

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

**Taotao USA, Inc.,
Taotao Group Co., Ltd., and
Jinyun County Xiangyuan Industry
Co., Ltd.,

Respondents.**

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**Docket No.
CAA-HQ-2015-8065**

RESPONDENTS’ MOTION FOR LEAVE TO FILE AMENDED ANSWERS

COME NOW Respondents Taotao USA, Inc. (Taotao USA), Taotao Group Co., Ltd. (Taotao Group), and Jinyun County Xiangyuan Industry Co. Ltd. (“JCXI”) and file their First Amended Answers to the Amended Complaint (“Amended Answers”), together with this Motion for Leave, respectfully requesting leave to file their Amended Answers after the deadline to file motions. Granting this motion will not prejudice Complainant because Complainant was present at the depositions that made Respondents aware of the unintentional mistakes or errors made in their Answers to the Amended Complaint, and the new affirmative defenses have been part of Respondents’ arguments and defenses throughout settlement negotiations. Complainant is opposed to this motion.

Respondents seek to amend their answers to paragraphs 4, 12 and 13 which they unknowingly and inadvertently admitted. Discovery and further investigations have revealed that the answers to said paragraphs may not be accurate. Additionally, Respondents’ seek to assert the following additional defenses: mistake, violation of Respondents’ civil rights and right to equal protection, waiver and estoppel.

Although Respondents had previously made arguments relying on some or all of the additional defenses during settlement negotiations, the necessity of these defenses was realized

after Complainant voluntarily provided attachments to certain emails identified in Complainant's exhibits, such as CX069 and CX073. The attached documents included inspection reports, photographs, and catalytic converter test plan and test results. The documents show that Respondents' inspected vehicles, removed catalytic converters and tested them to determine precious metal concentrations for some or all of the engine families, or their predecessors identified in the Amended Complaint.

For the foregoing reasons, Respondents' move the Presiding Officer to grant them leave to make amendments to their Answers to the Amended Complaint and assert additional defenses.

Respectfully Submitted,



10/02/17
Date

William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
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CERTIFICATE OF SERVICE

This is to certify that the foregoing motion in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judge's E-Filing System.

I certify that a copy of the foregoing motion was sent this day via electronic mail to the following e-mail addresses for service on Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov, Robert Klepp at Klepp.Robert@epa.gov, and Mark Palermo at Palermo.Mark@epa.gov.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'William Chu', written in a cursive style.

10/02/17
Date

William Chu

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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**Docket No.
CAA-HQ-2015-8065**

**RESPONDENT TAOTAO USA, INC.’S FIRST AMENDED ANSWER TO THE
AMENDED COMPLAINT, AND REQUEST FOR HEARING**

Respondent, Taotao USA, Inc. (“Taotao USA”) by and through its Attorney of Record, William Chu, files this Amended Answer and Request for Hearing and by way of response to the Complaint, admits, denies and alleges as follows:

RESPONSE TO PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint contains allegations about the authority under which the Complaint is issued. Such allegations constitute conclusions of law, which Respondent is not required to admit or deny. Further, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the authority under which the Complaint is issued, conclusions about the regulatory status of certain materials, and the legality of the management thereof and therefore cannot admit same. To the extent any allegation in Paragraph 1 of the Complaint is not specifically admitted, it is denied and Respondent demands strict proof thereof.
2. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
3. Admitted.

4. Respondent admits that Taotao USA is a corporation organized under the laws of Texas. Respondent is unable to admit or deny the second part of this paragraph as it is overly broad and vague as to the time-period being referred to. Subject thereto and without waiving the same, denied.
5. Admitted.
6. Admitted.
7. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
8. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
9. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
10. Admitted.
11. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
12. Respondent is unable to admit or deny this statement as it is overly broad and vague as to the time-period being referred to. Subject thereto, and without waiving the same, denied.
13. Denied.
14. Admitted.
15. Admitted.
16. Admitted to the extent that the COC applications include a contractual agreement between Taotao Group Co., Ltd (Taotao Group) and Taotao USA in which Taotao Group appoints Taotao USA as its agent for service of process from EPA, otherwise denied.

17. Admitted to the extent that the COC applications include a contractual agreement between Jinyun County Xiangyuan Industry, Co., Ltd. (“JCXI”) and Taotao USA in which JCXI appoints Taotao USA, Inc. as its agent for service of process from EPA, otherwise denied.

18. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

RESPONSE TO JURISDICTION

19. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

20. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

21. This Paragraph contains statements of law that Respondent is not required to admit or deny. Respondent has no knowledge of what the Administrator and Attorney General determined for this matter. Subject thereto and without waiving same, denied.

22. Admitted.

RESPONSE TO GOVERNING LAW

23. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

24. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

25. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

26. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

RESPONSE TO ALLEGED VIOLATIONS OF LAW

27. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

28. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

29. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

31. Admitted.

32. As to Respondent, Taotao USA admitted.

33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

34. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

35. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

36. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

37. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

38. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first portion of Paragraph 38. Subject thereto and without

waiving same, denied. In regard to Paragraph 38(a), denied. In regard to Paragraph 38(b), denied. In regard to Paragraph 38(c), denied.

39. Admitted.

RESPONSE TO COUNT 1

40. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 39 of the Complaint above.

41. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

42. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

43. Admitted.

44. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

45. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

46. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

47. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

48. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

49. Denied.

RESPONSE TO COUNT 2

50. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 49 of the Complaint above.

51. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

52. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

53. Admitted.

54. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

55. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

56. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

57. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

58. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

59. Denied.

RESPONSE TO COUNT 3

60. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 59 of the Complaint above.

61. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

62. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

63. Admitted.

64. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

65. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

66. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

67. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

68. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

69. Denied.

RESPONSE TO COUNT 4

70. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 69 of the Complaint above.

71. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

72. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

73. Admitted.

74. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

75. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

76. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

77. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

78. Denied.

RESPONSE TO COUNT 5

79. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 78 of the Complaint above.

80. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

81. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

82. Admitted.

83. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

84. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

85. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

86. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

87. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

88. Denied.

RESPONSE TO COUNT 6

89. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 88 of the Complaint above.

90. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

91. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC

application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

92. Admitted to the extent that Respondent built the vehicles in the amount referenced in the paragraph. Respondent denies that it was the “manufacturer” for the purposes of COC requirements.

93. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

94. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

95. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

96. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

97. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

98. Denied.

RESPONSE TO COUNT 7

99. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 98 of the Complaint above.

100. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

101. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

102. Admitted.

103. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

104. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

105. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

106. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

107. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

108. Denied.

RESPONSE TO COUNT 8

109. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 108 of the Complaint above.

110. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

111. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

112. Admitted.

113. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

114. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

115. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

116. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

117. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

118. Denied.

RESPONSE TO COUNT 9

119. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 118 of the Complaint above.

120. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

121. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

122. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

123. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

124. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

125. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

126. Denied.

RESPONSE TO COUNT 10

127. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 126 of the Complaint above.

128. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

129. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

130. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

131. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

132. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

133. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

134. Denied.

RESPONSE TO PROPOSED CIVIL PENALTY

135. Paragraphs 135 through 141 do not require specific responses in Respondent's Answer, however to the extent the proposed civil penalty is considered, Paragraphs 137 through 140 purport to summarize portions of the statutes which statutes speak for themselves, and such allegations constitute conclusions of law, to which Respondent is not required to admit or deny. To the extent any allegation in Paragraphs 135 through 141 is not specifically admitted, it is denied and Respondent requests strict proof thereof.

RESPONDENT'S AFFIRMATIVE DEFENSES

Without admission of any issues of fact or law, except as expressly stated above, and with full reservation of all applicable rights and defenses, Respondent requests dismissal or mitigation of the allegations based upon the following factors, all of which are based upon Respondent's information and belief.

1. The Complaint fails to state a claim upon which relief can be granted. Specifically, there have been no allegations of Respondent exceeding emission standards under the Clean Air Act ("CAA").
2. Complainant has not alleged any facts showing that Respondent's conduct was a cause in fact of any release of excess emissions from mobile sources as set forth in Paragraph 23 of the complaint, including hydrocarbons, oxides of nitrogen, and carbon monoxide, nor has Respondent caused any impact to any regulatory scheme.
3. In the event that any catalysts active material was either missing or not present in the quantity or concentration described in the relevant COC applications for the 10 Engine Families, as asserted in the Complaint, such deviations from the COC applications were *de minimis* in their contribution to any potential emission of excess pollutants and were therefore insufficient as a

matter of law under the due process and equal protection rights guaranteed by the United States Constitution and pursuant to the *de minimis* doctrine to give rise to any liability.

4. The regulations implemented by the EPA and asserted against Respondent are unconstitutional and overstep the reaches of Chevron Deference. The Supreme Court in *Chevron* stated that when a statute is ambiguous as to its purpose, agency interpretations are given controlling weight, “unless they are arbitrary, capricious, or manifestly contrary to the statute. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984). The relevant statute from Paragraph 23(b) of the Complaint, Section 213 of the Clean Air Act, states that the EPA has the authority to implement emissions standards to regulate actions that “cause, or significantly contribute to, air pollution which may reasonable be anticipated to endanger public health or welfare.” 42 U.S.C. §7547. Respondent argues that the Governing Law asserted in Paragraphs 23 through 26 of the Complaint is not a reasonable interpretation of Section 213 of the Clean Air Act, as there have been no actual allegations of contributions to air pollution. It is unfair to access a penalty when there has been no assertion of any air pollution.

5. The Complaint alleges in Paragraphs 36 and 37 that the required catalyst active material was either missing or not present in the quantity or concentration described in the relevant COC Applications therefore the catalytic converters do not conform to the design specifications described in the relevant applications for COC’s. Failure to conform to the design specifications described in the applications for COC’s does not mean that the vehicles do not conform in all material respects to the specifications in the COC applications, nor does it mean that the vehicles are uncertified. The requirement that the COC’s conform to the “design specifications in the relevant applications” is not a requirement stated in any applicable statutes or regulations. In fact, the specific language requiring conformity to “design specifications” was deleted from

applicable regulations in 1982. *Compare* 40 C.F.R. 86.437-78, *as amended* and 40 C.F.R. 85.074-309 (1976) (repealed in 1977).

6. Under EPA's Compliance Determination Guidelines ("Guidelines") provided to Respondent Taotao, USA, in 2010, specific violations are listed which *may* make a vehicle/engine uncertified are listed. Instances where a catalyst active material is either missing or not in the concentration described in the COC application is not listed as a violation, which makes a vehicle/engine uncertified. The intentional deletion of this requirement or failure to include it in the Guidelines suggests that such nonconformity does not make a vehicle/engine uncertified, as is required to constitute a violation of the Clean Air Act. Furthermore, the Guidelines list instances in which the vehicle/engine may be uncertified.

