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September 4, 2014

Federal Election Commission
Office of Complaints, Examination and Legal Administration
Attn: Kim Collins, Paralegal
999 E. Street, NW
Washington, DC 20463

RE: MUR 6855; Michigan Industrial Tools, Inc.; Response

Dear Ms. Collins,

In the above-referenced-matter, we intend to stand on the Response of Justin Amash for Congress, Mr. Justin Amash, and Mrs. Stacey Chalfoun, Treasurer. I have included a courtesy copy of the Response with this letter.

Regards,

Tyler Gaastra
Company Counsel
Michigan Industrial Tools, Inc.

Enclosure

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September 4, 2014

By Federal Express Delivery

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Kim Collins, Paralegal
999 E Street, N.W.
Washington, DC 20436

Dear Ms. Collins:

Re: MUR 6855; Response of Justin Amash for Congress and Mrs. Stacey Chalfoun, Treasurer (the "Committee") and Justin Amash

INTRODUCTION

This office represents the above-referenced Committee and Justin Amash,[1] which have received a complaint (the "Complaint") designated Matter Under Review ("MUR") 6855 by the Federal Election Commission (the "Commission"). This letter responds to the Complaint filed with the Commission on or about July 18, 2014 by Stephen Grimm, which indicates that a "potentially" improper corporate contribution was made to the Committee back in 2010, when Justin Amash[2] received compensation from his family's hand tool business, Michigan Industrial Tools ("MIT")[3]. The allegation is based on Justin's 2010 financial disclosure, which correctly shows that Justin, prior to becoming a congressman, received a total of $200,000 in annual salary and performance bonus from MIT in 2010.

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[1] Please see attached Statement of Designation of Counsel signed by Justin Amash.
[2] Congressman Amash will be called "Justin" throughout this response because several Amash family members are discussed.
[3] MIT was formerly known as Amash Imports, Inc.

The Complaint's only allegation is that $200,000 "was in excess of any reasonable amount" that Justin could have earned for his work four years ago.[4] Yet, Mr. Grimm (the "Complainant") does not know -- and does not claim to know -- anything about that work. Justin's 2010 compensation was in line with his compensation in past years and consistent with the company's policies. Justin's compensation was in no way related to his campaign. Mr. Grimm has not offered, and cannot offer, any evidence to the contrary.

In fact, Mr. Grimm implicitly concedes that the present claim is unsubstantiated by using hedge words throughout the Complaint (the compensation was "potentially improper";[5] Justin "may have received"[6] improper contributions).

When this frivolous claim was brought to the local media prior to the August 5, 2014 election, it gained no traction. Significantly, the editor of the local paper refused to put it into print after hearing the facts from an MIT representative, Nancy Hill. Needless to say, a legal proceeding demands a tougher standard than local media. However, even local media found this claim wanting.

According to the Commission:[7]

> "The Commission will make a determination of "no reason to believe" a violation has occurred when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law."

The present situation illustrates that a "no reason to believe" determination is warranted. The Complaint, this response, and public information do not provide any inference that a violation has occurred. In fact, as demonstrated in the "Background" section of this letter below, all facts point consistently to the same conclusion: That Justin was paid for employment pursuant to the established compensation plan of MIT. Beyond that, the Complaint is deficient on its face so a response should not be required. Finally, the compensation paid to Justin in 2010 is not a contribution to the Committee because this compensation satisfied each of the three regulatory factors of 11 C.F.R. 113.1(g)(6)(iii). Accordingly, the Commission should find that there is no reason to believe that either the Committee or Justin violated the Federal Election Campaign Act.

[4] See Complaint, page 2.
[5] See Complaint, page 2.
[6] See Complaint, page 1.
[7] See Guidebook for Complainants and Respondents on the FEC Enforcement Process (May 2002), page 13.

BACKGROUND

Justin Amash is one of the owners of Michigan Industrial Tools, his family's hand tool business. Justin has been a U.S. Representative in Congress since January 2011. Prior to holding that office, Justin was a business lawyer and a state representative in Michigan. He has a bachelor's degree and law degree from the University of Michigan.

MIT is a private, medium-sized business in Wyoming, Michigan. Justin and his family members own all of the shares. Justin's father, Attallah, and his two brothers, John and Jeff, run the company.

Attallah Amash started the company from scratch. Like his two brothers, Justin began working for his father's business while still in school. John and Jeff now work for the business full-time, but Justin does not. Justin left the business entirely at the start of 2011 when he entered Congress.

Attallah compensates his sons for their work, assistance with management, and input on strategic direction. Especially because Attallah has minimal formal education, he places a high value on his sons' education and experience. The compensation is based on their contributions to the company and has not been tied directly to hours worked.

