UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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

RESPONDENTS' REPLY TO COMPLAINANT'S COMBINED RESPONSE TO RESPONDENTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION FOR ACCELERATED DECISION

COME NOW Respondents Taotao USA, Inc. (Taotao USA), Taotao Group Co., Ltd. (Taotao Group), and Jinyun County Xiangyuan Industry Co. Ltd. ("JCXI") and file this Reply to Complainant's Combined Response to Respondents' Motion to Dismiss for Failure to State a Claim and Motion for Accelerated Decision ("Reply"). In this Reply, Respondents will show that Complainant's Combined Response to Respondents' Motion to Dismiss for Failure to State a Claim and Motion for Accelerated Decision[1] ("Combined Response"), just like it's Complaint against Respondents[2], relies on a flawed interpretation of the applicable regulations that attempts to impermissibly expands the scope of the Clean Air Act ("CAA" or "the Act"). Furthermore, Complainant in its Combined Response miscomprehends Respondents arguments and misstates the clear language and context of applicable statutes. Complainant also continues to refer to inapplicable statutes and regulations, which are neither relevant to the facts of this matter nor related to the allegations contained in the Complaint. *See* Com. Resp. at 8 (citing to 40 C.F.R. §§ 86.441-78 and 85.2505, the former is a regulation pertaining to reporting requirements of the Clean

[1] Cited as "Com. Resp."
[2] Cited as "Am. Complaint."

Air Act, and the latter deals with vehicles produced prior to the effective date of a COC where the prototype has not usually been tested, neither of which are relevant to the allegations contained in the Complaint). Complainant's continued repetition of baseless arguments already defeated, and irrelevant law that does not apply serves no purpose other than to create confusion and hinder justice.

ARGUMENT

The Combined Response makes no new arguments regarding its authority to bring this action, but rather continues to refer to the single district court decision which permitted the Environmental Protection Agency ("EPA") to bring an action against a party in the absence of an emissions violation where the vehicles delivered in commerce did not have the same emission control parts as the prototype tested to complete the certification process.[3] Respondents have already discredited Complainant's reliance on *United States v. Chrysler Corp.* and shown that the application of the *Chrysler* in this action is improper.[4] in this action Respondents therefore request that their Motion to Dismiss for Failure to State a Claim ("Mot. Dismiss") and Motion for Accelerated Decision ("Mot. Accel. Dec.") be granted and this action be dismissed in its entirety with prejudice, in the alternative, if the action is not dismissed, Respondents request that the Presiding Office order Complainant to stop referring to statutes and regulations that pertain to matters not alleged in this action, deflect from the facts and allegations of this action, and are very likely to confuse the Tribunal.

[3] *See* Com. Resp. at 7 and 10 (citing to *United States v. Chrysler Corp.*, 591 F.2d 958 (D.C. Cir. 1979)); *see also* Complainant's Motion for Partial Accelerated Decision ("Complainant's Mot. P. Accel. Dec.") at 7, 8 and 30-33; Complainant's Initial Prehearing Exchange ("Complainant's Initial PHE") at 8.

[4] *See* Respondents' Response to Complainant's Motion for Partial Accelerated Decision ("Response to Comp.'s Mot. P. Accel. Dec." at 10-14 (discussing *Chrysler*); *see also* Mot. Dismiss at 3-4; Mot. Accel. Dec. at 2-3; and Respondent's Joint Prehearing Exchange at 4.

I. Complainant's Interpretation of the Clean Air Act is Based Entirely on Speculation and Impermissibly Expands the Scope of the Statute as well as the EPA's Delegated Authority.

The arguments made in the Combined Response rely on flawed interpretations of the Act based purely on speculation and are clearly contrary to the language of the relevant statute as well as the language of EPA's own regulations. Furthermore, Complainant points to certain language of regulations to make its arguments while ignoring the context or the remaining language of the same regulations.

A. A vehicle model that passes emissions testing both prior to the issuance of a COC, and in subsequent certification testing, is covered by its COC.