7. The EPA has not met its burden of establishing that it has jurisdiction over this matter or that it has the ability to assess a penalty in excess of \$320,000.00. The EPA has provided no proof that the Administrator and the Attorney General jointly determined that this matter is appropriate for an administrative penalty assessment proceeding, beyond a mere assertion in Paragraph 21 of the Complaint. Therefore, the EPA has not proven that it has jurisdiction over this matter through an administrative penalty assessment proceeding.

8. The relief sought is not proper having due regard to the gravity of the violation, the size of Respondent's business, and the effect on Respondent's ability to continue business.

9. Respondent affirmatively states that certification violations are generally not of "major" egregiousness. The Mobile Source penalty policy itself states that "violations should be classified as "Major" if vehicles or engines are uncertified and there is no information about the emissions from these vehicles or engines, or test data of the uncertified engines shows the engines to exceed emissions standards." Respondent argues that information about emissions

from these vehicles and test data is available, and should be analyzed in any penalty policy analysis, if any analysis is performed.

10. The claims asserted by Complainant are barred by the civil rights and rights to equal protection. Respondent asserts that the agency has discriminatorily applied their authority under the relevant statute and regulations against Chinese nationals.

11. Respondent affirmatively asserts the defense of mistake. The catalytic converter concentrations specified in the COC applications were tested for accuracy at Chinese laboratories, which showed that the ratios of the tested catalytic converters matched the precious metal ratios specified in the respective COC applications.

12. Respondent affirmatively asserts the defense of waiver and estoppel. Specifically, Respondent submitted to Complainant, catalytic converter test results pursuant to a test plan preapproved by the agency, from a laboratory preapproved by the agency, after importing vehicles in 2012. The test results showed that the precious metal concentration ratio matched the ratio listed on the COC application. Respondent paid a penalty for submitting the results after importing the vehicles, which the agency accepted.

13. The claims asserted by Complainant may be barred by any or all of the affirmative defenses contemplated by Federal Rules of Civil Procedure. To the extent that Complainant's claims may be barred by one or more of said affirmative defenses not specifically set out above, such defenses cannot be determined until there is further discovery.

RESPONDENT'S REQUEST FOR HEARING

Pursuant to the consolidated Rules of Practice, 40 C.F.R. Part 22, Respondent hereby requests a hearing on this matter in which it will contest allegations of material fact and

applications of law in the Complaint and contest the appropriateness of the proposed penalties in the Complaint.

PRAYER

WHEREFORE, Respondent prays that the Complaint be withdrawn with prejudice in whole or in part as it pertains to Respondent, and for such other relief, at law or in equity, to which Respondent shows itself to be justly entitled.



10/02/17
Date

William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com

CERTIFICATE OF SERVICE

This is to certify that on October 2, 2017 the foregoing Answer was filed and served on the Presiding Officer electronically through the Office of Administrative Law Judges (OALJ) e-filing system.

The undersigned certifies that an electronic copy of foregoing instrument was sent this day for service by electronic mail to Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov; Robert Klepp at Klepp.Robert@epa.gov; and Mark Palermo at Palermo.Mark@epa.gov.

A handwritten signature in black ink, appearing to be 'William Chu', written in a cursive style.

William Chu

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

**Taotao USA, Inc.,
Taotao Group Co., Ltd., and
Jinyun County Xiangyuan Industry
Co., Ltd.,**

Respondents.

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**Docket No.
CAA-HQ-2015-8065**

**RESPONDENT TAOTAO GROUP CO., LTD.’S FIRST AMENDED ANSWER TO THE
AMENDED COMPLAINT, AND REQUEST FOR HEARING**

Respondent, Taotao Group Co. Ltd. (“Taotao Group”) by and through its Attorney of Record, William Chu, files this Amended Answer and Request for Hearing and by way of response to the Complaint, admits, denies and alleges as follows:

RESPONSE TO PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint contains allegations about the authority under which the Complaint is issued. Such allegations constitute conclusions of law, which Respondent is not required to admit or deny. Further, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the authority under which the Complaint is issued, conclusions about the regulatory status of certain materials, and the legality of the management thereof and therefore cannot admit same. To the extent any allegation in Paragraph 1 of the Complaint is not specifically admitted, it is denied and Respondent demands strict proof thereof.

2. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

3. Admitted.

4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
5. Admitted.
6. Admitted.
7. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
8. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
9. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
10. Admitted.
11. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
12. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Subject thereto and without waiving same, denied.
13. Denied.
14. Admitted.
15. Admitted to the extent that the COC applications include a contractual agreement between Taotao Group and Taotao USA, Inc. in which Taotao Group appoints Taotao USA, Inc. as its agent for service of process from EPA, otherwise denied.
16. Admitted to the extent that the COC applications include a contractual agreement between Jinyun County Xiangyuan Industry (“JCXI”) and Taotao USA, Inc. in which JCXI appoints Taotao USA, Inc. as its agent for service of process from EPA, otherwise denied.

17. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

RESPONSE TO JURISDICTION

18. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

19. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

20. This Paragraph contains statements of law that Respondent is not required to admit or deny. Respondent has no knowledge of what the Administrator and Attorney General determined for this matter. Subject thereto and without waiving same, denied.