In the years 2007 to 2009, which are not directly relevant here, but are being discussed for context, Justin was compensated as follows:

2007: $140,000
2008: $135,000
2009: $60,000

In each of these years, Attallah, John, and Jeff set Justin's compensation by considering a number of factors including: talent and ability, hours worked, and specific contributions. The company believes that talented, trustworthy individuals should be compensated at or near the top of the market for the industry. Moreover, Justin's compensation was typically lower than Jeff's and John's compensation because each brother brought similar qualifications to the job, but Justin more often had other time commitments.

In 2010, Justin ran for Congress. He remained a consultant for MIT. For this work, Justin continued to receive compensation at his 2009 rate of $60,000. At the time Justin became a Federal candidate, his title and responsibilities for MIT were unchanged as a result of his status as a Federal candidate. Justin's continued employment with MIT constituted *bona fide* employment with MIT. Any compensation paid by MIT to Justin was in consideration for the services provided by Justin to MIT. In 2010, the compensation paid to Justin was comparable to compensation paid to other executives of MIT pursuant to an established compensation plan. The factors that determined Justin's 2010 compensation were the same factors used in prior years.

In 2010, Justin's compensation was $200,000, which consisted of:

$60,000 (base salary)
$40,000 (mid-year performance bonus to John, Justin, and Jeff because of unexpectedly high revenue)
$100,000 (year-end bonus paid on Dec. 27, 2010)

After winning the general election in November 2010, Justin decided that he should leave the company before entering Congress. His father and brothers chose to pay him the year-end bonus to recognize his contributions to the company and, especially, his leading role the prior year in creating the company's highly successful TEKTON line of hand tools.

In 2009, Justin personally came up with the brand name, TEKTON, and worked to develop the TEKTON packaging style and brand identity. In 2010, the TEKTON line was the top-selling hand tool brand for the company. It is now featured in multiple brick-and-mortar retail chains and is a popular hand tool brand in the Internet retail channel. It has generated more than $10 million in new sales for MIT.

Attallah, John, and Jeff concluded that TEKTON's success warranted that Justin receive a substantial bonus. Furthermore, as noted, the bonus was paid after the election had already ended and could not be influenced.

Significantly, Mr. Grimm has not attempted to provide any evidence of a connection between Justin's 2010 MIT compensation and the election. He has just asserted that Justin's compensation was "unreasonable." Such a claim is unsupported and contrary to MIT's established compensation plan.

THE COMPLAINT IS DEFICIENT ON ITS FACE

The Complaint's general speculation that "potentially improper corporate contributions" [8] were received in 2010 is insufficient to find reason to believe that the Committee or Justin violated the Federal Election Campaign Act of 1971 as amended (the "Act"). It cannot be overemphasized that the Complaint's sole allegation of a "potentially" improper corporate contribution is as follows:

> "No Amash Imports, Inc. contribution was reported on Amash' campaign FEC Report, yet his compensation was in excess of any reasonable amount he could have earned for his work."[9]

[8] See Complaint, page 2.
[9] See Complaint, page 2.

Significantly, because the Complaint provides no evidence as to a "reasonable" amount of compensation, the Complaint stops short of actually alleging a violation of the Act:

> "These personal financial disclosures showed that the $180,000 in payments from May to December 2010 were not investment income from the company to Justin Amash but were potentially improper corporate contributions." (emphasis added)[10]

Rather, the Complaint is left to conclude only that a violation "potentially" has occurred and does not allege that a violation actually "has occurred" thereby requiring its dismissal under the Act.[11]

Accordingly, the Complaint is deficient on its face. The Commission regulations state that a complaint "should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and . . . [i]t should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant."[12] The Complaint does not meet this standard and forces the Committee and Justin into responding to pure speculation. The enforcement system will be abused unless the Commission requires concrete and specific factual information as required by Commission regulations. Stated differently, unless the Commission takes its pleadings standard seriously, the Commission procedures increasingly will be abused as a governmentally-sanctioned political weapon against core First Amendment activity. Accordingly, the Commission should summarily dismiss the Complaint under 11 C.F.R. § 111.5.

