

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FUMA INTERNATIONAL LLC, an Ohio
limited liability company,

Plaintiff,

v.

R.J. REYNOLDS VAPOR COMPANY, a
North Carolina corporation,

Defendant.

Civ. No. 1:19-cv-260 [Lead Case]

Civ. No. 1:19-cv-660

**PLAINTIFF FUMA INTERNATIONAL LLC'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
PRECLUDE TESTIMONY OF SHANHONG WANG AT TRIAL**



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Plaintiff Fuma International LLC (“Fuma”) hereby submits this memorandum of law in support of its Motion to Preclude Testimony of Shanhong Wang (“Wang”) at Trial.

I. INTRODUCTION

This Court is familiar with Defendant R.J. Reynolds Vapor Company’s (“RJR”) efforts to obtain Mr. Wang’s testimony and present it at trial. *See, e.g.*, RJR’s Mot. for Leave to Take Trial Deposition Remotely After Close of Discovery, ECF No. 152. Pursuant to this Court’s July 28, 2021 Order (ECF No. 180), the parties conducted the remote trial deposition of Mr. Wang on September 24, 2021, while he was in Macau, China.

One month later, on October 25, 2021, RJR produced for the first time over thirty documents that detail the scope and nature of RJR’s efforts to bring Mr. Wang to Macau and to compensate him for his testimony. Most revealing is that Mr. Wang – a fact witness – submitted a bill of \$23,343 (USD) to RJR. The only Wang document RJR produced to Fuma prior to the deposition was Mr. Wang’s “consulting agreement,” which it produced only a half-hour before the deposition. The documents also show RJR reserved the exclusive “King Premier Suite Eiffel Tower View” room at the Conrad Macao for Mr. Wang’s deposition, a fact that Mr. Wang concealed during his deposition. Most of the Wang documents RJR produced were dated before the deposition, and their belated and untimely production after his deposition prevented Fuma from fully cross-examining Mr. Wang on the issues of bias and credibility.

Separately, on October 25, 2021, RJR submitted an errata sheet to the court reporter that materially altered certain testimony and adds a Zoom screenshot of an exhibit that was not part of the deposition record. Neither Mr. Wang nor RJR requested or reserved the

right to read and review the deposition transcript as required by Federal Rule of Civil Procedure 30(e).

In short, RJR withheld documents that Fuma would have used to cross-examine Mr. Wang during his trial deposition, improperly paid a fact witness for his testimony, and now seeks to improperly modify and expand his trial testimony – on the eve of trial and after Mr. Wang returned to China and became unavailable for further examination. Accordingly, this Court should preclude RJR from presenting Mr. Wang’s testimony at trial.

II. PROCEDURAL AND FACTUAL BACKGROUND

Mr. Wang is a fact witness that RJR expects to call at trial. RJR’s Pretrial Disclosures at 2, ECF No. 169-2. RJR describes Mr. Wang as “a material fact witness” who “is listed as a fact witness on Reynolds’s pretrial disclosures.” RJR Br. in Support of Mot. for Leave to Take Trial Deposition Remotely at 1-2, ECF No. 153-1-153-2. RJR never disclosed Mr. Wang as an expert of any kind under Federal Rule of Civil Procedure 26(a)(2).

Although RJR has been working with Mr. Wang since at least September of 2019, it was only thirty minutes before his deposition that RJR produced a confidential consulting agreement between its counsel and Mr. Wang dated September 23, 2021 (the day before his deposition).¹ See Exhibit A. The agreement ostensibly compensates Mr. Wang “as a

¹ While the “consulting agreement” appears to be dated one day before the deposition, it is possible Mr. Wang signed the “consulting agreement” on the day of his deposition given the time difference between Macao and the United States.

consultant” even though his testimony is entirely factual in nature. *See id.*

At no point during his deposition did either Mr. Wang or RJR request to have Mr. Wang review the deposition transcript and sign a statement of changes as required by Federal Rule of Civil Procedure 30(e), and they thereby waived their rights to do so.

On October 25, 2021, RJR produced thirty-eight documents concerning Mr. Wang’s deposition. Thirty of the documents are dated prior to Mr. Wang’s deposition, and RJR withheld all but Mr. Wang’s consulting agreement from Fuma until October 25, 2021. One text message shows that RJR paid for Mr. Wang to stay in the “King Premier Suite Eiffel Tower View” room at the Conrad Macao. *See Exhibit B.* Another document shows RJR’s counsel sending Mr. Wang his consulting agreement for the first time the day before (or the day of) his deposition. *See Exhibit C.*

Eight of the recently-produced documents are dated after Mr. Wang’s deposition. One email shows RJR’s counsel forwarding Mr. Wang a completed draft errata sheet for his signature. *See Exhibit D.* Another email shows Mr. Wang responding by attaching an invoice for \$23,343, which appears exorbitant. For example, Mr. Wang charged \$1,400 for “14 work hours to exchange 14 emails” and \$800 for “8 hours of work in Macao, September 24” (Mr. Wang’s deposition lasted five hours). *See Exhibit E* (certified translations included). Mr. Wang also itemized “11 hours of nucleic acid testing in Macao, September 25,” and twice itemized “8 hours of accounting testing in Shenzhen” for August 22 and September 22, for a total of \$2,700. Several of these tasks bear no relation to his purported roles as a deponent or “consultant” for RJR, about which he would have been cross-examined. *Id.*

On October 25, 2021, RJR submitted to the court reporter Mr. Wang's signed errata sheet, which reflected the same draft RJR previously asked Mr. Wang to sign. *See* Exhibit F. The errata sheet includes substantive changes to Mr. Wang's testimony and also attempts to modify a final deposition exhibit by adding a Zoom screenshot. *See id.*

III. ARGUMENT

A. This Court should preclude Mr. Wang's testimony at trial because RJR violated its continuing duty to timely supplement discovery responses.

In its July 28, 2021 Order, this Court reminded RJR "of its continuing duty to timely supplement discovery responses." ECF No. 180 at 2. As cited by this Court in its July 28, 2021 Order, Fuma's May 23, 2019 Request for Production No. 66 already requires that RJR produce "[a]ll communications between You and any third party involving either (a) the Asserted Patent, (b) any U.S. or foreign patents or applications related to the Asserted Patent, or (c) a proceeding related to the Asserted Patent or any U.S. or foreign patents relating to the Asserted Patent where the proceeding may be any type of proceeding, including but not limited to a United States District Court case, a United States Patent and Trademark Office proceeding, or any other proceeding before a court or agency in any other jurisdiction." *Id.* (citing Doc. 166 at 10 n.4). This document request encompasses communications with Mr. Wang, who testified that he has "over 100 patents relating to E-cigarettes. Some were under my name. Some were under my wife's name. Some were co-authored by me and others. I don't recall. Too many." *See* Exhibit G at 89:10-89:14.

The number, scope, and extent of RJR's communications with Mr. Wang bear on his bias and credibility. The communications are not subject to any claim of privilege or

immunity by RJR, and there is no legal basis or excuse for RJR's failure to produce them in a timely fashion. The documents and communications dated before Mr. Wang's trial deposition should have been produced to Fuma for use at Mr. Wang's deposition. Now that Mr. Wang has returned to China and is unavailable to testify at trial, Fuma cannot fully cross-examine him on his bias and credibility, particularly with respect to how RJR compensated him for his testimony.

"Federal Rule of Civil Procedure 37(c) provides 'strong inducement' for following the disclosure requirements of Rule 26(a) and (e)." *Syngenta Crop Protection, LLC v. Willowood, LLC*, No. 1:15-CV-274, 2017 WL 3309699 at *1 (M.D.N.C. Aug. 2, 2017) (citing Advisory Comm. Notes (1993)). "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness ... at trial, unless the failure was substantially justified or is harmless." *Id.* (citing Fed. R. Civ. P. 37(c)(1)).

RJR's failure to timely produce its communications with Mr. Wang was not substantially justified or harmless. Here, there was (and is) no opportunity to fully cross-examine Mr. Wang regarding the late-disclosed documents because of his unavailability and because "trial [is] fast approaching and pretrial hearings and deadlines for motions, proposed instructions, and other trial-related documents required by the Court [is] fill[ing] the time leading up to trial." *See id.* at *3. Precluding RJR from presenting Mr. Wang's testimony at trial is the only way to "adequately protect [Fuma] from unfair prejudice caused by the last-minute surprise disclosures" concerning his trial deposition. *See id.* at *5.

B. This Court should preclude Mr. Wang's testimony because it is the result of RJR improperly compensating a fact witness.

The Fourth Circuit has long held that agreements to pay fact witnesses beyond reasonable expenses and time lost are void as lacking in consideration and contrary to public policy. *See Alexander v. Watson*, 128 F.2d 627, 630 (4th Cir. 1942). The circumstances surrounding Mr. Wang's trial deposition are similar to those in *Rocheux International of New Jersey v. U.S. Merchants Financial Group, Inc.*, where the District of New Jersey precluded testimony from an improperly paid fact witness. No. 06-6147, 2009 WL 3246847 (D.N.J. Oct. 5, 2009). After speaking with the fact witness about his proposed testimony, the plaintiff designated the fact witness as an expert, presumably to justify paying him for his factual testimony. *Id.* at *3-*4. The district court also noted that the fact witness submitted no expert report. *Id.* at *1. The district court found that the plaintiff's decision to pay "for factual testimony has cast a cloud over the legitimacy of that testimony," and noted "other courts have recognized that the proper sanction for the wrongful payment of fact witnesses is the exclusion of the tainted witnesses." *Id.* at *4.

Like *Rocheux International of New Jersey*, Mr. Wang's factual testimony is tainted by RJR's use of a "consulting agreement" to compensate Mr. Wang with \$23,343 and several nights in a luxury hotel suite. *See* Exhibits A, B and E. According to a November 28, 2020 Asia Times article, the median monthly income for the middle class in Shenzhen is reportedly \$790, or \$9,480 annualized. *See* Exhibit H at 4. Presumably, RJR paid Mr. Wang nearly 2.5 times an average annual salary for approximately six weeks of his time preparing for a five-hour deposition. *See* Exhibit E.

Though RJR has been aware of Mr. Wang's anticipated factual testimony for years, it procured the "consulting agreement" only the day before (or the day of) Mr. Wang's deposition. *See* Exhibit C. When asked about the arrangement during his deposition, Mr. Wang was evasive and RJR repeatedly objected to the inquiry. *See* Exhibit G at 76:4-85:9.² For example, RJR objected, and Mr. Wang was evasive, when asked during his deposition about the kind of accommodations RJR was providing Mr. Wang for his deposition. *See id.* at 83:14-85:9. Mr. Wang did, however, testify that "there's not a causal relation between this agreement and what I've been doing." *See id.* at 81:25-82:4. The putative topics of Mr. Wang's deposition were purely factual without any indication that he was serving as RJR's paid "consultant."