21. Admitted.

RESPONSE TO GOVERNING LAW

22. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

23. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

24. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied. Second, Respondent denies that every manufacturer must submit a COC application and avers to the definition of “manufacturer” in the statute. Respondent did not apply for the COC in this case, the Importer, Taotao USA, Inc. applied for the COC and the COC’s themselves are issued to Taotao USA, Inc. as the “U.S. Manufacturer or Importer.” Therefore, Respondent Taotao Group should not be subject to the jurisdiction of this court and the regulations asserted herein. Third, the language of the Clean Air

Act (CAA) and related statute in 25(g) is incorrect as it includes the following language “causing another to import” which is not consistent with the actual text of the CAA or related statute. Finally, the language of the regulation in 25(h) is incorrect as it includes the following language “cause another to import,” which is not consistent with the actual text of the cited regulation.

25. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

RESPONSE TO ALLEGED VIOLATIONS OF LAW

26. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

27. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

28. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

29. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

30. Admitted.

31. As to Respondent, Taotao USA Inc. (“Taotao USA”), admitted.

32. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

34. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

35. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

36. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

37. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first portion of Paragraph 38. Subject thereto and without waiving same, denied. In regard to Paragraph 38(a), denied. In regard to Paragraph 38(b), denied. In regard to Paragraph 38(c), denied.

38. Admitted.

RESPONSE TO COUNT 1

39. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 39 of the Complaint above.

40. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

41. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

42. Admitted.

43. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

44. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

45. Respondent is unable to answer this Paragraph as it is overly broad and vague as to what “similarly” means. Subject thereto and without waiving same, denied.

46. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

47. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

48. Denied.

RESPONSE TO COUNT 2

49. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 49 of the Complaint above.

50. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

51. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC

application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

52. Admitted.

53. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

54. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

55. Respondent is unable to answer this Paragraph as it is overly broad and vague as to what “similarly” means. Subject thereto and without waiving same, denied.

56. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

57. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

58. Denied.

RESPONSE TO COUNT 3

59. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 59 of the Complaint above.

60. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

61. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny.

Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

62. Admitted.

63. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

64. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

65. Respondent is unable to answer this Paragraph as it is overly broad and vague as to what “similarly” means. Subject thereto and without waiving same, denied.

66. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

67. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

68. Denied.

RESPONSE TO COUNT 4

69. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 69 of the Complaint above.

70. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

71. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

72. Admitted.

73. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

74. Respondent is unable to answer this Paragraph as it is overly broad and vague as to what “similarly” means. Subject thereto and without waiving same, denied.

75. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

76. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

77. Denied.

RESPONSE TO COUNT 5

78. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 78 of the Complaint above.

79. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

80. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

81. Admitted.

82. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

83. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

84. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

85. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

86. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

87. Denied.

RESPONSE TO COUNT 6

88. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 88 of the Complaint above.

89. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

90. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

91. Admitted to the extent that Respondent built the vehicles in the amount referenced in the paragraph. Respondent denies that it was the “manufacturer” for the purposes of COC requirements.

92. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

93. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

94. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

95. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

96. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

97. Denied.

RESPONSE TO COUNT 7

98. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 98 of the Complaint above.

99. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

100. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

101. Admitted.

102. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

103. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

104. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

105. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

106. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

107. Denied.

RESPONSE TO COUNT 8

108. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 108 of the Complaint above.

109. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

110. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

111. Admitted.

112. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

113. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

114. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

115. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

116. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

117. Denied.

RESPONSE TO COUNT 9

118. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 118 of the Complaint above.

119. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

120. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

121. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

122. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

123. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

124. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

125. Denied.

RESPONSE TO COUNT 10

126. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 126 of the Complaint above.

127. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

128. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

129. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

130. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

131. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

132. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

133. Denied.

RESPONSE TO PROPOSED CIVIL PENALTY

134. Paragraphs 135 through 141 do not require specific responses in Respondent's Answer, however to the extent the proposed civil penalty is considered, Paragraphs 137 through 140 purport to summarize portions of the statutes which statutes speak for themselves, and such allegations constitute conclusions of law, to which Respondent is not required to admit or deny. To the extent any allegation in Paragraphs 135 through 141 is not specifically admitted, it is denied and Respondent requests strict proof thereof.

RESPONDENT'S AFFIRMATIVE DEFENSES

Without admission of any issues of fact or law, except as expressly stated above, and with full reservation of all applicable rights and defenses, Respondent requests dismissal or mitigation of the allegations based upon the following factors, all of which are based upon Respondent's information and belief.

1. The Complaint fails to state a claim upon which relief can be granted. Specifically, there have been no allegations of Respondent exceeding emission standards under the Clean Air Act ("CAA").

2. The Complaint fails to state a claim against Respondent upon which relief can be granted. In Paragraph 27, Complainant alleges that Respondent is a "person" under the CAA. The Clean Air Act prohibits "...in case of a person, the importation into the United States, of any new

motor vehicle or new motor vehicle engine...unless such vehicle is covered by a certificate of conformity...” CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1). Because the Complaint alleges that Respondent is a “person” under the CAA, and because Respondent Taotao Group did not import the subject vehicles or engines into the United States, Respondent Taotao Group is not subject to CAA § 203(a)(1) and 42 U.S.C. § 7522(a)(1). Therefore, Respondent Taotao Group should not be subject to the jurisdiction of this court and the regulations asserted herein. As such the Complaint fails to state a claim upon which relief can be granted against Respondent Taotao Group.

