

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

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 ISSUANCE OF SUBPOENAS

Pursuant to 40 C.F.R. §§ 22.4(c)(9) and 22.21, Respondents' Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. respectfully file this motion for the issuance the of subpoenas so that certain witnesses may be called to testify at the hearing in this matter.

Respondents' First Motion to Supplement the Prehearing Exchange ("First Motion") sets forth the names and affiliations of the witnesses that Respondents may call to testify at the hearing in this matter. These witnesses include Granta Nakayama, Jacqueline Robles Werner, and Amelie Isin. *See* First Motion at 4-5.

Mr. Nakayama and Ms. Werner appear to be the authors of the Clean Air Act Mobile Source Penalty Policy ("Penalty Policy"), which Complainant has relied upon in calculating its proposed penalty assessment. Complainant has listed Ms. Isin as the witness who may testify about the calculation of the proposed civil penalty in this matter. *See* Complainant's Third Motion to Supplement the Prehearing Exchange ("Third Motion") at 3.

Although Complainant has only identified Ms. Isin as a possible expert witness on the Penalty Policy, Respondents must have the opportunity to question the actual authors of the Penalty Policy to ensure that Ms. Isin's calculations adequately apply all the factors of the Penalty

Policy, and whether the calculations of the proposed penalty as well as the application of the Penalty Policy is appropriate.

[A] respondent must have meaningful opportunity to test the application of such a policy in each case. Merely presenting the Agency's rationale and the attendant mathematical calculation may well leave a respondent without a real opportunity to test the Agency's fealty to the policy's requirements.

In re John A. Biewer Co. of Ohio, Inc., et al, 2009 EPA ALJ LEXIS 19, at *50 (ALJ Dec. 23, 2009).

Additionally, Respondents also move to subpoena the following witnesses identified by Complainant: Cleophas Jackson and Emily Chen. *See* Third Motion at 3-4; Complainant's Rebuttal Prehearing Exchange at 4. Mr. Jackson and Ms. Chen have first-hand knowledge regarding Respondents' various efforts to achieve compliance and remedy harm, if any. Their testimony is crucial to the calculation of penalties.

Finally, Respondents move to subpoena Byron Bunker, Director of the Office of Transportation and Air Quality ("OTAQ") as a rebuttal witness.

Respondents' respectfully request that the Presiding Officer grant their motion for the issuance of subpoenas. The proposed subpoenas are attached.¹

¹ For the convenience of the Court, the signature pages appear consecutively, followed by the blank return-of-service pages. The proposed subpoenas identify the date and time of the hearing as July 18, 2017, at 8:30a.m., as established in the Court's Hearing Notice and Order, which may be changed if Respondents' currently pending Motion for Continuance is granted. As Respondents cannot identify the precise date and time of each witness' appearance at this time, the proposed subpoenas state that the precise date and time of each witness' appearance will be determined.

Respectfully Submitted,



William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 909
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com

06/23/17
Date

CERTIFICATE OF CONFERENCE

Counsel for the Respondent has confirmed that Counsel for Complainant is opposed to the requested subpoenas.



Salina Tariq

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 certified mail for service on Complainant's counsel as follow:

Edward 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

06/23/17
Date



William Chu

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

SUBPOENA

TO: Granata Nakayama, Assistant Administrator Office of Enforcement and Compliance Assurance, USEPA Headquarters, William Jefferson Clinton Building, 1200 Pennsylvania Avenue, N. W., *Mail Code: 2242A*, Washington, DC 20460.

YOU ARE HEREBY COMMANDED, pursuant to Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

**DATE AND TIMES: July 18, 2017 at 8:30 am
(precise date and tie of appearance to be determined)**

**PLACE: EPA Administrative Courtroom
EPA East Building, Room 1152
1201 Constitution Avenue, NW
Washington, D.C. 20460**

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON before the Administrative Law Judge at the above dates, time and place;

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

TO REMAIN IN ATTENDANCE until expressly excused by the Administrative Law Judge.

FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COURT AS CONTEMPT THEREOF.

ISSUED in Washington, D.C., this ____ day of _____, 2017.

Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
Mail Code 1900L
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

Witness Fees and expenses in the same amounts as are paid to witnesses in the courts of the United States shall be paid by the party upon whose request the subpoena is issued.

This subpoena is to be served in accordance with Section 22.05(b) (1) (i) of the Consolidated Rules of Practice, 40 C.F.R. '22.05(b) (1) (i).

Person at whose request this Subpoena was issued:

William Chu
The Law Offices of William Chu
4455 LBJ Freeway, Suite 909
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com
Attorney for Respondents

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

SUBPOENA

TO: Jacqueline R. Werner, Air Enforcement Division of the Office of Civil Enforcement, USEPA Headquarters, William Jefferson Clinton Building, 1200 Pennsylvania Avenue, N. W., *Mail Code:* 2242A, Washington, DC 20460.

YOU ARE HEREBY COMMANDED, pursuant to Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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SUBPOENA

TO: Amelie Isin, USEPA Region 3, 1650 Arch Street, *Mail Code:* 3AP20, Philadelphia, PA 19103-2029.

YOU ARE HEREBY COMMANDED, pursuant to Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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

SUBPOENA

TO: Cleophas Jackson, Director, Gasoline Engine Compliance Center, Compliance Division
United States Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105.

YOU ARE HEREBY COMMANDED, pursuant to Section 22.21(b) of the Consolidated
Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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

SUBPOENA

TO: Emily Chen, Environmental Engineer, Gasoline Engine Compliance Center, Office of Transportation and Air Quality, Office of Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105.

YOU ARE HEREBY COMMANDED, pursuant to Section 22.21(b) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, TO APPEAR IN PERSON at the following place and times:

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SUBPOENA

TO: Byron Bunker, Director, OTAQ, USEPA National Vehicle and Fuel Emissions Laboratory/OAR, 2565 Plymouth Road, Ann Arbor, MI 48105

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