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May 27, 2021

Hon. Steve Johnson  
Michigan House of Representatives  
House Oversight Committee Chair  
State Capitol  
P.O. Box 30014  
Lansing, MI 48909

Dear Chair Johnson:

I serve as legal counsel to the Whitmer for Governor candidate committee and Michigan Transition 2019. I am in receipt of your May 22, 2021 letter addressed to Governor Gretchen Whitmer. As the majority of your questions relate to the activities of my clients, I will respond to your inquiries. In addition, I want to set the record straight on issues related to payment for the Governor's March 2021 trip.

Michigan Transition 2019 is organized as a Michigan nonprofit corporation. It is recognized as a tax-exempt social welfare organization under Internal Revenue Code Section 501(c)(4). It also has registered assumed names of "Michigan Inaugural 2019" and "Executive Office Account." Contributions to Michigan Transition 2019 are not deductible as charitable contributions. Thus, any expenditures from Michigan Transition 2019 have not been subsidized by charitable contributions.

Article II of the Articles of Incorporation of Michigan Transition 2019 describe the purposes for which it is established. Those purposes relevant to the current situation include:

- To operate for the promotion of civic action and social welfare by promoting the common good and general welfare of the residents of, and visitors to, the State of Michigan.
- To educate legislators, state officers, and the general public on issues facing Michigan and the United States.
- To advocate citizen participation and obtain support for public policies in Michigan.

The exempt activities of Michigan Transition 2019 are not limited to its original purpose of supporting the transition of Governor Whitmer and her inaugural ceremony. As such, the

expenditures made by Michigan Transition 2019 since its inception were made consistently with its purposes by, in many cases, lessening the use of taxpayers' dollars and the burden of government. This includes expenses for travel, staff, food, postage, and research when those activities are related to the exempt activities of Michigan Transition 2019.

In addition, let me share several facts and the timeline for Governor Whitmer's trip to visit her father. On or around March 8, 2021, an aide to Governor Whitmer's office contacted PVS to ask whether PVS had an aircraft that could fly her on a trip to Florida. The rationale for securing a non-commercial flight was security, as Governor Whitmer has been the subject of extraordinary threats to her life. As you are aware, right now more than a dozen militia members are being prosecuted in state and federal court based on an alleged attempt to kidnap and likely kill the governor. PVS responded to the outreach the next day and indicated that it did have an aircraft. On March 10, 2021, PVS was provided with an itinerary for the flight and arranged for a flight to depart on March 12 and return on March 15, 2021.

As stated by the Governor's office, this was a two-day weekend trip to visit her ailing father, with a travel day on each side of the visit. I have been informed that leading up to and prior to this trip, the Michigan State Police adhered to all protocols at all times during this trip. The Governor's office has also indicated that during the trip, the Governor followed all MDHHS epidemic orders. Michigan has not had any limitations on travel for nearly a year. Although I cannot speak for the Governor's office, my understanding is that the State does not provide details regarding security for the Governor, especially given the very real and ever-present threats to her life.

That said, the Governor and her security detail were on the flight to visit her father. The return flight included her daughters who had been helping manage her father's health issues for several weeks while maintaining their college and high school virtual schedules. No other people were on the flights besides the Governor, her children on the return flight, her security detail, and the flight crew.

On March 19, 2021, an aide to Governor Whitmer's office contacted PVS to determine the cost of the flight. PVS responded to the request but did not issue an invoice or request payment at that time. The value of the flight was \$27,521. PVS later received payment in the amount of \$27,521.00 (the "Payment") from Michigan Transition 2019.

At the time the Payment was issued, both PVS and Michigan Transition 2019 believed that the Payment was being made in compliance with all applicable laws. PVS assumed that the Payment was made pursuant to 14 C.F.R. § 91.321 (Carriage of Candidates in Elections). Under federal tax laws and state nonprofit law, Michigan Transition 2019 may pay expenses related to the carrying out of its exempt purposes. It was determined that the expense of the non-commercial flight was reasonable and necessary given the serious and varied threats to the personal safety of the Governor as advised by security experts. Only because of media reports on these issues did PVS and Michigan Transition 2019 learn that a miscommunication occurred between them with respect to the source of the payment for the flight.

Notwithstanding that the payment of the trip was a proper expense of Michigan Transition 2019 under tax and nonprofit law, legal counsel for PVS advised Michigan Transition 2019 on May 17 that because of PVS' status as a Part 91 operator, FAA rules do not allow the operator to

accept any flight reimbursements except from a candidate campaign committee. Based on this new understanding, the cost of the flight will now be paid from the Whitmer for Governor campaign fund consistent with FAA rules. Although not required by law, the Governor is also voluntarily reimbursing the Whitmer for Governor candidate committee for an amount equivalent to the cost of a first-class commercial airline ticket for herself and her daughters.

Payment for the flight by the Whitmer for Governor candidate committee is also permissible under the Michigan Campaign Finance Act. MCL 169.209 permits candidate committees to make expenditures for incidental expenses “paid or incurred in carrying out the business of an elective office.” Under the law, these expenses include but are not limited to “unreimbursed [expenses] for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.”

As you know, the threats against the Governor’s life are well-documented. Commercial flights were deemed not reasonable for security reasons at that time. Moreover, as the Governor’s office has stated, while outside the state the Governor maintained her official schedule and conducted scheduled meetings. The payment for the additional security costs by an entity other than the State lessened the burden on taxpayers. But for her elected office, the Governor would not have incurred the security expenses for travel to see her ailing father on short notice. This legal conclusion is consistent with MCL 169.209 and the April 15, 2021 interpretive statement of the Secretary of State’s office to Representative Kevin Hertel, which confirmed that security expenses necessary to protect the health and welfare of an elected official that would not otherwise have been incurred but for the person’s status as an elected official can be considered a necessary and reasonable expense under the Michigan Campaign Finance Act.

We understand that PVS is still working with the FAA to address its questions related to these issues. Once we are informed by PVS that the FAA has resolved its inquiry, the Whitmer for Governor candidate committee will issue a check to PVS. The July 2021 campaign finance report of the Whitmer for Governor candidate committee will reflect this transaction in compliance with the Michigan Campaign Finance Act.

You also raised questions regarding Governor Whitmer’s travel in January 2021 to Washington, D.C. to attend the Inauguration of President Biden, an event for which the Governor served as co-chair. Again, the Governor’s travel was compliant with applicable law. Although it could have been, the cost of the flight was not borne by the taxpayers of Michigan.

Governor Whitmer travelled on a non-commercial plane operated by Solomon Plumbing Co. on January 19 and January 21, 2021. The value of the flight was \$22,670. The plane is operated under Part 91 of the FAA regulations. For the reasons discussed above, and even though the trip was in furtherance of the Governor’s official duties, the Whitmer for Governor campaign committee issued a check for the value of the flight. In compliance with the Michigan Campaign Finance Act, this transaction will be reported on the July 2021 report for the Whitmer for Governor candidate committee.

Finally, the Governor’s March 2021 trip has drawn significant attention the last several weeks. Responses to questions were based on the information and understanding my clients or I had at each point in time. As additional information was shared or learned, we sought to provide

additional clarity. Ensuring the Governor's security, while lessening any burden on taxpayers, has always been our top priority.

Thank you for your attention to these matters.

Sincerely,

CLARK HILL PLC

A handwritten signature in blue ink that reads "Chris M. Trebilcock". The signature is written in a cursive style with a large initial "C".

Christopher M. Trebilcock