Furthermore, Mr. Wang has returned to China and is unavailable for further examination. Fuma could not cross-examine Mr. Wang on whether the alleged time lost, expenses incurred, and/or work performed in preparation for the deposition are authentic and reasonable because RJR withheld its pre-deposition communications until a month after the deposition. According to his invoice to RJR, Mr. Wang purportedly spent sixteen hours traveling on high-speed rail from Shenzhen, China to Kaifeng, China before spending eighty hours in Kaifeng arranging for his visa to Macao. *See* Exhibit E. Mr.

² Mr. Wang was also evasive when questioned about whether he believes RJR should compensate him for allegedly copying his patents. *See* Exhibit G at 86:12-88:9. Courts have repeatedly held that payments to fact witnesses via litigation consulting agreements for the purpose of overcoming hostility, or otherwise making a witness "sympathetic", are "absolutely indefensible and which are really included in the general definition of subordination of perjury." *See State of N.Y. v. Solvent Chemical Co., Inc.*, 166 F.R.D. 284, 290 (W.D.N.Y. Apr. 2, 1996) (collecting cases).

Wang then allegedly spent twenty-four hours driving back from Kaifeng to Shenzhen. *Id.* Mr. Wang billed RJR \$12,583 for this time and travel. *Id.* A cursory use of Google maps raises questions about whether this was necessary (or whether Mr. Wang's invoice entries are genuine), when Macao is apparently twenty miles from Shenzhen, *see* Exhibit I, and Kaifeng is a sixteen-hour drive across China from Shenzhen, *see* Exhibit J. But because RJR withheld its pre-deposition communications with Mr. Wang from Fuma, Fuma could not cross-examine Mr. Wang on his alleged preparation and travel.

Mr. Wang's invoice entries and hotel accommodations, coupled with the facts that his "consulting agreement" was dated either one day before or the day of his deposition and he responded to RJR's request for an errata sheet signature with a \$23,343 bill, imply Mr. Wang exchanged his testimony and errata sheet signature for RJR's compensation. There is no alternative way to cure the "cloud over the legitimacy of [Mr. Wang's] testimony" other than to preclude it wholesale from trial. *See Rocheux International of New Jersey*, 2009 WL 3246847 at *4.

C. RJR's attempts to modify Mr. Wang's trial testimony violate Federal Rule of Civil Procedure 30(e).

On a separate but related issue, RJR seeks to modify Mr. Wang's trial testimony through an improper errata sheet.³ Federal Rule of Civil Procedure 30(e)(1) provides, "[o]n request by the deponent or a party before the deposition is completed, the deponent must

³ If this Court precludes Mr. Wang's testimony wholesale because RJR violated its discovery obligations and/or improperly paid for Mr. Wang's factual testimony, the issue of whether the errata sheet violates the Federal Rule of Civil Procedure 30(e) becomes moot.

be allowed 30 days after being notified by the officer that the transcript or recording is available in which: (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.” (emphasis added). Under Federal Rule of Civil Procedure 30(e)(2), “[t]he officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.”

Neither Mr. Wang nor RJR made the requisite request for Mr. Wang to review and make changes to the deposition record before his deposition finished. For that reason, the officer’s certificate accompanying Mr. Wang’s deposition transcript does not contain a note that such a review was requested. *See* Exhibit G at 114.

“Although courts are split over whether to allow substantive changes to a deposition, there is no debate that the procedural requirements must be adhered to.” *Agrizap, Inc. v. Woodstream Corp.*, 232 F.R.D. 491, 493 (E.D. Pa. Jan. 19, 2006) (striking changes for failing to request a review opportunity before the deposition concluded). “Under the plain language of Rule 30(e) therefore, the deponent or party must request review of the deposition before its completion.” *Id.* (quoting *Rios v. Bigler*, 67 F.3d 1543, 1551 (10th Cir. 1995)); *see also EBC, Inc. v. Clark Bldg. Sys., Inc.*, 618 F.3d 253, 265 (3d Cir. 2010) (“As a threshold, Rule 30(e)(1) requires the party or deponent to request review of the deposition before the deposition itself is completed.”); *Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005) (affirming striking of errata sheet for failure to comply with Rule 30(e)’s “procedural dictates”). Accordingly, Mr. Wang’s and RJR’s failures to request review before the end of Mr. Wang’s deposition requires

preclusion of his errata sheet to avoid violating the threshold procedural requirements of Federal Rule of Civil Procedure 30(e).

Aside from the procedural violations, however, Fuma will be prejudiced if this Court permits RJR to modify Mr. Wang's trial testimony – particularly since his errata sheet includes substantive changes and he is unavailable for further cross-examination.⁴ For example, Mr. Wang's errata sheet notes material changes to his description of patent components: "103 is the absorbent material for the oil" would read "103 is the oil," "thread" would read "oil," and text reading "heat conducive cotton" would read "heat conductive cotton". Compare Exhibit F at 3 with Exhibit G at 23:16-23:19, 51:9. The errata sheet also impermissibly modifies a deposition exhibit by adding a Zoom screenshot to the first deposition exhibit to show a red line annotation that both Mr. Wang and the court reporter irreconcilably contend they personally added. See Exhibit G at 25:16-36:11. No procedural rule permits a party or deponent to unilaterally modify the record of deposition exhibits. Doing so for a trial deposition is akin to modifying trial exhibits after the witness has left the stand. "[T]he Rule cannot be interpreted to allow one to alter what was said under oath. If that were the case, one could merely answer the questions with no thought at all then return home and plan artful responses. ... A deposition is not a take home

⁴ Correspondence between Mr. Wang and RJR's counsel suggests RJR's counsel may have completed the errata sheet before asking Mr. Wang for his signature. See Exhibit D. This Court has broad inherent authority to fashion an appropriate remedy should the circumstances warrant it. See *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488-89 (9th Cir. 1991) (dismissing plaintiff's claims for violating Rule 30(e) after plaintiff swore he reviewed and made changes, but changes were actually made by his counsel).

examination.” *Greenway v. Int’l Paper Co.*, 144 F.R.D. 322, 325 (W.D. La. 1992).

This Court should preclude Mr. Wang’s errata sheet and new exhibit from trial in the event it does not preclude Mr. Wang’s testimony at trial.

IV. CONCLUSION

RJR violated Federal Rules of Civil Procedure 26(e) and 30(e) and should not be permitted to use Mr. Wang to present evidence at trial in accordance with Federal Rule of Civil Procedure 37(c)(1). RJR withheld documents and frustrated Fuma’s ability to fully cross-examine Mr. Wang during his one-shot trial deposition. RJR used a “consulting agreement” to improperly pay Mr. Wang for his cooperation and testimony. And, after never requesting and thereby waiving their right to review the deposition transcript and submit changes, RJR and Mr. Wang are now attempting to modify both his trial testimony and exhibits. Mr. Wang has returned to China and is not under the jurisdiction of this Court. With trial commencing in less than a month, there is no way to cure the “cloud over the legitimacy” over Mr. Wang’s testimony and RJR’s prejudicial discovery tactics other than to preclude Mr. Wang’s testimony wholesale from trial.

Date: November 3, 2021

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CERTIFICATE OF WORD COUNT

Pursuant to L.R. 7.3(d)(1), the undersigned certifies that this Brief complies with the word limit contained in L.R. 7.3(d)(1), using the word count feature of the word processing software in making this certification.

/s/ Kevin G. Williams
Kevin G. Williams

CERTIFICATE OF SERVICE

I hereby certify that, on November 3, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

/s/ Kevin G. Williams
Kevin G. Williams

37267564.5

Exhibit A

haynesboone

September 23, 2021

Via Email

Wang Shanhong ("Davy")
godscience@126.com

Re: Retention as a Consultant in Connection with *Fuma International LLC v. R.J. Reynolds Vapor Company*, Civil Action Nos. 19-cv-260 and 19-cv-660

Dear Mr. Wang,

Haynes and Boone, LLP ("Haynes Boone") represents R. J. Reynolds Vapor Company ("RJR") in a patent litigation matter against Fuma International, LLC, captioned *Fuma International LLC v. R.J. Reynolds Vapor Company*, Civil Action Nos. 19-cv-260 and 19-cv-660, pending in the Middle District of North Carolina (hereinafter, "Litigation"). Pursuant to the terms and conditions set forth in this letter agreement ("Agreement"), Haynes Boone would like to retain you as a consultant to work with Haynes Boone in its representation of RJR in this Litigation.

In the course of this engagement, you have been asked to provide deposition and/or trial testimony, participate in meetings and teleconferences, review materials, and undertake other tasks related to providing your testimony for this Litigation.

You represent and warrant that your performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by you in confidence or in trust prior to your retention as an independent contractor under this Agreement, and that you will not disclose to Haynes Boone or RJR, nor induce Haynes Boone or RJR to use any confidential or proprietary information or material belonging to any previous employer or others. You also represent that you have not executed, nor are you bound by any covenants, restrictions or other contractual agreements with any employer, customer, firm or entity with which you are currently or were previously associated that might restrict or otherwise impede your retention as an independent contractor under this Agreement.

This Agreement may not be amended or modified, nor any provision waived, by any means other than an explicit writing signed by you and Haynes Boone. Nothing in this Agreement shall be understood as granting, expressly or by implication, any patent rights, technical information or know-how of RJR except to the extent expressly set forth herein.

Haynes and Boone, LLP
Attorneys and Counselors
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T (214) 651-5000
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CONFIDENTIAL

RJRV-F000706375

You agree that you are an independent contractor, and not an employee, of Haynes Boone or RJR. Accordingly, you shall not have any authority to make commitments or enter into contracts on behalf of Haynes Boone or RJR. Solely as a result of this Agreement, you shall not be eligible for any benefits extended to Haynes Boone or RJR employees, and you shall be responsible for all applicable taxes relating to your retention to provide services hereunder.

As compensation for your time spent for this Litigation, Haynes Boone agrees to compensate you at a standard rate of \$100.00 per hour for your time spent obtaining an Exit-Entry permit with the local authorities and any required COVID-19 tests for purposes of traveling to Macau for your deposition, your travel time between Shenzhen and your hometown (Kaifeng) for purposes of obtaining an Exit-Entry permit, your travel time between Shenzhen and Macau for purposes of providing your deposition, and your time speaking with attorneys at Haynes Boone relating to this Litigation. Haynes Boone also agrees to reimburse you for your reasonable travel expenses, including travel and lodging in Macau.

RJR's Agreement to compensate you for your time and reimburse your reasonable expenses is not for any testimony or information that you may provide in this Litigation, and such compensation is not dependent on the substance or any such testimony or information. Rather, you are being compensated solely for your reasonable time and expenses. As the consultation proceeds, please periodically send me a letter itemizing your time spent and expenses.

Please signify your acceptance of the terms contained in this Agreement and return it to me as a pdf email attachment. If you have any questions about any of these matters, please let us know.

We appreciate your help in this matter.