3. Respondent is not subject to CAA § 203(a)(1) 42 U.S.C. § 7522(a)(1) as Respondent was not the “manufacturer” subject to the Certificate of Conformity requirements under the statute. As stated in Paragraph 24(c) of the Complaint, a “manufacturer” means “any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale...” CAA § 216(1), 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801. Taotao USA Inc., not Respondent Taotao Group, was the “manufacturer” for the purposes of Certificate of Conformity requirements. Respondent avers to the definition of “manufacturer” in the statute and denies that every manufacturer, under the plain meaning, must submit a COC application. In fact, Respondent did not apply for the COC in this case. The importer or “manufacturer” under the statute, Taotao USA, Inc. applied for the COC and the COC’s themselves are issued to Taotao USA, Inc. as the “U.S. Manufacturer or Importer.” Therefore, Respondent Taotao Group should not be subject to the jurisdiction of this court and the regulations asserted herein. As such the Complaint fails to state a claim upon which relief can be granted against Respondent Taotao Group.

4. Complainant has not alleged any facts showing that Respondent's conduct was a cause in fact of any release of excess emissions from mobile sources as set forth in Paragraph 23 of the complaint, including hydrocarbons, oxides of nitrogen, and carbon monoxide, nor has Respondent caused any impact to any regulatory scheme.

5. In the event that any catalysts active material was either missing or not present in the quantity or concentration described in the relevant COC applications for the 10 Engine Families, as asserted in the Complaint, such deviations from the COC applications were *de minimis* in their contribution to any potential emission of excess pollutants and were therefore insufficient as a matter of law under the due process and equal protection rights guaranteed by the United States Constitution and pursuant to the *de minimis* doctrine to give rise to any liability.

6. The regulations implemented by the EPA and asserted against Respondent are unconstitutional and overstep the reaches of Chevron Deference. The Supreme Court in *Chevron* stated that when a statute is ambiguous as to its purpose, agency interpretations are given controlling weight, "unless they are arbitrary, capricious, or manifestly contrary to the statute. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984). The relevant statute from Paragraph 23(b) of the Complaint, Section 213 of the Clean Air Act, states that the EPA has the authority to implement emissions standards to regulate actions that "cause, or significantly contribute to, air pollution which may reasonable be anticipated to endanger public health or welfare." 42 U.S.C. §7547. Respondent argues that the Governing Law asserted in Paragraphs 23 through 26 of the Complaint is not a reasonable interpretation of Section 213 of the Clean Air Act, as there have been no actual allegations of contributions to air pollution. It is unfair to assess a penalty when there has been no assertion of any air pollution.

7. The Complaint alleges in Paragraphs 36 and 37 that the required catalyst active material was either missing or not present in the quantity or concentration described in the relevant COC Applications therefore the catalytic converters do not conform to the design specifications described in the relevant applications for COC's. Failure to conform to the design specifications described in the applications for COC's does not mean that the vehicles do not conform in all material respects to the specifications in the COC applications, nor does it mean that the vehicles are uncertified. The requirement that the COC's conform to the "design specifications in the relevant applications" is not a requirement stated in any applicable statutes or regulations. In fact, the specific language requiring conformity to "design specifications" was deleted from applicable regulations in 1982. *Compare* 40 C.F.R. 86.437-78, *as amended* and 40 C.F.R. 85.074-309 (1976) (repealed in 1977).

8. Under EPA's Compliance Determination Guidelines ("Guidelines") provided to Respondent Taotao, USA, in 2010, specific violations are listed which *may* make a vehicle/engine uncertified are listed. Instances where a catalyst active material is either missing or not in the concentration described in the COC application is not listed as a violation, which makes a vehicle/engine uncertified. The intentional deletion of this requirement or failure to include it in the Guidelines suggests that such nonconformity does not make a vehicle/engine uncertified, as is required to constitute a violation of the Clean Air Act. Furthermore, the Guidelines list instances in which the vehicle/engine may be uncertified.

9. The EPA has not met its burden of establishing that it has jurisdiction over this matter or that it has the ability to assess a penalty in excess of \$320,000.00. The EPA has provided no proof that the Administrator and the Attorney General jointly determined that this matter is appropriate for an administrative penalty assessment proceeding, beyond a mere assertion in

Paragraph 21 of the Complaint. Therefore, the EPA has not proven that it has jurisdiction over this matter through an administrative penalty assessment proceeding.

10. The relief sought is not proper having due regard to the gravity of the violation, the size of Respondent's business, and the effect on Respondent's ability to continue business.

11. Respondent affirmatively states that certification violations are generally not of "major" egregiousness. The Mobile Source penalty policy itself states that "violations should be classified as "Major" if vehicles or engines are uncertified and there is no information about the emissions from these vehicles or engines, or test data of the uncertified engines shows the engines to exceed emissions standards." Respondent argues that information about emissions from these vehicles and test data is available, and should be analyzed in any penalty policy analysis, if any analysis is performed.

12. Respondent further asserts that service of the Complaint upon Taotao Group was improper. As Respondent asserts that process and service of process was improper, Respondent affirmatively preserves its objection to process and service of process and further reiterates that nothing in this Answer serves as an admission that service of the Complaint on Respondent was proper.

13. The claims asserted by Complainant are barred by civil rights and rights to equal protection. Respondent asserts that the agency has discriminatorily applied their authority under the relevant statute and regulations against Chinese nationals.

14. Respondent affirmatively asserts the defense of mistake. The catalytic converter concentrations specified in the COC applications were tested for accuracy at Chinese laboratories, which showed that the ratios of the tested catalytic converters matched the precious metal ratios specified in the respective COC applications.