Complainant argues that the Act's prohibition against vehicles that are not covered by a certificate rather than against vehicles that exceed emissions standards, reflects a deliberate choice made by Congress. Com. Resp. at 5, n.6. The gist of the argument is that because the 1965 version of the Act prohibited the sale or importation of motor vehicles or motor vehicles engines not in conformity with...emissions standards, and the 1970 version instead prohibited the same acts "unless such vehicles or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed" by the EPA, a certificate of conformity can be invalidated for non-emission related violations. *See* id. Not only is the argument a highly speculative interpretation of Congress' purpose for this "deliberate" choice, it is clearly incorrect and completely ignores legislative history and Congressional intent. The more plausible, if not the only, reason the language of the Act was changed in 1970 from "vehicles not in conformity with the regulations prescribed under 202," i.e. emission standards to "unless the vehicle is covered by a certificate of conformity issued (and in effect) under regulations prescribed" by the EPA was that 1970 was the

year the National Environmental Policy Act established the EPA, and Congress thereafter delegated the task of establishing emission standards to the EPA.[5]

Complainant then argues that "[b]y its own terms, section 203(a)(1) does not list exceeding emission standards as an element of a Clean Air Act violation." *See* Com. Response at 9. This argument ignores the purpose of the Clean Air Act, as well as legislative history and Congressional Intent. *See* above. Furthermore, the argument seems to overlook that by its own terms, all the Act requires is for a vehicle to be covered by a COC issued and in effect under the regulations, nothing else. Here all vehicles were in fact covered by an EPA-issued COC,[6] and the COC was still in effect because neither the Act, nor any regulations require catalytic converters, let alone standards for catalytic converter active material concentrations. *See* Com. Response at 12 ("the EPA has not prescribed specific standards for the content of catalytic converters). Therefore, "by its own terms," section 203(a) does not permit a COC to be deemed invalid arbitrarily for reasons not specified in current regulations.

B. Complainant's Argument that a Test Vehicle Must Be Identical in Terms of Precious Metal Concentrations Fails as a Matter of Law and is Unreasonable Under the Circumstances.

Complainant attempts to deem Taotao USA's EPA-issued COCs ineffective by arguing that certification regulations require that an engine family must be "identical or the same in specific respects including "the number…, location, volume, and composition of catalytic converters they employ, a vehicle is not covered by an engine family's COC if it is not "identical" or "same" in

[5] *See* Evolution of the Clean Air Act, *Clean Air Act OF 1970* ("The EPA was created on December 2, 1970 in order to implement the various requirements included in these Acts.") (available at https://www.epa.gov/clean-air-act-overview/evolution-clean-air-act#caa70) (last visited January 12, 2016).
[6] Am. Complaint ¶ 31.

respect to the active material concentrations of catalytic converters. *See* Com. Resp. at 6 and 8. In making this argument, Complainant refers to 40 C.F.R. §§ 86.420-78(a)-(b)(6) and 1051.230(a)-(b)(5). *See* id. Complainant's argument is flawed in and of itself. Whereas the cited regulations state that a test vehicle must be similar in specific respect to the catalytic converter in terms of number, location, volume and composition, nowhere do they require all vehicles in an engine family be similar in respects to the catalytic converter's precious metal concentrations. Complainant therefore seems to be arguing that precious metal concentrations may fall within the terms "volume" or "composition." The argument fails upon glancing at each of the ten COC applications that form the basis of this action. *See* "Engine Family Description" in CX001 - CX010. The engine family description on each of the COC applications clearly describes the parts and configurations that are may be viewed as "identical" or "similar" in each engine family, and nowhere do they mention precious metal concentrations. Whether or not precious metal concentrations must also be "identical" in order for a vehicle to be covered by a COC is not important where the actual COC applications that were approved by the EPA did not list said concentrations under "Engine Family Description." Going just by what is described in the relevant COC applications, because that is what Complainant is expecting the Tribunal to do, especially given that EPA often approves vehicles without catalytic converters because catalytic converters are not required components, it is clear that catalytic converter active material concentrations are not described to be a part of the engine family's description.

