

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

February 3, 2017

Mr. Jonathan Su  
Latham & Watkins LLP  
555 Eleventh Street NW, Suite 1000  
Washington, D.C. 20004-1304

Dear Mr. Su:

In letters dated August 29, 2016, and September 30, 2016, the Committee requested documents and communications relating to Mylan's price increases for the EpiPen. While the Committee appreciates that Mylan has produced some materials in response to the Committee's requests, we require Mylan's full and complete cooperation. To date that has not occurred, and your client's stated refusal to produce documents central to the Committee's investigation raises serious questions about Mylan's future willingness to cooperate.

Despite numerous verbal and written requests by Committee staff, Mylan continues to refuse to produce specific documents and communications the Committee requires. For example, in the September 30, 2016, letter, the Committee prioritized: "All agreements, contracts, and communications to or from manufacturers, suppliers, distributors, wholesalers, insurers, pharmacy benefit managers, retail pharmacies, and any other partners in the distribution channel for EpiPens, referring or relating to EpiPens."<sup>1</sup> This request followed Chief Executive Officer Heather Bresch's September 21, 2016, testimony before the Committee that the company's steep price increases are justified because a substantial portion of the \$608 wholesale acquisition price for the EpiPen goes to "other people in the supply chain, the pharmacy benefit managers, retail pharmacy, wholesalers and insurers."<sup>2</sup>

Despite repeated requests for all materials responsive to this specific document request, to date Mylan has only produced a limited subset of these documents, with significant redactions. Although Mylan permitted Committee staff to review this limited subset of contracts without redactions *in camera*, Mylan refuses to produce them in unredacted form to the Committee, nor has Mylan allowed Committee staff to review the complete set of responsive documents *in camera*. On January 13, 2017, you stated in an email to Committee staff that "Mylan has

---

<sup>1</sup> Letter from Jason Chaffetz, Chairman, and Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Ms. Heather Bresch, Chief Executive Officer, Mylan, Inc. (Sept. 30, 2016).

<sup>2</sup> *Reviewing the Rising Price of EpiPens: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 114<sup>th</sup> Cong. 108 (Sept. 21, 2016) (testimony of Heather Bresch, Chief Executive Officer, Mylan, Inc.).

responded appropriately to the Committee's request for information on this subject" and requested an explanation of the Committee's "rationale for the request."<sup>3</sup>

Given that the Committee already discussed this request with you,<sup>4</sup> and that Mylan still has not produced all agreements, contracts and communications responsive to this request, the Committee's request is not satisfied, and your statements to the contrary are factually misplaced. We therefore now require that Mylan make all requested materials available in the *in camera* setting by February 28, 2017, and further produce unredacted copies of these documents to the Committee.

Similarly, Mylan continues to refuse to provide the Committee with information about its Medicaid rebate payments, despite repeated requests that you prioritize this information. Your client's ongoing refusal to provide this information creates the impression that Mylan is attempting to conceal information about its Medicaid rebate payments from the Committee. Mylan has asked to defer this request while the settlement with the Department of Justice regarding Mylan's classification of the EpiPen for purposes of the Medicaid rebate program is pending. Committee staff have articulated the Committee's position that its requests do not directly implicate materials Mylan's attorneys are creating in response to the Department of Justice's investigation, however, and have asked Mylan to prioritize the production of this information. On December 15, 2016, Committee staff informed Mylan that its request to defer producing the Medicaid rebate information is not acceptable.<sup>5</sup>

Furthermore, Mylan only recently began producing email communications to the Committee, and the Committee remains empty handed on a number of fronts given the company's slow production of largely non-substantive emails. The bulk of the emails produced to date appear to be mass distribution emails circulating press clips, publicly available investment firm analyst reports, and a handful of presentations. Committee staff also requested that Mylan prioritize the production of responsive emails from CEO Heather Bresch and Chairman Robery Coury, and yet we have received few substantive emails containing Mrs. Bresch or Mr. Coury.

In light of Mylan's many failures to respond adequately, Committee staff requested a custodian list and search terms relating to your search for responsive communications to better understand how responsive materials are being identified by the company, but Mylan has declined our repeated requests for this information. On December 9, 2016, your team provided

---

<sup>3</sup> Email from Counsel for Mylan, Inc. to Committee Staff, H. Comm. on Oversight & Gov't Reform (Jan. 13, 2017, 6:47 a.m.) (on file with the Committee).

<sup>4</sup> This request was specifically discussed during calls between Committee Staff and Counsel for Mylan, Inc. on October 24, 2016 and November 2, 2016. These documents are directly related to the Committee's inquiry into Mylan's price increases for the EpiPen, especially given Ms. Bresch's September 21, 2016 testimony before the Committee. Furthermore, the Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

<sup>5</sup> Email from Committee Staff, H. Comm. on Oversight & Gov't Reform, to Counsel for Mylan, Inc. (Dec. 15, 2016, 4:37 p.m.) (on file with the Committee).

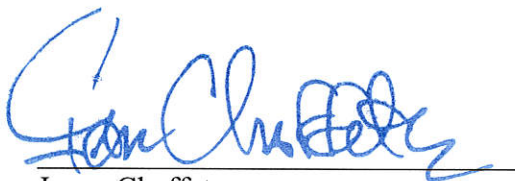
Mr. Jonathan Su  
February 3, 2017  
Page 3

Committee staff with a list of current and former voting members of the Mylan Specialty Pricing Committee, identifying some—but not all—members as preliminary document custodians.<sup>6</sup>

Mylan must comply with all of the Committee's requests for documents and communications and must do so in a timely manner. Anything less than a complete and timely cooperation may result in a subpoena *duces tecum* and an invitation to testify on all outstanding requests.

If you have any questions about this request, please contact Natalie Turner of the Committee's Majority staff at (202) 225-5074 or Alexandra Golden of the Committee's Minority staff at (202) 225-5051. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Elijah E. Cummings  
Ranking Member

---

<sup>6</sup> Email from Counsel for Mylan, Inc. to Committee Staff, H. Comm. on Oversight & Gov't Reform (Dec. 9, 2016, 5:39 p.m.) (on file with the Committee).