Regards,



Haynes Boone

ACCEPTED AND AGREED:

Wang Shan hong (王山红)

Dated: _____

CONFIDENTIAL

RJRV-F000706376

Exhibit B



They ask me to pay the bill again

Handwritten notes on the form: 3639.32 MOP, 1654.24, and 3639.32 MOP.

Hotel to Complete 酒店续订			
Arrival Date 入住日期	Departure Date 退房日期	Confirmation 确认号	Adult / Children 人数
Sep-23-21	Sep-23-21	1878361	1/0
Room Number 房号	Room Price 房价	Room Type 房间类别	
2825	1,654.24	King Premier Suite Eiffel Tower View	

Check in time begins from 3.00pm and check out time is 11.00am.
入住时间由下午3时开始, 退房时间是上午11时。

A 10% service charge and 5% tax will be added to your bill.
房价自需另加10%服务费及5%税。

**Non-Stop Check Out
快速退房服务**
I authorise Conrad Macao to debit the credit card that has been authorised on arrival for the full amount incurred during my stay.
我授权澳门康莱德酒店全权办理本人的退房结账事宜, 并承诺用信用卡付清住宿期间内所发生的所有费用

Signature
签署
Checked
酒店确认

By checking in this Hotel ("Hotel"), I hereby expressly authorize Conrad Limited ("Conrad") and its Affiliates to collect, use, and process automatically or mechanically any personal data (hereinafter referred to as "Data") that is contained in the Hotel (hereinafter referred to as "Hotel") records, including my name, identification, address, email, telephone number, average stay (hereinafter referred to as "Stay"), the date of my arrival, group size, hotel room number, room type, rate and number date and place of stay, reason for stay, nationality and date related to and arising from my stay, travel history, and to improve customer segmentation and customization of marketing efforts and for market research, consumer preferences and to conduct statistical and satisfaction surveys. In addition, I also authorize VOA, and its Affiliates, to use and process my Data and disclose, in confidentiality, my Data with Conrad Macao and Hotel Members as well as with Las Vegas Sands Corporation, MGM Resorts International, and other entities. I understand that my Data will be stored in the United States of America, British Columbia (Canada), Hong Kong, Macao, Singapore, and other jurisdictions.

Waiting,,,,,

Fri, Sep 24, 1:42 AM

Now the signal is ok



Exhibit C

Message

From: He, Judy [/o=Haynes and Boone LLP/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f41e07eef8341c195c0dbf93c9cbfb0-hej]
on behalf of He, Judy
Sent: 9/23/2021 2:19:30 PM
To: 'Davy' [godscience@126.com]
CC: Gabric, Ralph [Ralph.Gabric@haynesboone.com]; Miller, Laura [Laura.Miller@haynesboone.com]
Subject: RJR/Fuma Litigation
Attachments: Wang Consulting Agreement - Fuma (English).pdf; Wang Consulting Agreement - Fuma (Simplified Chinese).pdf

王先生:

谢谢您昨天和我说话。正如我们所讨论的，请在附件中找到一份英文和简体中文的咨询协议供您审阅和签名。

请尽快通过电子邮件将已签署的协议（英文版和简体中文版）通过电子邮件发送给我。如果您有问题，请告诉我们。

Regards,

+++++ (以上内容的英文翻译) (English translation of the above)

Mr. Wang --

Thank you for speaking with me yesterday. As discussed, attached please find a consulting agreement in both English and Simplified Chinese for your review and signature.

Please return the signed agreement (both English and Simplified Chinese versions) in PDF via email to me as soon as possible. Please let us know if you have any questions.

Regards,

HAYNES BOONE

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CONFIDENTIAL

RJRV-F000706390

haynesboone

September 23, 2021

Via Email

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Re: Retention as a Consultant in Connection with *Fuma International LLC v. R.J. Reynolds Vapor Company*, Civil Action Nos. 19-cv-260 and 19-cv-660

Dear Mr. Wang,

Haynes and Boone, LLP ("Haynes Boone") represents R. J. Reynolds Vapor Company ("RJR") in a patent litigation matter against Fuma International, LLC, captioned *Fuma International LLC v. R.J. Reynolds Vapor Company*, Civil Action Nos. 19-cv-260 and 19-cv-660, pending in the Middle District of North Carolina (hereinafter, "Litigation"). Pursuant to the terms and conditions set forth in this letter agreement ("Agreement"), Haynes Boone would like to retain you as a consultant to work with Haynes Boone in its representation of RJR in this Litigation.

In the course of this engagement, you have been asked to provide deposition and/or trial testimony, participate in meetings and teleconferences, review materials, and undertake other tasks related to providing your testimony for this Litigation.

You represent and warrant that your performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by you in confidence or in trust prior to your retention as an independent contractor under this Agreement, and that you will not disclose to Haynes Boone or RJR, nor induce Haynes Boone or RJR to use any confidential or proprietary information or material belonging to any previous employer or others. You also represent that you have not executed, nor are you bound by any covenants, restrictions or other contractual agreements with any employer, customer, firm or entity with which you are currently or were previously associated that might restrict or otherwise impede your retention as an independent contractor under this Agreement.

This Agreement may not be amended or modified, nor any provision waived, by any means other than an explicit writing signed by you and Haynes Boone. Nothing in this Agreement shall be understood as granting, expressly or by implication, any patent rights, technical information or know-how of RJR except to the extent expressly set forth herein.

Haynes and Boone, LLP
Attorneys and Counselors
2323 Victory Avenue
Suite 700
Dallas, Texas 75219
T (214) 651-5000
F (214) 651-5940
www.haynesboone.com

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RJRV-F000706391

You agree that you are an independent contractor, and not an employee, of Haynes Boone or RJR. Accordingly, you shall not have any authority to make commitments or enter into contracts on behalf of Haynes Boone or RJR. Solely as a result of this Agreement, you shall not be eligible for any benefits extended to Haynes Boone or RJR employees, and you shall be responsible for all applicable taxes relating to your retention to provide services hereunder.

As compensation for your time spent for this Litigation, Haynes Boone agrees to compensate you at a standard rate of \$100.00 per hour for your time spent obtaining an Exit-Entry permit with the local authorities and any required COVID-19 tests for purposes of traveling to Macau for your deposition, your travel time between Shenzhen and your hometown (Kaifeng) for purposes of obtaining an Exit-Entry permit, your travel time between Shenzhen and Macau for purposes of providing your deposition, and your time speaking with attorneys at Haynes Boone relating to this Litigation. Haynes Boone also agrees to reimburse you for your reasonable travel expenses, including travel and lodging in Macau.

RJR's Agreement to compensate you for your time and reimburse your reasonable expenses is not for any testimony or information that you may provide in this Litigation, and such compensation is not dependent on the substance or any such testimony or information. Rather, you are being compensated solely for your reasonable time and expenses. As the consultation proceeds, please periodically send me a letter itemizing your time spent and expenses.

Please signify your acceptance of the terms contained in this Agreement and return it to me as a pdf email attachment. If you have any questions about any of these matters, please let us know.

We appreciate your help in this matter.

Regards,



Haynes Boone

ACCEPTED AND AGREED:

Wang Shanhong (王山红)

Dated: _____

CONFIDENTIAL

RJRV-F000706392

Exhibit D

Message

From: He, Judy [/o=Haynes and Boone LLP/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f41e07eef8341c195c0dbf93c9cbfb0-hej]
on behalf of He, Judy
Sent: 10/12/2021 12:32:08 PM
To: 'Davy' [godscience@126.com]
CC: Gabric, Ralph [Ralph.Gabric@haynesboone.com]; Miller, Laura [Laura.Miller@haynesboone.com]
Subject: RJRV/Fuma
Attachments: Wang Errata Sheet.pdf

王先生:

请查看附件，如果您有任何问题，请告诉我们。如果没有，请签字并返回给我们。

Regards,

++++ (以上内容的英文翻译) (English translation of the above)

Mr. Wang –

Please review the attached and let us know if you have any questions. If not, please sign and return to us.

Regards,

HAYNES BOONE

Judy He
Associate
judy.he@haynesboone.com

Haynes and Boone, LLP
180 N. LaSalle St.
Suite 2215
Chicago, IL 60601

(t) +1 312.216.1640
(f) +1 312.216.1621

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RJRV-F000706399

WITNESS ERRATA SHEET

Witness Name: Shanhong Wang
 Case name: FUMA INTERNATIONAL LLC v. R.J. REYNOLDS
 VAPOR COMPANY
 Date of Deposition: September 24, 2021

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
6	16	1:19-cv-60	1:19-cv-260	Typo
23	16-17	103 is the absorbent material for the oil	103 is the oil	Clarification
23	19	thread	oil	Clarification
25	11-13	Exhibit 1 is missing the	Page 8 of Exhibit 1	TSG error
28	10-14	red-line annotation	should reflect the	
28	17-20	made during the	red-line annotation	
28	23-25	deposition.	made during the	
29	2-4		deposition,	
25-29	generally		as shown in the screenshot attached to this errata.	
40	10	51	Frija	Clarification
40	19	Frazier	Frija	Typo
42	4, 5, 15	Long Totem	LoongTotem	Typo
45	5	Long Totem	LoongTotem	Typo
51	9	conducive	conductive	Typo

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RJRV-F000706400

Pg.	Ln.	Now Reads	Should Read	Reason
53	16	Frazier	Frija	Typo
60	13, 18	Long Totem	LoongTotem	Typo
63	23-24	Long Totem	LoongTotem	Typo
64	4	Long Totem	LoongTotem	Typo
68	5	Long Totem	LoongTotem	Typo
71	7	Long Totem	LoongTotem	Typo
95	9	2007	2007-2008	Clarification
95	10	Long Totem	LoongTotem	Typo
97	21	daily	Davy	Typo
111	8	RJRV-F00006280	RJRV-F000062080	Typo

Signature of the Deponent:

Wang Shanhong (王山红)

CONFIDENTIAL

RJRV-F000706401

Exhibit E

Message	
From:	Lucy [godscience@126.com]
Sent:	10/15/2021 3:31:40 AM
To:	He, Judy [Judy.He@haynesboone.com]
Subject:	Re:RJR/Fuma
Attachments:	wangshanhong.pdf
EXTERNAL: Sent from outside Haynes and Boone, LLP	

Hi Judy,
 Good afternoon. I am the assistant of General Manager Wang.
 Attached is the reasonable compensation for the time GM Wang spent as the consultant for Haynes and Boone, LLP.
 The compensation is for the time it took to obtain the Hong Kong and Macau travel permit from the local office to travel to Macau, and the time to take the COVID-19 test for Macau travel.
 The travel time between Shenzhen and Hometown (Kai Feng) to get the Hong Kong and Macau travel permit, the travel time between Shenzhen and Macau for the testimony. The time to talk to the lawyer of Haynes and Boone, LLP. Also, the reasonable travel expenses, including transportation and accommodation.
 Please check the attachment, contact us if there is any question. Your payment is much appreciated. If there are no further questions here is the new address for GM Wang as follows:
 Room 301, Unit 1, #3 building, Area 6, Xi Xiang Tao Yuan Ju, Bao An district, Shen Zhen.
 Post code: 518126

Best Regards and Thanks,
 Lucy

2021-10-13 00:32:10, "He, Judy" <Judy.He@haynesboone.com>
 Wrote on

Mr. Wang-

Please review the attached and let us know if you have any questions. If not, please sign and return to us.