Even where catalytic converters are mentioned in the relevant applications, the only volume and composition specified for Catalytic Convertors is the substrate "composition", and [total] "volume" of the substrate.[7]

Additionally, because no testing of active material concentrations is required and the face of each COC makes clear that catalytic converters were purchased by a third-party manufacturer, Complainant essentially makes the argument that EPA requires strict compliance over all described items whether or not, the vehicle manufacturer or COC holder has built that part, while at the same time, EPA has no requirement that the part be tested for concentrations prior to it being installed on the vehicle. In the present matter, EPA approved all applications where it was clear that the catalytic converter manufacturer was different from the vehicle manufacturer; the regulations do not require testing of the catalytic converter for active material concentrations for approval of a COC application; and knowing that the only thing a vehicle manufacturer could do (and was required to do) was to install the part, as purchased, onto the EDV and test the EDV for emissions. If EPA wanted manufacturers to certify that all parts were built to the specifications described in a COC, it should not have permitted a component to be purchased by a third party and placed onto a vehicle. EPA should have then either made catalytic testing mandatory for those who purchase their catalytic converter from third parties and do not manufacture their own, just as emission testing is mandatory for certain ICI importers who certify that the vehicles pass emissions, or required that all vehicles or engines manufacturers that employ catalytic converters onto their respective vehicles/engines must manufacture the converters themselves. It is completely unreasonable to hold a person liable for failing to first test a vehicle component before

[7] Although the COC applications do list the precious metal concentrations and ratios, said concentrations as not listed under "number, location, volume or composition."

it is installed, where no such test is required. A more reasonable reading of the applicable regulations is therefore that a vehicle or engine manufacturer must accurately provide all specifications of components that said manufacturer has built, and ensure that third-party components are installed onto all vehicles in the same manner as they are equipped onto their respective EDVs.

Finally, EPA, itself does not interpret the regulation to require that an engine family must be identical in terms of catalytic material concentrations. *See* CX012 at EPA-00039, Certification Guidance. The guidance states that in order to group vehicles into an engine family: First, group your product line into one of four engine displacement classes, "…then you *should* (emphasis added) divide your product line for each engine displacement class into families of vehicles that are expected to have similar exhaust and evaporative emission characteristics throughout their useful life. *Id.* "You *may* (emphasis added) group vehicles into engine families if they are the same in all of the following aspects" as per the applicable regulation. *Id.* This makes EPA's intent behind the regulation, as well as its own interpretation very clear. The use of the word "should" and "may" identify that there are two ways to group vehicles into an engine family. One is by engine displacement class and expected exhaust and evaporative emissions, and the other is the way that requires similar catalytic convertor number, location, volume, and composition.

II. No applicable law requires a vehicle to conform in all material respects to the "design specifications described in the vehicle's COC application.

Complainant has referred to the language on the face of the COC to put forth the argument that because the Act authorizes EPA to issue COCc "upon such terms…as [it] prescribes" and because regulations allow the EPA to issue a COC subject to terms and conditions, the language

on the face of the COC is applicable law. *See* Com. Response at 7.[8] Complainant has referred to the following language on the face of the COC: "a COC the covers those vehicles that conform, in all material respects, to the "design specifications" that applied to those vehicles described in the documentation required by 40 CFR Parts 1051, 1065, 1068…" Respondents have already shown, and Complainant has admitted, that the regulation that prescribed such language to be added was deleted nearly forty years ago. *See* Complainant's Mot. P. Accel. Dec. at 7. ("… "predecessor regulation.")Therefore, because deleting the provision that required such language on the face of each COC was a deliberate action by the EPA, not only is the continued printing of said language on a COC in direct conflict with said deliberate action, there is no current regulation that requires material conformance with "design specifications." In response, Complainant seems to be arguing that the language of the COC is a condition relevant to this present action because the language will in the future be supported by a prospective regulation. *See* Com. Response at 7. This argument ignores the mandatory rulemaking procedures as well as the well-established bar against retroactive legislation. *See Landgraf v. USI Film Prods.,* 511 U.S. 244, 265 (1994); *see also Bowen v. Georgetown University Hospital,* 488 U.S. 204 (1988).