JUSTIN AMASH WAS COMPENSATED IN ACCORDANCE WITH THE ESTABLISHED COMPENSATION PLAN OF MICHIGAN INDUSTRIAL TOOLS

To the extent that the Committee and Justin are forced to respond in this matter, we note that the Commission recognizes that "an individual may pursue gainful employment at the time he or she is a candidate for a Federal office."[13] Continued employment and candidacy for office are not mutually exclusive.[14]

In reviewing these situations, the Commission indicates that so long as Justin was compensated in 2010 in accordance with the established compensation plan of MIT, the compensation paid to Justin will not constitute a contribution to the Committee.[15]

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[10] See Complaint, page 2.
[11] 2 U.S.C. § 437g(a)(1) allows a person to file a complaint only if the person believes that a violation of the Act "has occurred" not "potentially" has occurred.
[12] 11 C.F.R. § 111.4(d)(3) and (4).
[13] Advisory Opinion 1977-45 (Martin) citing Advisory Opinions 1977-31 (Berman), 1976-70 (National Republican Congressional Committee) and the Commission's response to AOR 1976-84.
[14] Advisory Opinion 2006-13 (Spivack) citing Advisory Opinion 1979-74 (Emerson).
[15] See Advisory Opinion 2006-13 (Spivack).

Corporations, such as MIT, are prohibited from making contributions to Federal candidates or their authorized committees.[16] Payments of compensation to a candidate shall be considered contributions from the payer to the candidate unless:[17]

The compensation results from bona fide employment that is genuinely independent of the candidacy;

The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

According to the Commission's Office of the General Counsel:[18]

> "Compensation that meets these requirements is not subject to the requirements of the Act."

Based on the facts of this situation, the compensation paid to Justin in 2010 is not a contribution to the Committee because this compensation satisfied each of the three regulatory factors of 11 C.F.R. 113.1(g)(6)(iii). First, the compensation resulted from Justin's "*bona fide* employment" with MIT which was "genuinely independent" of his candidacy.[19] Justin worked as a consultant for MIT from 2007 through 2010. No decision by MIT to retain Justin was dependent upon, or even in any way related to, Justin's candidacy for Federal office in 2010. Furthermore, Justin's duties as consultant for MIT did not change after he became a candidate. Significantly, the Complaint does not challenge that compensation paid to Justin in 2010 resulted from his *bona fide* employment that was genuinely independent of his candidacy for Federal office. Therefore, any fees paid to Justin in 2010 for services rendered to MIT were paid independent of his candidacy.

Second, Justin's compensation in 2010 from MIT was exclusively in consideration of services provided by Justin as part of his employment by MIT.[20] In 2010, Justin was compensated only for his duties on behalf of MIT, and not for any activities that he undertook as a candidate or on behalf of any other organization. Again, the Complaint does not contest this factor. Consequently, Justin's entire compensation from MIT in 2010 was in consideration of the services he provided to MIT.

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[16] 2 U.S.C. 441b(a); 11 C.F.R. 114.2(b)(1).
[17] 11 C.F.R. 113.1(g)(6)(iii); *see, e.g.*, Advisory Opinion 2011-27 (New Mexico Voices for Children) (applying section 113.1(g)(6)(iii) to determine whether compensation paid to candidate would be contribution); Advisory Opinion 2006-13 (Spivack) (same); Advisory Opinion 2004-17 (Klein) (same); Advisory Opinion 2004-08 (American Sugar Cane League) (same).
[18] MUR 5260 (Talent for Senate Committee), First General Counsel's Report dated December 19, 2002, page 17.
[19] 11 C.F.R. 113.1(g)(6)(iii)(A).
[20] 11 C.F.R. 113.1(g)(6)(iii)(B).

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Third, Justin's compensation from MIT in 2010 did not exceed the amount that would be paid to any other similarly qualified person for the same work over the same period of time.[21] Although the Complaint alleges that Justin's compensation was in "excess of any reasonable amount he could have earned for his work",[22] the Complaint fails to offer any evidence to support this contention. As indicated in the "Introduction" and "Background" sections of this letter, as supported by the attached Affidavit of Nancy Hill,[23] Justin was compensated in accordance with the established compensation plan of MIT in 2010.

Therefore, based on the facts of this situation, the compensation paid to Justin Amash in 2010 is not a contribution to the Committee because this compensation satisfies each of the three regulatory factors of 11 C.F.R. 113.1(g)(6)(iii).

CONCLUSION

Accordingly, the evidence in this matter demonstrates that any charges are baseless and subject to dismissal under 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6. In contrast to the conjecture set forth in the Complaint, the facts of this matter, as verified by the attached Nancy Hill Affidavit, demonstrate that the Committee did not receive a corporate contribution in 2010 from MIT. But again, the Committee and Justin should not have been put to the burden of making such a demonstration and the Commission need not rely on it to dispose of the Complaint. Nonetheless, if the Commission does determine to examine the merits of the Complaint, as demonstrated by the evidence in this matter, the Commission should find that there is no reason to believe that the Committee or Justin violated the Federal Election Campaign Act.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC

Eric E. Doster

/mka/dr

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[21] 11 C.F.R. 113.1(g)(6)(iii)(C).
[22] Complaint, page 2.
[23] A copy of this Affidavit is attached; if the Commission requires the original Affidavit, please contact the undersigned.