Regards,

+++++) (English translation of the above)

Mr. Wang -

Please review the attached and let us know if you have any questions. If not, please sign and return to us.

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RJR/F-000706387

Message

From: Lucy [godscience@126.com]
Sent: 10/15/2021 3:31:40 AM
To: He, Judy [Judy.He@haynesboone.com]
Subject: Re:RJRV/Fuma
Attachments: wangshanhong.pdf

EXTERNAL: Sent from outside Haynes and Boone, LLP

Hi Judy,

下午好, 我是王总助理Lucy。

附件是王总担任美国海博顾问期间所花费时间的合理补偿

此补偿为前往澳门而在地方当局获得港澳通行证所花费的时间以及为前往澳门而做的 COVID-19 测试所花费的时间

从深圳到家乡(开封)为获得港澳通行证的来回 路程时间, 从深圳到澳门为提供证词的来回路程时间。

以及与海博的律师交谈的 时间。 以及合理的旅费, 包括在澳门的旅费和住宿费。

请查看此附件, 如果有任何问题请和我们联系, 如果没有, 辛苦支付此合理补偿。

另外王总新地址:

深圳市宝安区西乡桃源居6区3栋一单元301, 邮编: 518126

Best regards and Thanks

Lucy

在 2021-10-13 00:32:10, "He, Judy" <Judy.He@haynesboone.com> 写道:

王先生:

请查看附件, 如果您有任何问题, 请告诉我们。如果没有, 请签字并返回给我们。

Regards,

+++++ (以上内容的英文翻译) (English translation of the above)

Mr. Wang –

Please review the attached and let us know if you have any questions. If not, please sign and return to us.

CONFIDENTIAL

RJRV-F000706387

Regards,

HAYNES BOONE

Judy He

Associate
judy.he@haynesboone.com

Haynes and Boone, LLP

180 N. LaSalle St.
Suite 2215
Chicago, IL 60601

(t) +1 312.216.1640

(f) +1 312.216.1621

vCard | Bio | Website

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RJRV-F000706388

Wang Shanhong WANGSHANHONG ADD: #301, Unit 1, Building 3, Xixiang Taoyuanju Zone 6, Bao'an District, Shenzhen Tel: +8615502199379				
To: Haynes and Boone, LLP Consignee: Judy Tel: 2146515000				
ITEMS	DESCRIPTION	Time	Standard	Amount
				USD
August 23-24	8 hours of accounting testing in Shenzhen on August 22	8	100/hour	800.00
2	High-speed rail fee from Shenzhen to Changsha, from Changsha to Kaifeng, August 23-24			147.00
3	16 hours of travel from Shenzhen to Changsha, from Changsha to Kaifeng, August 23-24	16	100/hour	1,600.00
4	Transit accommodations in Changsha			51.00
5	80 hours to arrange for visa to Macao in Kaifeng, August 25-September 3	80	100/hour	8,000.00
6	24 hours to drive back from Kaifeng to Shenzhen, September 19-21	24	100/hour	2,400.00
7	Fuel and toll fees during the drive back from Kaifeng to Shenzhen, September 19-21			385.00
8	8 hours of accounting testing in Shenzhen, September 22	8	100/hour	800.00
9	6 hours of travel from Shenzhen to Macao, September 23	6	100/hour	600.00
	Travel expenses from Shenzhen to Macao, September 23			33.00
10	8 hours of work in Macao, September 24	8	100/hour	800.00
11	11 hours of nucleic acid testing in Macao, September 25	11	100/hour	1,100.00
12	6 hours of travel in Macao-Zhuhai-Shenzhen, September 25	6	100/hour	600.00
13	32 hours of home quarantine after returning from Macao, September 26-29	32	100/hour	3,200.00
14	8 hours of nucleic acid testing in Shenzhen, September 30	8	100/hour	800.00
	Travel expenses in Macao-Zhuhai-Shenzhen, September 25			27.00
15	14 work hours to exchange 14 emails	14	100/hour	1,400.00
16	6 work hours on the phone	6	100/hour	600.00
Total	Total	227		23,343.00
Bank account information: Beneficiary Bank Name : REDACTED Beneficiary Bank Address : REDACTED REDACTED Beneficiary Account Name : REDACTED Beneficiary Account Number : REDACTED Beneficiary Account address : REDACTED REDACTED Swift Code : REDACTED				

CONFIDENTIAL

RJRV-F000706389

王山红 WANGSHANHONG ADD: 深圳市宝安区西乡铁源居6区3栋一单元301 Tel: +8615502199379				
To: Haynes and Boone, LLP Consignee: Judy tel: 2340515000				
ITEMS	DESCRIPTION	Time	Standard	Amount USD
8月23-24日	8月22日深圳核算检测8个小时	8	100/小时	800.00
2	8月23-24日深圳到长沙, 长沙到开封高铁费用			147.00
3	8月23-24日深圳到长沙, 长沙到开封16小时	16	100/小时	1,600.00
4	长沙中转住宿费			51.00
5	8月25日-9月3日开封办理澳门签证80小时	80	100/小时	8,000.00
6	9月19日-21日开封开车回深圳24小时	24	100/小时	2,400.00
7	9月19日-21日开封开车回深圳汽油费过路费			385.00
8	9月22日深圳核算检测8个小时	8	100/小时	800.00
9	9月23日深圳到澳门6个小时	6	100/小时	600.00
	9月23日深圳到澳门路费			33.00
10	9月24日澳门工作时间8小时	8	100/小时	800.00
11	9月25日澳门核酸检测11小时	11	100/小时	1,100.00
12	9月25日澳门-珠海-深圳6小时	6	100/小时	600.00
13	9月26-29日澳门返回居家隔离32小时	32	100/小时	3,200.00
14	9月30日深圳核酸检测8小时	8	100/小时	800.00
	9月25日澳门-珠海-深圳路费			27.00
15	14封邮件交流工作时间14小时	14	100/小时	1,400.00
16	电话交流工作时间6小时	6	100/小时	600.00
Total	合计	227		23,343.00
Bank account information: Beneficiary Bank Name : REDACTED Beneficiary Bank Address : REDACTED Beneficiary Account Name : REDACTED Beneficiary Account Number : REDACTED Beneficiary Account address : REDACTED Swift Code : REDACTED				



TRANSLATION CERTIFICATION

Date: October 27, 2021

To whom it may concern:

This is to certify that the attached translation is an accurate representation of the documents received by this office. The translation was completed from:

- **Chinese**

To:

- **English**

The documents are designated as:

- **RJRV-F000706387**

Taylor Liff, Project Manager in this company, attests to the following:

"To the best of my knowledge, the aforementioned documents are a true, full and accurate translation of the specified documents."

Signature of Taylor Liff



TRANSLATION CERTIFICATION

Date: October 27, 2021

To whom it may concern:

This is to certify that the attached translation is an accurate representation of the documents received by this office. The translation was completed from:

- **Chinese**

To:

- **English**

The documents are designated as:

- **RJRV-F000706389**

Taylor Liff, Project Manager in this company, attests to the following:

"To the best of my knowledge, the aforementioned documents are a true, full and accurate translation of the specified documents."

Signature of Taylor Liff

Exhibit F

From: He, Judy <Judy.He@haynesboone.com>
Sent: Monday, October 25, 2021 1:47 PM
To: 'TSG Production'
Cc: 'Brandon Jordan'; 'FumaService'; Gabric, Ralph; Miller, Laura; Quinlan, Michael S.; Morrow, John
Subject: [EXTERNAL] Fuma International, LLC v. R.J. Reynolds Vapor Company - ERRATA - Job Date 9/24/2021 - Job #199180
Attachments: SIGNED Wang Errata Sheet.pdf

TSG and Counsel –

Attached please find the signed errata for the deposition of Shanhong Wang in the above-referenced matter/job.

Regards,

HAYNES BOONE

Judy He
Associate
judy.he@haynesboone.com

Haynes and Boone, LLP
180 N. LaSalle St.
Suite 2215
Chicago, IL 60601

(t) +1 312.216.1640
(f) +1 312.216.1621

[vCard](#) | [Bio](#) | [Website](#)

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WITNESS ERRATA SHEET

Witness Name: Shanhong Wang
 Case name: FUMA INTERNATIONAL LLC v. R.J. REYNOLDS VAPOR COMPANY
 Date of Deposition: September 24, 2021

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
6	16	1:19-cv-60	1:19-cv-260	Typo
23	16-17	103 is the absorbent material for the oil	103 is the oil	Clarification
23	19	thread	oil	Clarification
25	11-13	Exhibit 1 is missing the red-line annotation made during the deposition.	Page 8 of Exhibit 1 should reflect the red-line annotation made during the deposition, as shown in the screenshot attached to this errata.	TSG error
28	10-14			
28	17-20			
28	23-25			
29	2-4			
25-29	generally			
40	10	51	Frija	Clarification
40	19	Frazier	Frija	Typo
42	4, 5, 15	Long Totem	LoongTotem	Typo
45	5	Long Totem	LoongTotem	Typo
51	9	conducive	conductive	Typo

Pg.	Ln.	Now Reads	Should Read	Reason
53	16	Frazier	Frija	Typo
60	13, 18	Long Totem	LoongTotem	Typo
63	23-24	Long Totem	LoongTotem	Typo
64	4	Long Totem	LoongTotem	Typo
68	5	Long Totem	LoongTotem	Typo
71	7	Long Totem	LoongTotem	Typo
95	9	2007	2007-2008	Clarification
95	10	Long Totem	LoongTotem	Typo
97	21	daily	Davy	Typo
111	8	RJRV-F00006280	RJRV-F000062080	Typo

Signature of the Deponent:



Wang Shanhong (王山红)