III. Precious Metal Concentrations Are Not "Specifications" for the purpose of Conformity.

Although Complainant's entire Complaint is premised on the argument that, per certain EPA regulations, a COC covers only those highway motorcycles that conform in all material

[8] Complainant has cited to a few words from 42 U.S.C. § 7525(a)(1), the full language says "Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed *under section 7521 of this title* (emphasis added)." A reference to section 7521 is reference to emission standards. "If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe." *Id.*

respects to the EDV tested for that COC and all other specifications in the COC application, and only those recreational vehicles that conform in all material respects to specifications in the COC application, Complainant has failed to adhere to EPA's own definition of "specifications." *See* Am. Complaint at 6. Complainant has cited to the following regulations in support of this action against Respondents: 40 CFR §§ 86.437-78(a)(2)(iii) ("The certificate will cover all vehicles represented by the test vehicle and will certify compliance with no more than one set of applicable standards."), (b)(4) ("The certificate will cover all vehicles described by the manufacturer."); and 1068.103 ("Engines/equipment covered by a certificate of conformity are limited to those that are produced during the period specified in the certificate and conform to the specifications described in the certificate and the associated application for certification"). Complainant, however, has failed to cite to the definition of the term "specifications" as it relates to a COC application.

The "specifications" described in the COC and the associated application for certification that an engine or equipment must comply with include only "the emission control information label and any conditions or limitations identified by the manufacturer or EPA. 40 C.F.R. § 1068.103(a).[9] Nowhere in all the emission control information ("ECI") specified on each ECI label attached to all the vehicles identified in the Complaint, is there any mention of the precious metal concentrations, nor is such "mention" required. *See* e.g. CX006 at EPA-000196. Furthermore, none of the conditions or limitations identified by the manufacturer make any mention of a catalytic converter's precious metal concentrations. *See e.g.* id at EPA-000205. Finally, Complainant has already admitted that EPA does not have a specified precious metal concentration standard, nor is the installation of a catalytic converter ever required. *See* Com. Response at 12.

[9] This regulation, and therefore this definition, applies to all highway motorcycles regulated under highway motorcycles 40 CFR part 86, subparts E and F, as well as recreational vehicles subject to the provisions of 40 CFR part 1051. *See* 40. C.F.R. § 1068.1(a)(3),(12).

Therefore, unlike cases where certain design specifications are required, i.e. EPA standards such as those required in order to demonstrate compliance with evaporative emission standards,[10] and information that must be included; or cases where the parts equipped onto the EDV were different from the parts on the production vehicles, *see e.g. United States v. Chrysler Corp.*, 591 F.2d at 960, n.3., the present matter involves no such facts. Because the vehicles involved materially conformed to all "specifications" described in the COC application, and Complainant has essentially accepted that the no allegations have been made,[11] or evidence submitted, that the vehicles did not conform to their respective EDVs, the Presiding Officer should find that all vehicles manufactured and imported into the U.S. were covered by a valid COC (in effect) and Respondents Motion to Dismiss should be granted.

III. Contrary to Complainant's argument, Material Conformity with the Engine Family's EDV is all that's Required of a Highway Motorcycle to Be Covered By its COC.

Complainant has argued in its Combined Response that even though all subject highway motorcycles conform to their respective EDV, they are still uncertified because they must also comply to the specifications in the application for their COC. *See* Com. Response at 15. As discussed above, the term "specifications" as defined in the applicable regulation only covers information provided in an ECI label and other conditions and limitations *identified* (emphasis added) by a manufacturer or the EPA. *See* 40 C.F.R. § 1068.103. Precious metal concentrations is not required emission control information to be included, neither is said information included on any of the subject vehicle's labels. *See* 40 C.F.R. 86.413-78; *see also* certified ECI label on CX001-

[10] *See e.g.* 40 C.F.R. 1051.245 (a)(2); (e)(1)(i) (If the tank permeability control technology is a metal fuel tank with no, then one may design-certify with a tank emission level of 1.5 g/m<2>/day).
[11] *See* Com. Response at 15.

CX010. Furthermore, Complainant has admitted that EPA has not prescribed specific standards for the content of catalytic converters. *See* Com. Response at 12.

Complainant however argues that even though the relevant regulation, i.e. 40 C.F.R. § 86.437, does state that a COC issued on the basis of test data will cover all vehicles represented by the test vehicle, the regulations also require the test vehicles to be accurately described in the application. *See* Com. Response at 16. Again the latter part of Complainant's above-referenced statement is irrelevant in this matter and serves no purpose other than creating confusion because the test vehicle description on each COC application does not specify any precious metal concentrations. *See e.g.* CX002 at EPA-000045.

