



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Taotao USA, Inc.,) **Docket No. CAA-HQ-2015-8065**
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry)
Co., Ltd.)
)
Respondents.)

CORRECTED¹ NOTICE OF EX PARTE CONTACT

On October 11, 2017, Margaret Goldstein, one of Respondents’ proposed witnesses, contacted the staff of the Office of Administrative Law Judges by telephone regarding a subpoena *ad testificandum* this Tribunal issued to her on September 26, 2017, at the request of Respondents’ counsel. *See* Order Granting Respondents’ Motion for Issuance of Subpoena. The subpoena commands her to appear at the hearing in this matter in Washington, D.C., from October 17, 2017 through October 20, 2017.

Ms. Goldstein advised that the subpoena arrived by certified mail late in the day at her office in California on October 10, 2017, some two weeks after it was issued. She further stated that despite the subpoena’s requirement that Respondents pay “[w]itness fees and expenses in the same amounts as are paid to witnesses in the courts of the United States,” Respondents did not include any sum to cover such expenses nor have they otherwise made arrangements for her travel, accommodation, or per diem expenses related to her testimony at hearing. *See* Subpoena Issued to Margaret Goldstein at 1 n.1 (Sept. 26, 2017). *See also* 40 C.F.R. 22.19(e)(4) (“Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears.”); 42 U.S.C. § 7607(a) (“Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.”); 28 U.S.C. § 1821(b)-(d) (providing that witnesses in federal court shall be paid an attendance fee of \$40 per day; the actual expense of travel by common carrier or a mileage allowance for travel in private vehicle; parking fees; taxi fare between lodging and carrier terminals; and a subsistence per diem allowance²).

¹ This Corrected Notice corrects a scrivener’s error in the last paragraph of the Notice: Ms. Goldstein does not intend to appear at the hearing.

² The current subsistence per diem allowance for October 2017 includes \$250 per day for accommodations plus \$69 per day for meals and incidental expenses. *See* <https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates->

Ms. Goldstein indicated that, prior to receiving the subpoena, she had not been made aware of the need to attend the hearing and thus made no arrangements to do so. In light of the late date on which she received the subpoena, the distance she would need to travel, and the absence of the required payment for her appearance, Ms. Goldstein indicated she does not intend to appear at the hearing and is, in any case, unclear as to why Respondents desire her testimony. While providing her no legal advice, the staff of this office reiterated to Ms. Goldman the statement included on the subpoena that the party subpoenaing the witness is obligated to pay to her the fees and mileage required by law.³



Susan L. Biro
Chief Administrative Law Judge

Dated: October 12, 2017
Washington, D.C.

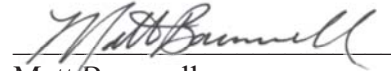
[lookup/?action=perdiems_report&state=DC&fiscal_year=2018&zip=&city](#) (accessed October 12, 2017).

³ See also *Martin v. Howard Univ.*, 209 F.R.D. 20, 20, 2002 U.S. Dist. LEXIS 15813 (D.D.C. 2002) (“[I]t is clear beyond all question that the failure to tender the witness fee is legitimate grounds for the witness to refuse to appear.”) (citing *Smith v. Midland Brake, Inc.*, 162 F.R.D. 683, 686 (D. Kan. 1995)).

In the Matter of *Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.*, Respondents. Docket No. CAA-HQ-2015-8065

CERTIFICATE OF SERVICE

I certify the foregoing **Corrected Notice of Ex Parte Contact**, dated October 12, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


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Attorney Advisor

Original by Hand Delivery To:

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Dated: October 12, 2017
Washington, D.C.