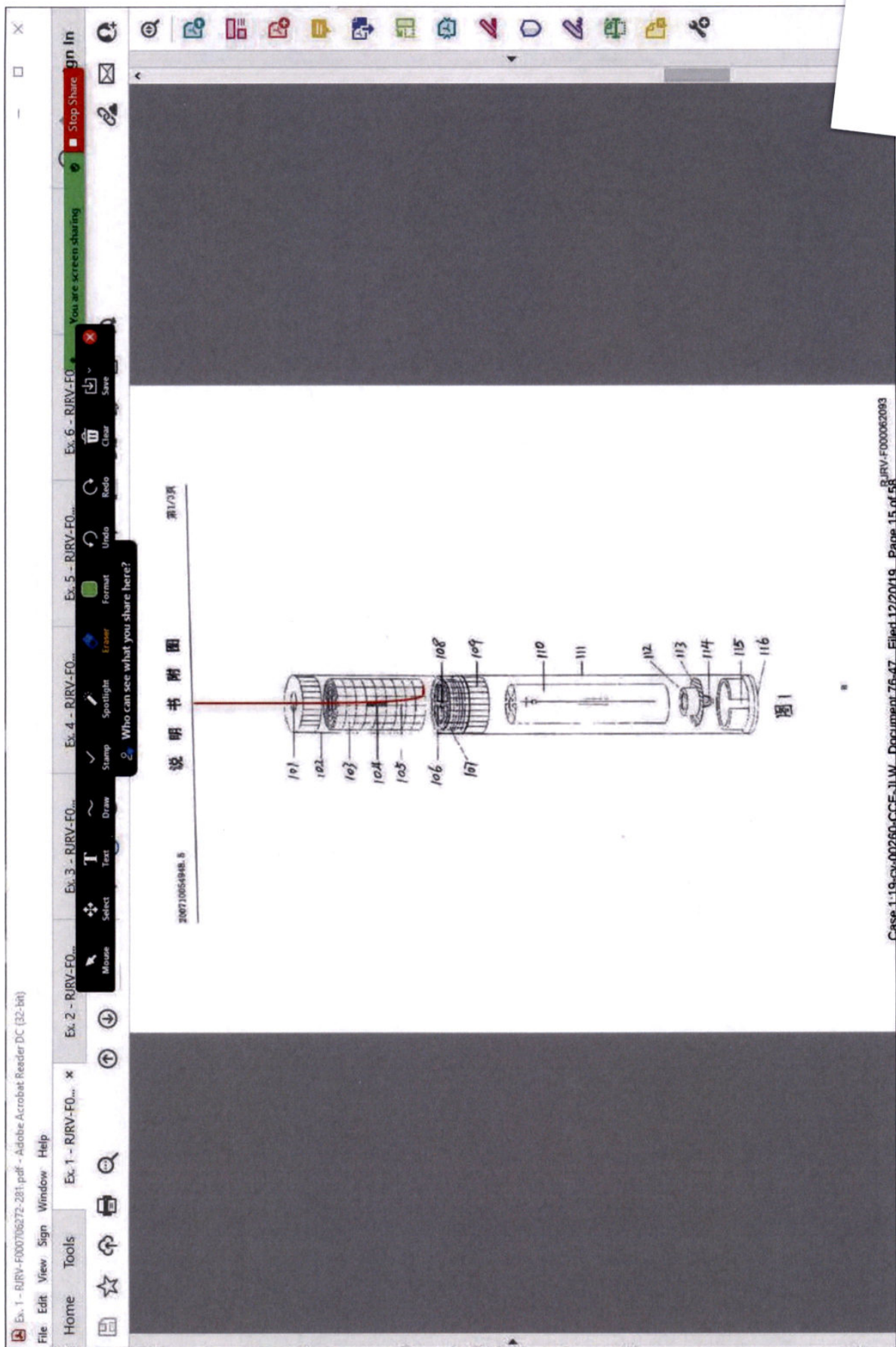


Exhibit G

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 FUMA INTERNATIONAL LLC, an)
4 Ohio limited liability)
5 company,)
6)
6 Plaintiff/Counter-) Civil Action
7 Defendant,) Nos.
7) 1:19-cv-260
8 vs.) and
8) 1:19-cv-660
9 R.J. REYNOLDS VAPOR)
9 COMPANY, a North Carolina)
10 corporation,)
10)
11 Defendant/Counter-)
11 Plaintiff.)
12 -----)

13

14

15

16 REMOTE ZOOM VIDEOTAPED DEPOSITION OF

17 SHANHONG WANG

18 Friday, September 24, 2021

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23 Reported by:

24 Stacey L. Daywalt

25 JOB NO. 199180

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Friday, September 24, 2021
9:33 a.m.

Remote Zoom Videotaped Deposition of
SHANHONG WANG, held before Stacey L. Daywalt, a
Court Reporter and Notary Public of the
District of Columbia.

1 A P P E A R A N C E S:

2 (All appearances via remote Zoom)

3

4 DIRK D. THOMAS

5 Attorneys for Plaintiff

6 1775 Eye Street

7 Washington, DC 20006

8 BY: DIRK THOMAS, ESQ.

9

10 AND

11

12 THE LAW FIRM OF BRANDON M. JORDAN

13 Attorneys for Plaintiff

14 2800 Eisenhower Avenue

15 Alexandria, Virginia 22314

16 BY: BRANDON JORDAN, ESQ.

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1 A P P E A R A N C E S (CONTINUED):

2

3 HAYNES AND BOONE

4 Attorneys for Defendant

5 180 North LaSalle Street

6 Chicago, Illinois 60601

7 BY: JUDY HE, ESQ.

8 RALPH GABRIC, ESQ.

9

10 AND

11

12 JONES DAY

13 Attorneys for Defendant

14 901 Lakeside Avenue

15 Cleveland, Ohio 44114

16 BY: MICHAEL QUINLAN, ESQ.

17

18

19

20

21 ALSO PRESENT:

22

23 PHILIP RIZZUTI, Videographer

24 VLADIMIR KORNEYCHUK, Exhibits

25 YANG SHAO, Interpreter

1 S. Wang

2 THE VIDEOGRAPHER: Good morning,
3 counsel. My name is Philip Rizzuti. I am a
4 legal videographer in association with TSG
5 Reporting, Inc.

6 Due to the severity of the COVID-19
7 and following the practice of social
8 distancing, I will not be in the same room with
9 the witness. Instead, I will record this
10 videotaped deposition remotely. The reporter,
11 Stacey Daywalt, also will not be in the same
12 room and will swear the witness remotely.

13 Do all parties stipulate to the
14 validity of this video recording and remote
15 swearing and that it will be admissible in the
16 courtroom as if it had been taken following
17 Rule 30 of the Federal Rules of Civil Procedure
18 and the state's rules where this case is
19 pending?

20 MR. THOMAS: Yeah, this is Dirk
21 Thomas on behalf of Fuma.

22 We do not consent. We object to the
23 fact that the court reporter swearing the
24 witness is not present with the witness.

25 But we can continue with the

1 S. Wang

2 deposition subject to our objection.

3 MS. HE: This is Judy He, counsel
4 for RJRV.

5 We consent and we note that it is a
6 court ordered deposition pursuant to the court
7 order.

8 THE VIDEOGRAPHER: Okay. This is
9 the start of media labelled No. 1 of the video
10 recorded deposition of Mr. Shanhong Wang in the
11 matter of Fuma International, LLC, an Ohio
12 limited liability company, versus R.J. Reynolds
13 Vapor Company, a North Carolina corporation, in
14 the United States District Court for the Middle
15 District of North Carolina, Case
16 Nos. 1:19-cv-60 and 1:19-cv-660.

17 This deposition is taking place on
18 September 24th, 2021 at approximately 9:35 a.m.

19 My name is Phil Rizzuti. I am the
20 legal video specialist from TSG Reporting, Inc.

21 The court reporter is Stacey
22 Daywalt, in association with TSG Reporting.

23 Counsel, please introduce
24 yourselves.

25 (Counsel identify themselves on the

1 S. Wang

2 record.)

3 THE VIDEOGRAPHER: Thank you.

4 Will the court reporter please swear
5 in the witness.

6 Excuse me. Will the court reporter
7 please swear in the interpreter first.

8 - - -

9 YANG SHAO, Interpreter, after having
10 been first sworn to translate Mandarin to
11 English and English to Mandarin to the best of
12 his ability, interpreted the following:

13 - - -

14 S H A N H O N G W A N G,

15 called as a witness, having been
16 duly sworn by a Notary Public, was examined and
17 testified as follows:

18

19 EXAMINATION BY

20 MS. HE:

21 Q. Can you please state your name for
22 the record.

23 A. My name is Shanhong Wang, spelled as
24 S-H-A-N-H-O-N-G, last name W-A-N-G.

25 The English name is spelled the

1 S. Wang

2 MR. THOMAS: Move to strike the
3 answer as nonresponsive.

4 BY MS. HE:

5 Q. Mr. Wang, please identify all of the
6 elements of the cartridge shown in Figure 1.
7 For example, 101 is an element, 102 is an
8 element.

9 Please identify all of the elements
10 shown in the cartridge of Figure 1.

11 MR. THOMAS: Object to the form of
12 the question.

13 THE WITNESS: 101 is actually the
14 cover with an aperture for the air.

15 102 is the outside housing.

16 103 is the absorbent material for
17 the oil.

18 104 is the heater, while 105 is the
19 part which has the thread inside.

20 BY MS. HE:

21 Q. So Mr. Wang, in Figure 1, from 101
22 to 105 is the cartridge. Correct?

23 MR. THOMAS: Object to the form of
24 the question.

25 THE WITNESS: That is correct,

1 S. Wang

2 Actually, for part 104, both the
3 upper end and the lower end would have their
4 independent airflow channels.

5 What we did was to coil the wire
6 through separate glass tubes. Therefore, the
7 airflow channel would be formed.

8 As you can see in 105 as well as in
9 101, they're hollow spaces.

10 BY MS. HE:

11 Q. Can the witness draw where the air
12 flows through this device -- through the
13 cartridge.

14 MR. THOMAS: Object to the form of
15 the question.

16 MR. KORNEYCHUK: Should I give him
17 control of the exhibit, Counsel?

18 MS. HE: Yes.

19 Can you give the witness control?

20 THE WITNESS: Well, since I'm using
21 my cell phone, can I do that? I don't know.
22 Is it okay?

23 MR. KORNEYCHUK: Counsel, I believe
24 that because he is on a cell phone that I
25 cannot give control. That's correct, yeah.

1 S. Wang

2 MS. HE: Can we go off the record?

3 THE VIDEOGRAPHER: The time is
4 10:26 a.m. and we are going off the record.

5 (Discussion was held off the
6 record.)

7 THE VIDEOGRAPHER: The time is
8 10:28 a.m. and we are back on the record.

9 MR. THOMAS: I want the record to
10 reflect that while the witness was asked the
11 last question and before the witness did
12 anything to what is now marked as Exhibit 1,
13 the videographer applied a red line to the
14 drawing that's marked as Exhibit 1 and the
15 witness saw that. And that was not the
16 witness's doing. That was the videographer's
17 doing.

18 So as long as the record reflects
19 that, we can move on.

20 MR. KORNEYCHUK: And in all
21 fairness, this is actually the exhibit operator
22 who made that mistake as I was trying to give
23 the deponent control of the exhibits. And I
24 wasn't able to because the deponent is on his
25 cell phone and I cannot give him control when

1 S. Wang

2 he's on his cell phone.

3 MR. THOMAS: Yeah, that's fine.

4 And I appreciate that it wasn't the
5 videographer. It was the Vladimir Korneychuk.
6 Is that correct?

7 MR. KORNEYCHUK: Korneychuk, yes.

8 MR. THOMAS: Okay. So -- and
9 Vladimir, who do you work for?

10 MR. KORNEYCHUK: TSG Reporting.

11 MR. THOMAS: Okay. Then the record
12 will reflect that the person handling the
13 exhibits added the red line before the witness
14 was able to respond to the question that was
15 pending, the red line in Exhibit 1.