Complainant then on one hand argues that Respondents have ignored the context in which the regulation is situated. *See* Com. Response at 16 (interpretation of *statutory* (emphasis added) language depends on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."). While on the other hand Complainant argues that the language of section §86.437-78 is not important but the language of other regulations should be looked at to decipher the applicable law. *See* id. at 16-17. In support of its position, Complainant has cited to the language of 40 C.F.R. §§ 86.441-78(c) and 85.2305(b)(1). Complainant's reference to these aforementioned regulations completely argues the full language of those regulations as well as those regulations' specific context. Section 86.441-78(c) has nothing to do with the Clean Air Act violation alleged in this action, but rather a different CAA provision dealing with record-keeping violations. *See* 40 CFR § 86.441-78; *see generally* Am. Complaint. Section 85.2305(b)(1) states that only when a vehicle is produced prior to the effective date of a COC covering that vehicle, must the vehicle conform in all material respects to the specifications described in the COC application. *See* 40 C.F.R. § 85.2305(b)(1).

Complainant has throughout this proceeding cited to section 85.2305(b)(1) several times, even though there is no allegation made that subject vehicles were produced before the effective date of their corresponding COCs. The only relevance that section 85.2305(b)(1) could have is that it shows EPA's intention that conformance with a COC application is only required in instances where the EDV has not yet been tested for conformance, i.e. before the COC is issued based on the emission results of the EDV.

Because Complainant has not disputed that the EDVs of all highway motorcycles conformed to the subject vehicles in this action, all highway motorcycles imported pursuant to valid EPA-issued COCs were covered by those COCs. Accordingly, the Presiding officer should dismiss the 67,527 violations pertaining to highway motorcycles alleged in the Complaint. *See* Am. Complaint at 8.

IV. All Recreational Vehicles conform in all material respects to the "specifications" described in their COC applications.

Because the "specifications" for the purpose of the COC do not include precious metal concentrations as discussed above, and all recreational vehicles materially conformed to all "specifications" described in the ECI label, EPA's design standards, and all passed the emission standards, they are all covered by their corresponding EPA-issued COCs. Furthermore, even if precious metal concentrations had been "specifications" for purpose of certification, which they are not, the fact that the EDVs containing the catalytic converters passed emission standards and all recreational vehicles passed subsequent emission "certification" tests, the alleged difference in precious metal concentration was clearly not material. The only law cited by Complainant to support its position that a vehicle can be uncertified even if it passes emission standards, is *Chrysler Corp.*, however *Chrysler Corp.* decision stood for the position that a vehicle that does

not conform to parts equipped on its EDV, cannot later be tested for emissions and still be covered. *See* Response to Comp.'s Mot. P. Accel. Dec." at 10-14 (discussing *Chrysler*). Here, Complainant does not argue that the EDVs contained different components, in fact Complainant wants the Presiding Officer to take judicial admission of that fact. *See* Com. Response at 15. Therefore, the facts of this matter are clearly different from those of *Chrysler Corp.* In fact, the Court in *Chrysler Corp.* said that deference must be given to statutory purpose which is to ensure that emission standards are met before a vehicle is introduced into Commerce, therefore without a showing, or even an allegation, that the EDV tested did not contain the same parts as the recreational vehicles imported into the U.S., *Chrysler Corp.* cannot be reasonably understood to apply to the matter at hand. *Id.*

IV. Complainant has Misinterpreted Respondents statements and Confused the Context in which they were made.

Complainant argues that because Respondents "admit" that the EDVs Respondents used to certify each engine family contained catalytic converters which conformed to catalytic converters equipped on imported vehicles, it is an admission that inspected vehicles represent all the vehicles identified in the Amended Complaint. *See* Com. Response at 14-15. Complainant's statement clearly misstates Respondents words to escape its burden of proving that all 109,964 vehicles alleged to be uncertified in the Amended Complaint were in fact uncertified.