15. Respondent affirmatively asserts the defense of waiver and estoppel. Specifically, Respondent submitted to Complainant, catalytic converter test results pursuant to a test plan preapproved by the agency, from a laboratory preapproved by the agency, after importing vehicles in 2012. The test results showed that the precious metal concentration ratio matched the ratio listed on the COC application. Respondent paid a penalty for submitting the results after importing the vehicles, which the agency accepted.

16. The claims asserted by Complainant may be barred by any or all of the affirmative defenses contemplated by Federal Rules of Civil Procedure. To the extent that Complainant's claims may be barred by one or more of said affirmative defenses not specifically set out above, such defenses cannot be determined until there is further discovery.

RESPONDENT'S REQUEST FOR HEARING

Pursuant to the consolidated Rules of Practice, 40 C.F.R. Part 22, Respondent hereby requests a hearing on this matter in which it will contest allegations of material fact and applications of law in the Complaint and contest the appropriateness of the proposed penalties in the Complaint.

PRAYER

WHEREFORE, Respondent prays that the Complaint be withdrawn with prejudice in whole or in part as it pertains to Respondent, and for such other relief, at law or in equity, to which Respondent shows itself to be justly entitled.

10/02/2017
Date



William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com

CERTIFICATE OF SERVICE

This is to certify that on October 2, 2017 the foregoing Answer was filed and served on the Presiding Officer electronically through the Office of Administrative Law Judges (OALJ) e-filing system.

The undersigned certifies that an electronic copy of foregoing instrument was sent this day for service by electronic mail to Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov; Robert Klepp at Klepp.Robert@epa.gov; and Mark Palermo at Palermo.Mark@epa.gov.



William Chu

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

**Taotao USA, Inc.,
Taotao Group Co., Ltd., and
Jinyun County Xiangyuan Industry
Co., Ltd.,**

Respondents.

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**Docket No.
CAA-HQ-2015-8065**

**RESPONDENT JINYUN COUNTY XIANGYUAN INDUSTRY CO., LTD.’S FIRST
AMENDED ANSWER TO THE AMENDED COMPLAINT, AND REQUEST FOR
HEARING**

Respondent, Jinyun County Xiangyuan Industry Co. Ltd. (“JCXI”) by and through its Attorney of Record, William Chu, files this Amended Answer and Request for Hearing and by way of response to the Complaint, admits, denies and alleges as follows:

RESPONSE TO PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint contains allegations about the authority under which the Complaint is issued. Such allegations constitute conclusions of law, which Respondent is not required to admit or deny. Further, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the authority under which the Complaint is issued, conclusions about the regulatory status of certain materials, and the legality of the management thereof and therefore cannot admit same. To the extent any allegation in Paragraph 1 of the Complaint is not specifically admitted, it is denied and Respondent demands strict proof thereof.

2. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

3. Admitted.
4. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
5. Admitted.
6. Admitted.
7. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
8. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
9. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
10. Admitted.
11. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
12. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Subject thereto and without waiving same, denied.
13. Denied.
14. Admitted.
15. Admitted.
16. Admitted to the extent that the COC applications include a contractual agreement between Taotao Group Co., Ltd (Taotao Group) and Taotao USA in which Taotao Group appoints Taotao USA as its agent for service of process from EPA, otherwise denied.

17. Admitted to the extent that the COC applications include a contractual agreement between Jinyun County Xiangyuan Industry, Co., Ltd. (“JCXI”) and Taotao USA in which JCXI appoints Taotao USA, Inc. as its agent for service of process from EPA, otherwise denied.

18. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

RESPONSE TO JURISDICTION

19. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

20. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

21. This Paragraph contains statements of law that Respondent is not required to admit or deny. Respondent has no knowledge of what the Administrator and Attorney General determined for this matter. Subject thereto and without waiving same, denied.

22. Admitted.

RESPONSE TO GOVERNING LAW

23. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

24. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

25. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

26. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

RESPONSE TO ALLEGED VIOLATIONS OF LAW

27. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
28. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
29. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
31. Admitted.
32. As to Respondent, Taotao USA admitted.
33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
34. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
35. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
36. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.
37. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
38. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first portion of Paragraph 38. Subject thereto and without

waiving same, denied. In regard to Paragraph 38(a), denied. In regard to Paragraph 38(b), denied. In regard to Paragraph 38(c), denied.

39. Admitted.

RESPONSE TO COUNT 1

40. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 39 of the Complaint above.

41. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

42. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

43. Admitted.

44. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

45. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

46. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

47. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

48. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

49. Denied.

RESPONSE TO COUNT 2

50. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 49 of the Complaint above.

51. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

52. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

53. Admitted.

54. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

55. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

56. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

57. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

58. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

59. Denied.

RESPONSE TO COUNT 3

60. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 59 of the Complaint above.

61. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

62. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

63. Admitted.

64. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

65. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

66. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

67. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

68. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

69. Denied.

RESPONSE TO COUNT 4

70. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 69 of the Complaint above.

71. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

72. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

73. Admitted.

74. Admitted to the extent that Taotao Group built the vehicles in the amount referenced in the paragraph. Respondent denies that Taotao Group was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

75. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

76. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

77. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

78. Denied.

RESPONSE TO COUNT 5

79. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 78 of the Complaint above.

80. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

81. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

82. Admitted.

83. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

84. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

85. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

86. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

87. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

88. Denied.

RESPONSE TO COUNT 6

89. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 88 of the Complaint above.

90. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

91. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC

application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

92. Admitted to the extent that Respondent built the vehicles in the amount referenced in the paragraph. Respondent denies that it was the “manufacturer” for the purposes of COC requirements.

93. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

94. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

95. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

96. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

97. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

98. Denied.

RESPONSE TO COUNT 7

99. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 98 of the Complaint above.

100. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

101. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

102. Admitted.

103. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

104. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

105. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

106. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

107. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

108. Denied.

RESPONSE TO COUNT 8

109. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 108 of the Complaint above.

110. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

111. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

112. Admitted.

113. Respondent is unable to answer this Paragraph as it is overly broad and vague as to which “annual report” is being referred to.

114. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

115. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

116. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

117. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

118. Denied.

RESPONSE TO COUNT 9

119. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 118 of the Complaint above.

120. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

121. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

122. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

123. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

124. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

125. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

126. Denied.

RESPONSE TO COUNT 10

127. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 126 of the Complaint above.

128. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

129. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

130. Admitted to the extent that JCXI built the vehicles in the amount referenced in the paragraph. Respondent denies that JCXI was the “manufacturer” for the purposes of COC requirements. Admitted as to Respondent Taotao USA.

131. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

132. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

133. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

134. Denied.

RESPONSE TO PROPOSED CIVIL PENALTY

135. Paragraphs 135 through 141 do not require specific responses in Respondent's Answer, however to the extent the proposed civil penalty is considered, Paragraphs 137 through 140 purport to summarize portions of the statutes which statutes speak for themselves, and such allegations constitute conclusions of law, to which Respondent is not required to admit or deny. To the extent any allegation in Paragraphs 135 through 141 is not specifically admitted, it is denied and Respondent requests strict proof thereof.

RESPONDENT'S AFFIRMATIVE DEFENSES

Without admission of any issues of fact or law, except as expressly stated above, and with full reservation of all applicable rights and defenses, Respondent requests dismissal or mitigation of the allegations based upon the following factors, all of which are based upon Respondent's information and belief.

1. The Complaint fails to state a claim upon which relief can be granted. Specifically, there have been no allegations of Respondent exceeding emission standards under the Clean Air Act ("CAA").
2. The Complaint fails to state a claim against Respondent upon which relief can be granted. In Paragraph 27, Complainant alleges that Respondent is a "person" under the CAA. The Clean Air Act prohibits "...in case of a person, the importation into the United States, of any new motor vehicle or new motor vehicle engine...unless such vehicle is covered by a certificate of conformity..." CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1). Because the Complaint alleges that Respondent is a "person" under the CAA, and because Respondent Taotao Group did not import the subject vehicles or engines into the United States, Respondent Taotao Group is not subject to CAA § 203(a)(1) and 42 U.S.C. § 7522(a)(1). Therefore, Respondent Taotao Group should not be subject to the jurisdiction of this court and the regulations asserted herein. As such the

Complaint fails to state a claim upon which relief can be granted against Respondent Taotao Group.

3. Respondent is not subject to CAA § 203(a)(1) 42 U.S.C. § 7522(a)(1) as Respondent was not the “manufacturer” subject to the Certificate of Conformity requirements under the statute. As stated in Paragraph 24(c) of the Complaint, a “manufacturer” means “any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale...” CAA § 216(1), 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801. Taotao USA Inc., not Respondent Taotao Group, was the “manufacturer” for the purposes of Certificate of Conformity requirements. Respondent avers to the definition of “manufacturer” in the statute and denies that every manufacturer, under the plain meaning, must submit a COC application. In fact, Respondent did not apply for the COC in this case. The importer or “manufacturer” under the statute, Taotao USA, Inc. applied for the COC and the COC’s themselves are issued to Taotao USA, Inc. as the “U.S. Manufacturer or Importer.” Therefore, Respondent Taotao Group should not be subject to the jurisdiction of this court and the regulations asserted herein. As such the Complaint fails to state a claim upon which relief can be granted against Respondent Taotao Group.

4. Complainant has not alleged any facts showing that Respondent’s conduct was a cause in fact of any release of excess emissions from mobile sources as set forth in Paragraph 23 of the complaint, including hydrocarbons, oxides of nitrogen, and carbon monoxide, nor has Respondent caused any impact to any regulatory scheme.

5. In the event that any catalysts active material was either missing or not present in the quantity or concentration described in the relevant COC applications for the 10 Engine Families,

as asserted in the Complaint, such deviations from the COC applications were *de minimis* in their contribution to any potential emission of excess pollutants and were therefore insufficient as a matter of law under the due process and equal protection rights guaranteed by the United States Constitution and pursuant to the *de minimis* doctrine to give rise to any liability.