16 THE WITNESS: No, actually I draw
17 this line. I drew this line using my cell
18 phone.

19 Actually, I did not see the cursor.
20 However, I saw a pen on the screen of my cell
21 phone. So I used that pen and drew the line,
22 and it was done like that.

23 And I even asked you guys whether
24 that's how I should do it, and it was done.

25 Actually, you can even try with your

1 S. Wang

2 own cell phone. It's so easy to do so.

3 MR. THOMAS: The record will reflect
4 what the videographer and what the exhibit
5 coordinator said.

6 And if this witness wants to
7 contradict what they said, I can't stop him.

8 So go ahead.

9 BY MS. HE:

10 Q. Mr. Wang, do you see a red line on
11 Figure 1?

12 A. Yes.

13 Q. Does that line go through the center
14 of 101?

15 MR. THOMAS: Object to the form of
16 the question.

17 THE WITNESS: Of course it went
18 through the center.

19 Q. Does that line go through the center
20 of 104?

21 MR. THOMAS: Object to the form of
22 the question.

23 THE WITNESS: In this figure, yes,
24 because it has to go through the airflow
25 channel.

1 S. Wang

2 Once it does so, it will go through
3 the heater and bring up the smoke or fumes or
4 vapors.

5 MR. THOMAS: Move to strike the
6 answer as nonresponsive.

7 MS. HE: Can I take a break?

8 THE WITNESS: All right.

9 MS. HE: Can we go off the record?

10 THE VIDEOGRAPHER: The time is
11 10:35 a.m. and we are going off the record.

12 (Recess was taken from 10:35 a.m. to
13 10:48 a.m.)

14 THE VIDEOGRAPHER: The time is
15 10:48 a.m. and we are back on the record.

16 BY MS. HE:

17 Q. Mr. Wang, I am marking as Wang
18 Exhibit 2 a document starting with Bates
19 No. RJRV-F000706283.

20 MR. THOMAS: Well, wait a minute.
21 Objection.

22 Who has been marking up this exhibit
23 that was just published with that red line and
24 then taking it off? How is that happening?

25 Counsel, this record has to reflect

1 S. Wang

2 that when this exhibit was published there was
3 a red line that looked like the red line on
4 Exhibit 1. And somebody, whoever has control
5 of the cursor right now -- I assume it's the
6 person who's controlling the exhibits --
7 removed that red mark that was on this page
8 when it was published to everybody, including
9 the witness.

10 How did that happen? Somebody.

11 MR. KORNEYCHUK: Counsel, during the
12 previous break when that line first appeared, I
13 had asked if I can remove that line after I
14 announced what happened.

15 I never removed that line, and so
16 that line was still on the screen here within
17 Zoom. That's why it appeared here on Exhibit 2
18 automatically.

19 MR. THOMAS: Well, listen, the
20 record has to reflect accurately everything
21 that happens here. Okay?

22 So if an exhibit comes up, before
23 anybody starts changing anything in it, we need
24 to make sure of what the record is before
25 somebody starts making changes on it.

1 S. Wang

2 Is that clear to everybody,
3 including whoever's working the exhibits?
4 Because at this point the record needs to
5 reflect that you were removing a marking that
6 apparently existed on Exhibit 2 when this
7 witness has never had control over Exhibit 2.
8 That's what showed up on this screen, so that's
9 what I want the record to reflect and that's
10 what the record does reflect.

11 And if anybody's going to challenge
12 me on that, say so now.

13 All right. Let's move on.

14 MR. GABRIC: Well, no. I'm going to
15 say so now, Dirk. This is Ralph.

16 MR. THOMAS: Go ahead, Ralph. Tell
17 me that you didn't see that red line get
18 removed when this Exhibit 2 was published.

19 MR. GABRIC: No, I'm going to tell
20 you what I heard the exhibit handler to say, is
21 that --

22 MR. THOMAS: No, Ralph. Tell me if
23 you saw that red line get removed from this
24 exhibit after it was published.

25 MR. GABRIC: Hey, Dirk, I'm not

1 S. Wang

2 going to answer your questions.

3 I'm making my record. You make your
4 record.

5 MR. THOMAS: Well, I want -- I want
6 there to be an exhibit just like was shown when
7 this was published.

8 And you can make a new exhibit
9 without it if you want. But this witness saw a
10 different exhibit that got modified, and now
11 the record won't show what the witness
12 observed.

13 MR. GABRIC: Well, I have a --
14 the -- Vladimir, are you controlling the
15 exhibits?

16 MR. KORNEYCHUK: I am, yes.

17 MR. GABRIC: And was the line on the
18 Zoom screen a remnant or was it actually on
19 Exhibit 2?

20 MR. KORNEYCHUK: Any sort of
21 adaptations that I made is not officially in
22 the exhibit unless I save it.

23 So that was just a line that was
24 within Zoom, not within that actual exhibit.

25 MR. GABRIC: That's all I wanted to

1 S. Wang

2 clarify. Thank you.

3 MR. THOMAS: Who put that line in,
4 Vladimir?

5 MR. KORNEYCHUK: Originally I
6 thought that it was me. The deponent said
7 otherwise.

8 At this point I can only speculate.

9 MR. THOMAS: And let's make a new
10 exhibit showing what you had left on Exhibit 2
11 when it was marked, because right now this
12 record does not reflect what was shown to the
13 witness.

14 So I'm going to make an objection to
15 any of this line of questioning at this point.

16 MR. GABRIC: Your objection's noted.

17 Judy, go ahead. Sorry to interrupt.

18 MR. THOMAS: No. Actually, I want
19 the videographer to create a separate exhibit
20 that I will mark when I get to answer questions
21 with that red line on Exhibit 2 as it was
22 originally pulled up.

23 Can you do that for me, Vladimir?

24 MR. GABRIC: You'll get your turn,
25 Dirk. This is --

1 S. Wang

2 MR. THOMAS: I'm just asking
3 Vladimir to make sure he can do it. That's
4 all.

5 I don't want to ask questions about
6 it right now. I just want to make sure
7 Vladimir tells me that he can recreate what was
8 originally shown to the witness and then I'll
9 mark it.

10 I know you don't want to, Ralph, but
11 I will.

12 MR. GABRIC: You don't have to
13 assume what I think or don't think, Dirk.

14 MR. THOMAS: Well, go ahead and mark
15 it then.

16 MR. GABRIC: We're going to conduct
17 our examination as we please, Dirk.

18 MR. THOMAS: Well, you're conducting
19 it --

20 (Simultaneous crosstalk.)

21 MR. THOMAS: -- record that does not
22 reflect what the witness has been shown, and
23 that's what I want this record to reflect.

24 But go ahead.

25 Vladimir, can you recreate that as

1 S. Wang

2 an exhibit for me when it's my turn to ask
3 questions?

4 MR. KORNEYCHUK: Well, the problem
5 with that is that that mark was not within an
6 exhibit. It was just within the Zoom platform.
7 So...

8 MR. THOMAS: Well, put it back. I
9 mean, hit replay and get it back --

10 MR. KORNEYCHUK: I can -- I can put
11 it -- I can try to put it back.

12 Would you like --

13 MR. THOMAS: Yeah, let me see what
14 it looks like as you pulled it up originally.

15 MR. KORNEYCHUK: Sure.

16 And again, I mean, this is not
17 within Exhibit 2. This is within Zoom.

18 So this is where -- this is the
19 exact --

20 MR. THOMAS: I want you to create
21 that for me to mark as an exhibit when it's my
22 turn to ask questions. Okay?

23 MR. KORNEYCHUK: I can go ahead and
24 save this and the --

25 MR. THOMAS: Perfect. Thank you.

1 S. Wang

2 MR. KORNEYCHUK: But am I okay to
3 clear this line, Counsel?

4 MR. THOMAS: Yeah, that's the one.
5 That's the one that was shown to the witness
6 initially, yes.

7 MR. KORNEYCHUK: Okay.

8 MR. THOMAS: But you've got a copy
9 of it with the red line on it that you're going
10 to use when I get to ask questions. Right?

11 MR. KORNEYCHUK: That's correct.

12 MR. THOMAS: Okay. Thank you.

13 BY MS. HE:

14 Q. Mr. Wang, I'm showing you a document
15 that I've marked as Wang Exhibit 2, and it
16 starts with Bates No. RJRV-F000706283.

17 Do you recognize Wang Exhibit 2?

18 (Wang Exhibit 2, Document starting
19 with Bates No. RJRV-F000706283, marked for
20 identification.)

21 THE WITNESS: I can't see it.

22 Can you show it to me?

23 Q. I believe the screen is shared.

24 A. Is this the document?

25 MS. HE: Can we go off the record.

1 S. Wang

2 BY MS. HE:

3 Q. Does that air travel through the
4 cartridge in a straight line?

5 MR. THOMAS: Object to the form of
6 the question.

7 THE WITNESS: That is correct.

8 Since the heater was wrapped up by
9 the heat conducive cotton, there's no other way
10 for the air to travel through. It can only
11 travel through the passageway in the center.

12 BY MS. HE:

13 Q. I'd like to scroll down to the photo
14 on the bottom right-hand side of the page
15 ending in Bates No. 6312.

16 Mr. Wang, there's -- that white --
17 what is the white stuff that is shown in that
18 photo?

19 MR. THOMAS: Object to the form of
20 the question.

21 THE WITNESS: The white stuff is
22 actually the heat conducive cotton, and it was
23 used to transfer the liquid to the heater. It
24 is the absorbent material for the oil.

25 Actually after the wrapping was

1 S. Wang

2 EXAMINATION BY

3 MR. THOMAS:

4 Q. Mr. Wang, you are being paid to help
5 R.J. Reynolds in this case. Correct?

6 A. No. Actually --

7 MS. HE: Excuse me, Mr. Interpreter.
8 I need to make my objection.

9 Objection, form and objection,
10 mischaracterizes the nature of his agreement.

11 THE INTERPRETER: The witness answer
12 is as follows: No. Actually, for all my
13 patents, nobody ever paid me even a penny.
14 Only one company called E-cigarettes.com paid
15 me 150,000 RMB. Otherwise, many companies
16 copied my patents but they didn't even pay me a
17 penny.

18 BY MR. THOMAS:

19 Q. Mr. Wang, you are being paid \$100 an
20 hour by R.J. Reynolds to appear for this
21 deposition. Correct?

22 MS. HE: Objection, mischaracterizes
23 the nature of his agreement.

24 THE WITNESS: Actually, I'm still
25 the owner of my company and I have a very

1 S. Wang

2 successful business. I've been very busy, and
3 time to me is very precious every day.
4 Actually, right now I've been providing
5 nicotine related products to many companies and
6 my business is very good.

7 For this deposition I have to suffer
8 some loss, so even this type of a compensation
9 may not actually cover my loss, and you
10 shouldn't even mention it.

