engaged in covered lobbying activities as defined by 2 U.S.C. §1602 during the first quarter of 2017 after deliberately deregistering as a lobbyist in Brownstein's fourth quarter filing for 2016.<sup>1</sup>

LDA filings show Mr. Bernhardt registered to lobby for Brownstein on behalf of the Westlands Water District (Westlands) on March 30, 2011.<sup>2</sup> Westlands is the largest agricultural water district in the United States, located in central California.<sup>3</sup> Public reporting indicates Mr. Bernhardt ran Brownstein's natural resources department.<sup>4</sup> Brownstein filed its 2016 fourth quarter report on November 18, 2016—one week after the 2016 presidential election—terminating Mr. Bernhardt's lobbying status effective the same day.<sup>5</sup> Public reporting at the time indicates Mr. Bernhardt "delisted himself as a lobbyist in November after Trump won the election to avoid running afoul of the new president's ban on lobbyists joining his administration."<sup>6</sup>

Public reporting and documents obtained via public records laws show that Mr. Bernhardt maintained his relationship with Westlands after his lobbyist deregistration on November 18, 2016 and may have engaged in repeated lobbying contacts with covered federal legislative branch officials as defined by 2 U.S.C. §1602. On November 22, 2016, Mr. Bernhardt agreed to join a conference call with Westlands and the offices of Representative Devin Nunes and former Representative David Valadao to discuss upcoming legislative efforts.<sup>7</sup> A complaint filed with your office in 2017 included copies of emails showing Mr. Bernhardt acted as an intermediary for covered federal legislative branch officials, including the legislative director for then-Representative Valadao, and Westlands on December 9, 2016 and January 2, 2017.<sup>8</sup> In both cases, Mr. Bernhardt appears to have provided his lobbying client, Westlands, with information related to legislative efforts that Brownstein disclosed lobbying activity for on behalf of Westlands in its 2016 fourth quarter amended filing and 2017 first quarter filing.<sup>9</sup> New reporting

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by the New York Times shows that Mr. Bernhardt was also in contact with a covered Senate employee in December 2016.<sup>10</sup> On March 8, 2017, Brownstein sent Westlands an invoice for \$27,432.68 for “Federal Lobbying,” including an itemized list of expenses related to Mr. Bernhardt’s January 2017 travel to California for a “Westlands” trip.<sup>11</sup>

On April 20, 2017, Brownstein filed its 2017 first quarter LDA disclosure showing Westlands paid the firm \$70,000 for lobbying services related to H.R. 1769, the San Luis Unit Drainage Resolution Act, among other legislation.<sup>12</sup> The legislation was sponsored by then-Representative Valadao, one of the members of the House of Representatives who Mr. Bernhardt appears to have been in contact with on November 22, 2016 and January 2, 2017. The legislation was a long-standing priority for Westlands that would implement a financially beneficial agreement between Westlands and the United States government.<sup>13</sup> Brownstein’s 2017 first quarter disclosure was filed shortly after the firm sent Westlands the March invoice for Mr. Bernhardt’s February 2017 “federal lobbying” (as described in the invoice) activity. It is not clear whether Brownstein reported the \$27,432.68 as part of the \$70,000 income from Westlands for the firm’s 2017 first quarter lobbying activity.

According to a July 18, 2017 media report, a Westlands representative claimed Bernhardt ceased all lobbying activity “the moment he deregistered as a lobbyist.”<sup>14</sup> In May 2017, during his confirmation process to be Deputy Secretary of the Department of the Interior, Mr. Bernhardt also confirmed in writing to the U.S. Senate Committee on Energy and Natural Resources he had “not engaged in regulated lobbying on behalf of Westlands Water District after November 18th, 2016.”<sup>15</sup> When one of my colleagues requested he provide complete records relating to any communications he had with covered legislative branch officials after his date of de-registration, Mr. Bernhardt refused.<sup>16</sup>

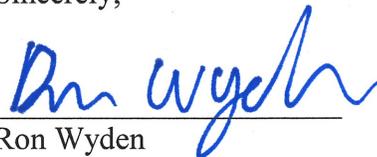
It is my understanding that repeated lobbying contact of covered federal legislative branch officials would require Brownstein’s and Mr. Bernhardt’s continued disclosure. Publicly available guidance provided by the Office of the Clerk of the U.S. House of Representatives appears to reinforce this interpretation (emphasis added):