6. The regulations implemented by the EPA and asserted against Respondent are unconstitutional and overstep the reaches of Chevron Deference. The Supreme Court in *Chevron* stated that when a statute is ambiguous as to its purpose, agency interpretations are given controlling weight, “unless they are arbitrary, capricious, or manifestly contrary to the statute. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984). The relevant statute from Paragraph 23(b) of the Complaint, Section 213 of the Clean Air Act, states that the EPA has the authority to implement emissions standards to regulate actions that “cause, or significantly contribute to, air pollution which may reasonable be anticipated to endanger public health or welfare.” 42 U.S.C. §7547. Respondent argues that the Governing Law asserted in Paragraphs 23 through 26 of the Complaint is not a reasonable interpretation of Section 213 of the Clean Air Act, as there have been no actual allegations of contributions to air pollution. It is unfair to assess a penalty when there has been no assertion of any air pollution. Under EPA’s Compliance Determination Guidelines (“Guidelines”) provided to Respondent Taotao, USA, in 2010, specific violations are listed which *may* make a vehicle/engine uncertified are listed. Instances where a catalyst active material is either missing or not in the concentration described in the COC application is not listed as a violation, which makes a vehicle/engine uncertified. The intentional deletion of this requirement or failure to include it in the Guidelines suggests that such nonconformity does not make a vehicle/engine uncertified, as is required to constitute a

violation of the Clean Air Act. Furthermore, the Guidelines list instances in which the vehicle/engine may be uncertified.

7. The Complaint alleges in Paragraphs 36 and 37 that the required catalyst active material was either missing or not present in the quantity or concentration described in the relevant COC Applications therefore the catalytic converters do not conform to the design specifications described in the relevant applications for COC's. Failure to conform to the design specifications described in the applications for COC's does not mean that the vehicles do not conform in all material respects to the specifications in the COC applications, nor does it mean that the vehicles are uncertified. The requirement that the COC's conform to the "design specifications in the relevant applications" is not a requirement stated in any applicable statutes or regulations. In fact, the specific language requiring conformity to "design specifications" was deleted from applicable regulations in 1982. *Compare* 40 C.F.R. 86.437-78, *as amended* and 40 C.F.R. 85.074-309 (1976) (repealed in 1977).

8. Under EPA's Compliance Determination Guidelines ("Guidelines") provided to Respondent Taotao, USA, in 2010, specific violations are listed which *may* make a vehicle/engine uncertified are listed. Instances where a catalyst active material is either missing or not in the concentration described in the COC application is not listed as a violation, which makes a vehicle/engine uncertified. The intentional deletion of this requirement or failure to include it in the Guidelines suggests that such nonconformity does not make a vehicle/engine uncertified, as is required to constitute a violation of the Clean Air Act. Furthermore, the Guidelines list instances in which the vehicle/engine may be uncertified

9. The EPA has not met its burden of establishing that it has jurisdiction over this matter or that it has the ability to assess a penalty in excess of \$320,000.00. The EPA has provided no

proof that the Administrator and the Attorney General jointly determined that this matter is appropriate for an administrative penalty assessment proceeding, beyond a mere assertion in Paragraph 21 of the Complaint. Therefore, the EPA has not proven that it has jurisdiction over this matter through an administrative penalty assessment proceeding.

10. The relief sought is not proper having due regard to the gravity of the violation, the size of Respondent's business, and the effect on Respondent's ability to continue business.

11. Respondent affirmatively states that certification violations are generally not of "major" egregiousness. The Mobile Source penalty policy itself states that "violations should be classified as "Major" if vehicles or engines are uncertified and there is no information about the emissions from these vehicles or engines, or test data of the uncertified engines shows the engines to exceed emissions standards." Respondent argues that information about emissions from these vehicles and test data is available, and should be analyzed in any penalty policy analysis, if any analysis is performed.

12. Respondent further asserts that service of the Complaint upon JCXI was improper. As Respondent asserts that process and service of process was improper, Respondent affirmatively preserves its objection to process and service of process and further reiterates that nothing in this Answer serves as an admission that service of the Complaint on Respondent was proper.

13. The claims asserted by Complainant are barred by the civil rights and right to equal protection. Respondent asserts that the agency has discriminatorily applied their authority under the relevant statute and regulations against Chinese nationals.

14. Respondent affirmatively asserts the defense of waiver and estoppel. Specifically, Respondent submitted to Complainant, catalytic converter test results pursuant to a test plan preapproved by the agency, from a laboratory preapproved by the agency, after importing

vehicles in 2012. The test results showed that the precious metal concentration ratio matched the ratio listed on the COC application. Respondent paid a penalty for submitting the results after importing the vehicles, which the agency accepted.

15. The claims asserted by Complainant may be barred by any or all of the affirmative defenses contemplated by Federal Rules of Civil Procedure. To the extent that Complainant's claims may be barred by one or more of said affirmative defenses not specifically set out above, such defenses cannot be determined until there is further discovery.

RESPONDENT'S REQUEST FOR HEARING

Pursuant to the consolidated Rules of Practice, 40 C.F.R. Part 22, Respondent hereby requests a hearing on this matter in which it will contest allegations of material fact and applications of law in the Complaint and contest the appropriateness of the proposed penalties in the Complaint.

PRAYER

WHEREFORE, Respondent prays that the Complaint be withdrawn with prejudice in whole or in part as it pertains to Respondent, and for such other relief, at law or in equity, to which Respondent shows itself to be justly entitled.



10/02/2017
Date

William Chu
Texas State Bar No. 04241000
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4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com

CERTIFICATE OF SERVICE

This is to certify that on October 2, 2017 the foregoing Answer was filed and served on the Presiding Officer electronically through the Office of Administrative Law Judges (OALJ) e-filing system.

The undersigned certifies that an electronic copy of foregoing instrument was sent this day for service by electronic mail to Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov; Robert Klepp at Klepp.Robert@epa.gov; and Mark Palermo at Palermo.Mark@epa.gov.

A handwritten signature in black ink, consisting of a stylized 'W' followed by a large loop and a horizontal stroke.

William Chu