11 BY MR. THOMAS:

12 Q. Mr. Wang, you are being paid \$100 an
13 hour for the time you spend speaking with
14 attorneys at Haynes and Boone relating to this
15 litigation. Correct?

16 MS. HE: Objection, mischaracterizes
17 his agreement.

18 Also, I'll note for the record that
19 the witness was not done testifying. He was
20 still in the middle of his testimony.

21 THE WITNESS: So far I haven't
22 received a dime. Nobody even paid me a penny
23 as of now.

24 BY MR. THOMAS:

25 Q. Mr. Wang, you have a written

1 S. Wang

2 agreement with R.J. Reynolds' lawyers to pay
3 you \$100 an hour for the time you spend helping
4 them on this case. Isn't that correct?

5 MS. HE: Objection, form and
6 objection, mischaracterizing the nature of his
7 agreement.

8 THE WITNESS: Actually, I don't care
9 about compensation for the time I spent.

10 So far I spent a lot of time, but I
11 haven't received even a dime. I don't really
12 care about this.

13 Last time a lawyer came to visit my
14 company, I spent my own money to host that
15 lawyer. I didn't receive any money for that.

16 BY MR. THOMAS:

17 Q. What lawyer was that, Mr. Wang, that
18 came to visit your company?

19 A. When the document was executed, the
20 last name of that attorney is spelled Z-H-A-O,
21 Zhao.

22 Q. And that is --

23 MS. HE: Excuse me. I need to make
24 a -- I didn't get a chance to make an objection
25 to that question.

1 S. Wang

2 But objection, form to the earlier
3 question that was mentioned.

4 BY MR. THOMAS:

5 Q. The lawyer that came to visit you is
6 a lawyer for R.J. Reynolds in this litigation.
7 Correct?

8 MS. HE: Objection, form.

9 THE WITNESS: He came over for the
10 execution of the document.

11 I do not know who that person really
12 is. I only tell you what I know.

13 BY MR. THOMAS:

14 Q. You know that it was somebody that
15 came to help you write your declaration that
16 you submitted in this case. Correct?

17 MS. HE: Objection, form and
18 objection, mischaracterizes earlier testimony.

19 THE WITNESS: I don't know much
20 about the English version.

21 However, for the Chinese version, I
22 participated in the creation of the declaration
23 and I helped with some wordings.

24 BY MR. THOMAS:

25 Q. I'm going to have Mr. Jordan mark as

1 S. Wang
2 the next exhibit -- it will be Wang
3 Exhibit 8 -- a document that was produced to us
4 just today from R.J. Reynolds, and it's Bates
5 numbered RJRV-F00706340, 341, 342 and 343.

6 (Wang Exhibit 8, Letter dated
7 9/23/21, RJRV-F000706340-343, marked for
8 identification.)

9 Q. If we could publish that for
10 everybody, please.

11 MR. JORDAN: Vladimir, this is
12 Brandon Jordan. I've placed Exhibit 8 in the
13 chat. So if you could just pull it up for us.

14 Q. And if you could go to the second
15 page of this and then towards the bottom.

16 Mr. Wang, is that your signature on
17 the left under where it says Accepted and
18 Agreed and it says Wang Shanhong?

19 Is that your signature?

20 A. That's correct.

21 Q. And if we could scroll up, please,
22 to the one, two, third paragraph where it says:
23 "As compensation for your time in this
24 litigation."

25 Could you highlight that, please.

1 S. Wang

2 And Mr. Wang, the document you
3 signed says that you will be paid as
4 compensation for your time spent in this
5 litigation \$100 per hour for your time spent
6 obtaining an exit/entry permit with the local
7 authorities. Correct?

8 MS. HE: Objection, form and
9 objection.

10 You're mischaracterizing the
11 agreement.

12 THE WITNESS: It's not completely
13 true with regard to your description.

14 Actually, I spent time for COVID-19
15 test, as well as getting the exit/entry permit
16 because I have to travel to Macau. Had the
17 deposition been taken in Shenzhen, then I
18 wouldn't have had done so many things.

19 I don't know why, but I guess it's
20 only legal for me to give my testimony in
21 Macau. For that, I had to go back to my
22 hometown for the paperwork and I had been
23 quarantined for a long time. Therefore, I have
24 spent so much time for this litigation.

25 In addition, there's not a causal

1 S. Wang

2 relation between this agreement and what I've
3 been doing. I'm doing this to -- for the sake
4 of my honor.

5 BY MR. THOMAS:

6 Q. Mr. Wang, you are being paid \$100 an
7 hour by R.J. Reynolds' lawyers for your travel
8 time between Shenzhen and your hometown of
9 Kaifeng for purposes of obtaining an exit/entry
10 permit. Correct?

11 MS. HE: Objection, form.
12 Objection, you're mischaracterizing the
13 agreement.

14 THE WITNESS: I believe such a
15 compensation is just a token, because when I
16 was working for another company or when I was
17 employed in the past, I used to be able to make
18 one million RMB a month.

19 Now I have my own business, I can
20 earn one million RMB a month. Therefore, I
21 don't care about such compensation.

22 BY MR. THOMAS:

23 Q. Mr. Wang, you are being paid \$100 an
24 hour for your travel time between Shenzhen and
25 Macau for purposes of providing your deposition

1 S. Wang

2 today. Correct?

3 MS. HE: Objection, form.

4 Objection, you're mischaracterizing the
5 agreement.

6 THE WITNESS: I know I executed this
7 document.

8 However, I don't care whether they
9 gave me this compensation or not because I have
10 spent a lot of time, and my time is more
11 valuable, way more valuable, than that level of
12 compensation.

13 BY MR. THOMAS:

14 Q. Mr. Wang, R.J. Reynolds' lawyers at
15 Haynes and Boone will pay for the hotel you're
16 staying in in Macau. Correct?

17 MS. HE: Objection, form.

18 THE WITNESS: Actually, I paid the
19 deposit when I checked in.

20 Q. Mr. Wang, are you in your hotel room
21 right now?

22 MS. HE: Objection, form.

23 THE INTERPRETER: The interpreter
24 did not get a response.

25 THE WITNESS: That's correct. This

1 S. Wang

2 is the hotel room I stay in Macau.

3 Q. Could you take your phone and show
4 us the hotel room that you're in. Just scan
5 around the room with your phone so we can see
6 the hotel room you're staying in.

7 MS. HE: Objection, form. That's
8 irrelevant.

9 THE WITNESS: Is that really
10 necessary? I don't think it is necessary.

11 Q. Yes, I believe it's necessary.
12 Please comply.

13 A. Is it really necessary?

14 Q. Yes. I want to see what kind of
15 accommodations R.J. Reynolds' lawyers are
16 paying for you to stay at while you do this
17 deposition.

18 MS. HE: Objection, harassment.

19 I'll note for the record that the
20 witness has expressed twice now that he feels
21 uncomfortable and he feels it's unnecessary to
22 comply, but Fuma counsel insists.

23 THE WITNESS: Why do you want me to
24 show you the room? Who would you like to see?
25 What are you looking for?

1 S. Wang

2 BY MR. THOMAS:

3 Q. Mr. Wang, I cannot force you to do
4 as I ask. I will move on.

5 But I will note for the record that
6 you refuse to provide me an indication of the
7 kind of accommodations that R.J. Reynolds is
8 paying for for you to attend your deposition.

9 So I'll move on.

10 (Simultaneous crosstalk.)

11 MS. HE: I object, mischaracterizes
12 the witness's position. The witness has
13 expressed that he is uncomfortable with
14 complying with Fuma's counsel's request.

15 BY MR. THOMAS:

16 Q. So I will move on.

17 A. Wait a minute. (In English.)

18 Hold on. I just want to say
19 something.

20 No matter how you would argue with
21 me, I've been in the industry for 18 years.
22 This product belongs to me. This patent
23 belongs to me. I have the ownership of the
24 original invention, and the intellectual
25 property belongs to me.

1 S. Wang

2 Q. Mr. Wang, do you have any United
3 States patents in your name?

4 A. Only the Chinese patent.

5 Q. So the answer is no, you have no
6 patents in the United States in your name for
7 E-cigarettes. Correct?

8 MS. HE: Objection, mischaracterizes
9 the witness's earlier testimony.

10 THE WITNESS: Okay. Just copy the
11 Chinese patents as much as you want.

12 Q. Mr. Wang, is R.J. Reynolds copying
13 your patents?

14 MS. HE: Objection, form.
15 Objection, vague.

16 Excuse me. One more objection.
17 Calls for a legal conclusion.

18 THE WITNESS: In fact all the
19 E-cigarettes in the US are using my patent.

20 BY MR. THOMAS:

21 Q. So the answer is you believe --
22 (Simultaneous crosstalk.)

23 Q. -- that R.J. Reynolds is using your
24 patent without paying you. Correct?

25 MS. HE: Objection, mischaracterizes

1 S. Wang

2 witness's earlier testimony, calls for a legal
3 conclusion. It calls for an opinion.

4 THE WITNESS: Actually, even though
5 I didn't say so, all the E-cigarettes in the
6 United States are using my patents because
7 those patents came after my patent and those
8 new patents didn't have any substantial
9 changes.

10 For example, they changed the round
11 shape to the flat shape. And actually there
12 was no significant change. They're still using
13 the concept of my patents, which are the
14 cartridges and the battery part for the
15 connections. And some people now use a kind of
16 touch connection instead of my threaded
17 connection, but still that's not something
18 substantially different.

19 I know it is very hard to protect my
20 patent in the United States, but still I have
21 the original invention.

22 BY MR. THOMAS:

23 Q. Mr. Wang, do you believe that R.J.
24 Reynolds should pay you for copying your
25 patents in their products?

1 S. Wang

2 MS. HE: Objection, mischaracterizes
3 witness's earlier testimony, calls for an
4 opinion, speculation and calls for a legal
5 conclusion.

6 THE WITNESS: Actually, I don't
7 think anyone should pay me any money since my
8 patents are already expired and became the
9 commonwealth of the humankind.

10 As long as I get some respect, I'll
11 be satisfied.

12 BY MR. THOMAS:

13 Q. Mr. Wang, when did your patents
14 expire?

15 MS. HE: Objection, form.
16 Objection, calls for a legal conclusion.

17 THE WITNESS: Well, I don't recall.

18 Q. Well, how do you know the patents
19 have expired if you don't know the date that
20 they expired?

21 MS. HE: Objection, form.

22 THE WITNESS: Maybe it has been a
23 long time ever since.

24 Q. Well, you filed your patent
25 application in 2008, the one that Ms. He showed

1 S. Wang

2 you. Correct?

3 A. Isn't it 2007, give or take?

4 Q. 2007 then.

5 Did that patent application ever
6 actually issue as a formal patent?

7 MS. HE: Objection, calls for a
8 legal conclusion.

9 THE WITNESS: I don't recall.

10 Actually, I have over 100 patents
11 related to E-cigarettes. Some were under my
12 name. Some were under my wife's name. Some
13 were co-authored by me and others. I don't
14 recall. Too many.