Respondents have stated that all catalytic converters were purchased from a third party catalytic converter manufacturer, as is evident in each COC application, and said catalytic converters were purchased the same way and belonged to the same model number as the catalytic converter on the EDV specified on each COC application. This only means that Respondents did what they had to, i.e. ensure to the best of their abilities to equip the same parts and components

on the EDV as the parts and components equipped onto all the vehicles. Complainant is attempting to use what Respondents did, and what they were required to do, as an admission of something that is not admitted. Given that there is no evidence that Respondents tampered with the catalytic converters purchased by the third party manufactures, who are not parties to this case, and no evidence that it was not reasonable for Respondents to rely on the active material concentrations provided by said party manufacturers, or to rely on test results performed at SGS for at least one of the engine families, *see* CX077. Whether or not the precious materials installed onto all the subject vehicles conformed to the COC applications is irrelevant, and even if the Presiding Officer finds that catalytic converter precious metal concentrations are a matter of material conformity regardless of emission results, the validity of said test results would then be something that needs to be decided by the Tribunal at the hearing. Respondents have already disputed the validity of the test result.[12] Furthermore, the affidavit of John Warren that Complainant has now introduced and attempts to include as Supplemental Prehearing Exchange uses the term: "relatively homogenous" and further states that test results are not 100% accurate. *See* CX179 ¶ 14 and 19-20. Even though the test results of precious metal concentrations have varied across tests, by Complainants' own evidence not 100% accurate and can only be expected to be "relatively" homogenous, Complainant contends that EPA requires that the catalyst precious metal concentrations must be "identical." Complainant's contention that EPA requires the concentrations to be "identical," therefore is

[12] *See* Response to Comp.'s Mot. P. Accel. Dec. at 16-18. Respondents had previously stated that a vehicles may have been up to its full useful life, prior to being tested for precious metals, Respondents withdraws that argument for purposes of this Reply as well as the Response previously submitted. However, reiterates all other arguments against the validity of the catalytic converter tests as well as their accuracy, and reiterate that test results identified in Complainant's Motion for accelerated Decision were produced with catalytic converters removed from vehicles often at different stages in their useful life and cannot all be used to determine the concentration of new catalytic converters.

completely unreasonable, and such an interpretation of any regulation is should be found arbitrary and capricious. *See* Com. Response at 5-6.

Additionally, Complainant's argument that Respondents are barred from arguing that the regulations are arbitrary and capricious again misconstrues Respondents statements. Whether or not the regulations themselves are unreasonable does not matter when the regulations are being unreasonably applied against Respondents. There are essentially no prior cases where EPA has been allowed to apply the regulations in a manner to hold that a vehicle is uncertified merely because of its catalytic converter precious metal concentrations, and the only cases that come close are those based on default judgments because the manufacturers in those cases missed certain administrative proceeding deadlines. The only other case where a regulation was used to penalize a manufacturer even though the vehicles passed emissions was *Chrysler Corp.* and even then that case had completely different facts and did not deal with circumstances where the only differences alleged were differences in precious metal concentrations and not any EPA-standards. Therefore, this is the first time, the regulation is being applied in this manner, meaning it is a new interpretation or action, which has completely disregarding the mandatory cost benefit analysis.

V. Taotao Group and JCXI are not manufacturers subject to the COC requirements as alleged.

Respondents reiterate the same arguments here that were made in their Response to Complainant's Motion for Accelerated Decision. *See* Response to Complainant's Mot. P. Accel. Dec. at 9-10.

CONCLUSION

Because precious metal concentrations are not "specifications" and no emission related violations have been alleged, the Presiding Office should find that all the subject vehicles identified

in the Complaint did conform in all material respects to the "specifications described in the relevant COC applications. Accordingly, Respondents Motion to Dismiss for Failure to State a Claim should be granted.

In the alternative, because Complainant has admitted that there is no dispute that all highway motorcycles conformed in all material respects to their relevant EDVs, the Presiding Officer should find that the 67, 527 highway motorcycle violations alleged fail as a matter of law.

PRAYER

WHEREFORE, Respondents pray that the Presiding Officer GRANT Respondents Motion to Dismiss for Failure to State and/or Respondents Motion for Accelerated Decision and either dismiss this action in its entirety with prejudice.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

This is to certify that on January 13, 2016 the foregoing Motion to Dismiss was filed and served on the Presiding Officer electronically through the Office of Administrative Law Judges (OALJ) e-filing system. I certify that a copy of the foregoing Motion was sent by certified mail to opposing counsel as follows:

Ed Kulschinsky
Robert Klepp
Air Enforcement Division
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Building
Room 1142C, Mail Code 2242A
Washington, DC 20460

Salina Tariq
Salina Tariq