“The LDA is not specific as to how far into the future the registrant should project an expectation that an individual will act as a lobbyist. It seems neither realistic nor necessary to expect registrants to make such projections beyond the next succeeding quarterly reporting period. Accordingly, if a registrant reasonably expects an individual to meet the definition of a lobbyist in either the current or next quarterly period, the lobbyist should remain in an “active” status. If a registrant does not believe this to be the case, the lobbyist can be delisted from the list of lobbyists for the registrant or client. A registrant may terminate a lobbyist by delisting the name only when (i) that individual’s lobbying activities on behalf of that client did not constitute at the end of the current quarter, and are not reasonably expected in the upcoming quarter to constitute, 20 percent of the time that such employee is engaged in total activities for that client; **or (ii) that individual does not reasonably expect to make further lobbying contacts.**”<sup>17</sup>

The Interior Department's Office of Inspector General recently confirmed that its office is reviewing related allegations that, as Acting Secretary of the Department of Interior, Mr. Bernhardt may have violated his ethics pledge by using his position as a federal employee to benefit Westlands. However, because these new allegations predate Mr. Bernhardt's federal service as Deputy Secretary and Acting Secretary of the Department of Interior, and because your office is responsible for enforcement of the LDA, I am hereby requesting a thorough investigation into potential civil and criminal violations of the LDA by Brownstein and Mr. Bernhardt.

I have attached all referenced materials in the accompanying enclosure. You may contact Malcolm McGearly in my office at 202-224-5244 with any questions.

Sincerely,



Ron Wyden  
United States Senator

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<sup>1</sup> *The New York Times*, Trump's Pick for Interior Dept. Continued Lobbying After Officially Vowing to Stop, New Files Indicate, April 4, 2019; [www.nytimes.com/2019/04/04/climate/david-bernhardt-interior-lobbying.html](http://www.nytimes.com/2019/04/04/climate/david-bernhardt-interior-lobbying.html)

<sup>2</sup> Lobbying Disclosure Act Database, April 15, 2011;

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=4846434C-D50A-4113-8F9D-A842930ABD13&filingTypeID=1>

<sup>3</sup> Westlands website; <https://wwd.ca.gov/about-westlands/>

<sup>4</sup> SFGate, Ex-water district lobbyist named for Interior Department post, May 1, 2017;

[www.sfgate.com/nation/article/Ex-water-district-lobbyist-nominated-for-Interior-11108326.php](http://www.sfgate.com/nation/article/Ex-water-district-lobbyist-nominated-for-Interior-11108326.php)

<sup>5</sup> Lobbying Disclosure Act Database, November 18, 2016;

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=74C70A3E-8A1A-4CFF-B90C-89DF3C2F66FE&filingTypeID=82>

<sup>6</sup> SFGate, May 1, 2017

<sup>7</sup> Bernhardt email to Westlands Deputy General Manager for External Affairs, November 22, 2016;

<https://assets.documentcloud.org/documents/3896981/WWD-Bernhardt-to-Amaral-Re-Leg-11-22-16-RE.pdf>

<sup>8</sup> Campaign for Accountability Complaint, filed with the U.S. Attorney for the District of Columbia, July 20, 2017;

<https://assets.documentcloud.org/documents/3898130/Bernhardt-Complaint-Final-7-20-17-With-Exhibits.pdf>

<sup>9</sup> Lobbying Disclosure Act Database, January 23, 2017,

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=74C70A3E-8A1A-4CFF-B90C-89DF3C2F66FE&filingTypeID=82>; Lobbying Disclosure Act Database, April 20, 2017;

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=60BA24CD-DE96-48C9-BA98-BA98957A1B82&filingTypeID=51>

<sup>10</sup> *The New York Times*, April 4, 2019

<sup>11</sup> Brownstein invoice, March 8, 2017

<sup>12</sup> Lobbying Disclosure Act Database, April 20, 2017

<sup>13</sup> H.R. 1769 – San Luis Unit Drainage Resolution Act, March 28, 2017; <https://www.congress.gov/bill/115th-congress/house-bill/1769>; *San Francisco Chronicle opinion*, Johnny Amaral, Deputy General Manager for

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Westlands, March 7, 2018; [www.sfchronicle.com/opinion/openforum/article/Westlands-Water-U-S-drainage-settlement-is-fair-12736397.php](http://www.sfchronicle.com/opinion/openforum/article/Westlands-Water-U-S-drainage-settlement-is-fair-12736397.php)

<sup>14</sup> E&E News, Deputy nominee still advising Calif. Water district, July 18, 2017; [www.eenews.net/stories/1060057527](http://www.eenews.net/stories/1060057527)

<sup>15</sup> U.S. Senate Committee on Energy and Natural Resources, May 18, 2017

<sup>16</sup> U.S. Senate Committee on Energy and Natural Resources, May 18, 2017

<sup>17</sup> Office of the Clerk, U.S. House of Representatives, Lobbying Disclosure Act Guidance, Last revised January 31, 2017; [https://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html#section8](https://lobbyingdisclosure.house.gov/amended_lda_guide.html#section8)