15 BY MR. THOMAS:

16 Q. If we could pull up what Ms. He
17 marked as Exhibit 1 to your deposition, please.

18 Did this patent application issue as
19 a formal patent, Mr. Wang, what was marked as
20 Exhibit 1 to your deposition today?

21 MS. HE: Objection, form, vague and
22 calls for a legal conclusion.

23 THE WITNESS: You don't need my
24 answer. You can search for the answer on the
25 Internet on the websites regarding the patents.

1 S. Wang

2 THE VIDEOGRAPHER: The time is
3 2:33 p.m., and this ends the deposition of
4 Mr. Shanhong Wang.

5 (Time Noted: 2:34 p.m.)

6

7

8

SHANHONG WANG

10

11 Subscribed and sworn to before me

12 this day of 2021.

13

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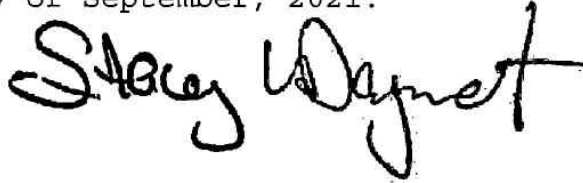
1 District of Columbia, to wit:

2 I, Stacey L. Daywalt, a Notary
3 Public of the District of Columbia, do hereby
4 certify that the within-named witness remotely
5 appeared before me at the time and place herein
6 set out, and after having been duly sworn by
7 me, according to law, was examined by Counsel.

8 I further certify that the
9 examination was recorded stenographically by me
10 and this transcript is a true record of the
11 proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor an employee
14 of counsel, nor related to any of the parties,
15 nor in any way interested in the outcome of
16 this action.

17 As witness my hand and Notarial Seal
18 this 28th day of September, 2021.

19 
20
21

22 Stacey L. Daywalt, Notary Public

23 My Commission Expires: 4/14/2026
24
25

Case 1:19-cv-00260-CCE-JEP Document 219-7 Filed 11/03/21 Page 38 of 38

Exhibit H



TIMES

CHINA

China's middle class not so rich after all

Revised official income data pinpricks certain hopes high-spending Chinese consumers will carry the post-Covid global economy

By FRANK CHEN

NOVEMBER 28, 2020



Retail needs a lift: A man carries a woman piggyback on a street surrounded by shops and malls in Shanghai on July 31. Photo: AFP / Hector Retamal

Chinese President Xi Jinping often promotes the prospect that the Chinese consumer will help to lift the global economy out of the Covid-19

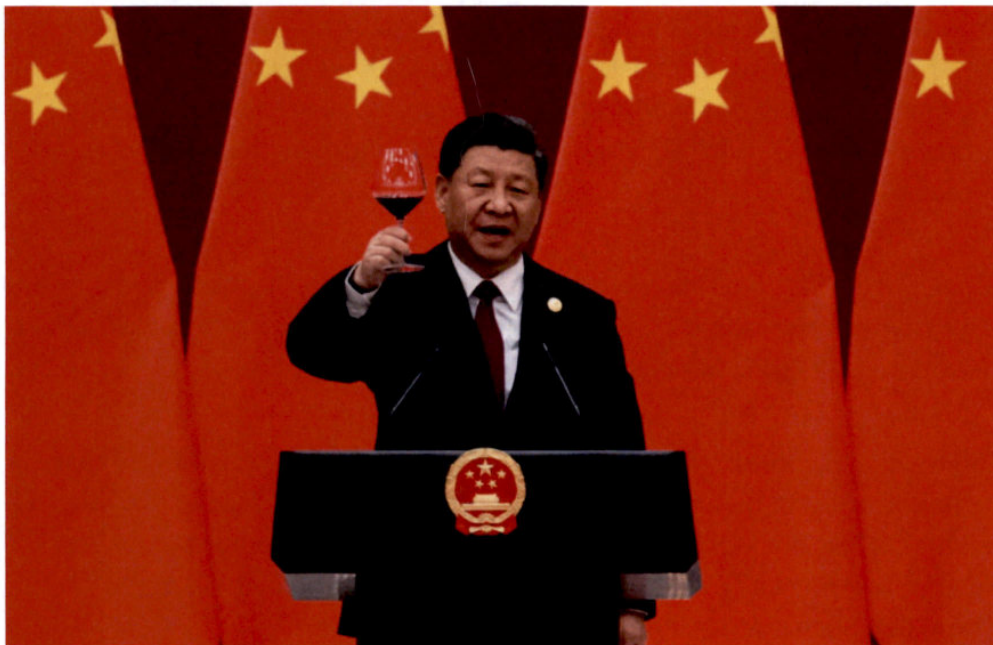
recession. But new data shows that the Chinese consumer won't likely be replacing their higher-spending Western counterparts any time soon.

Earlier this month, at the China International Import Expo in Shanghai, Xi vowed that China's rising middle class would consume no less than US\$22 trillion worth of imported foreign consumer goods over the next decade.

Upon the signing of the Regional Comprehensive Economic Partnership (RCEP), a trade pact that brings together 15 Asian economies including China, Japan, Australia and South Korea, China's Commerce Ministry said that the massive potential of China's middle class was still far from being fully tapped by foreign enterprises.

Indeed, there has been a steady flow of impressive National Statistics Bureau data about resilient average wage growth that has appeared to defy pandemic-stunted economic growth. China is one of the few economies worldwide expected to record positive gross domestic product (GDP) growth in 2020.

Xi is now promoting his newly announced "dual circulation" policy, a gambit that seeks to drive more domestic consumption-led economic growth and spending on imports. There are reasons to believe that China's middle class will start spending more as the yuan appreciates against the dollar, making imported goods relatively cheaper.



Chinese President Xi Jinping makes a toast with an imported glass of wine in a file photo. Image: Twitter

At an October State Council press conference marking the 71st anniversary of the Communist republic, the NSB claimed that China now boasted no less than 400 million middle class consumers and that the average personal income figures in major cities for the first three quarters all achieved “high single-digit growth” over 2019.

For instance, working residents in Shanghai, China’s largest city economy and most populous urban center, earned 54,126 yuan (US\$8,236) on average in the first nine months, up roughly 5% year-on-year, according to the [NSB](#). Beijing’s corresponding figure was 51,772 yuan (\$7,868).

A quarterly salary survey conducted by Zhilian, China’s largest jobs and employment consultancy, painted an even more optimistic picture. A middle class resident in Beijing made 11,623 yuan (\$1,766) a month between June and September, an all-time high in the survey’s history. Shanghai’s figure was 11,226 yuan (\$1,706), the same survey showed.

However, an unexplained change in the NSB's data-crunching methodology since the third quarter has raised new questions about the Chinese consumer's underlying spending power, as statisticians replaced average income figures with what they say is a "more accurate" median monthly income measure.

As such, the NSB's latest median monthly income figures across key Chinese cities have put a certain damper on Beijing's earlier upbeat assessments about the country's swelling middle class and rising spending power.

NSB median income data for the first nine months of this year showed that the middle class in Beijing, Shanghai, Shenzhen and other second-tier cities is making far less than formerly estimated. Those in Beijing make the highest amount, 6,906 yuan (\$1,050) per month, followed by Shanghai's 6,378 yuan (\$969) and Shenzhen's 5,199 yuan (\$790).

NSB data also revealed that in the first three-quarters of this year the median income for the nation's entire working class stood at 20,512 yuan (\$3,117), or 2,279 yuan (\$346) per month, 15% lower than the per capita average figure announced earlier by the bureau.



A pedestrian walks past an array of boutique stores in Beijing. Photo: Xinhua

The disparity in data suggests that the wealth and spending power of China's middle and working class has previously been exaggerated.

The new median income figures, however, corroborate Chinese Premier Li Keqiang's surprise [revelation](#) at a National People's Congress press conference in May that 600 million Chinese, or nearly half of the world's second-largest economy's population, were living a hand-to-mouth existence with a monthly income of 1,000 yuan (\$152) or even less.

"You cannot even rent a home in any big cities with just 1,000 yuan," the premier said at the televised question-and-answer event at the time.

Yuan Qiansheng, an assistant professor of economics at Shanghai Fudan University's School of Business, told Asia Times that the NSB started publishing median income data following the premier's candid admission on the state of the nation's still massive working poor.

"These latest median income data present a fuller picture of China's middle and working class... The reality on the ground is that, if one can make 5,000 yuan (\$760) a month, he is in fact way better off than a vast majority of his working peers in major cities.

"Average income figures can sometimes be misleading. One extreme case can be that, if you put a vagrant next to [Alibaba founder] Jack Ma, China's richest entrepreneur according to Forbes, then the two's average income can beat China's entire middle class. I'm glad that the NSB now releases median income figures to reflect more truth," said the academic.

The fact that the Chinese government is now publishing median data and Li is speaking openly about the state of the working class suggests that Beijing is finally acknowledging huge inequalities in income. This is also consistent with other reforms, for example, of the financial sector.



A file photo shows a migrant worker standing on the top of a litter bin to have a look at the National Stadium. Photo: WeChat via dixphoto

Xinhua reported in a feature on domestic consumption that young shop assistants at a beauty salon near Beijing's glittering Guomao business district could earn about 2,000 yuan (\$304) a month. It revealed that most of their cosmetics and personal care products were bought cheaply online, not in expensive, glitzy Guomao stores.

"The real internal demand is the demand from the masses. Forget luxury items and expensive homes, when Beijing doubles down on spurring domestic consumption and importing more foreign goods, the focus should be squarely put on the average wage-earners like these shop assistants," said Xinhua.

China Merchants Bank, widely seen as the bank of choice for wealthy Chinese, said in its 2019 annual [report](#) that only 1.8% of its total client base of 144 million had deposits of 500,000 yuan (\$76,000) or more. These VIP clients, the report said, had combined deposits of 6 trillion yuan (\$912 billion), accounting for more than 80% of the bank's total deposits.

That wealth disparity could help to explain why consumption is still in the doldrums across major cities. Shanghai reported a 4.6% year-on-year contraction in total retail sales in the first three quarters of this year.

Beijing's corresponding figure dropped by 13.1%. Number-crunching officials in both cities warned that consumption and retail sales would not likely return to the positive territory this year.

Read more:

[Beijing urged to help boost consumption by poor](#)

[Golden Week deflates China's consumption boom hype](#)

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Exhibit I

Google Maps



Map data ©2021 20 mi

Exhibit J

Google Maps Shenzhen, Guangdong Province, China to Kaifeng, Henan, China Drive 1,559 km, 16 hr 11 min



Map data ©2021 Google, SK telecom 200 mi

-  via G45大广高速
Fastest route
⚠️ This route has tolls.
16 hr 11 min
1,559 km
-  via S11平汝高速
16 hr 49 min
1,590 km
-  via G4京港澳高速
16 hr 51 min
1,599 km