

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Application of Shanghai Xiaosheng Industrial Co. Ltd

Plaintiff

v.

Defendant

Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

J.P. Morgan Chase Bank, N.A.
270 Park Avenue New York, New York 10017

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: Michelman & Robinson, LLP
800 Third Avenue, 24th Floor
New York, New York 10022

Date and Time:

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

A. The definitions set forth in Civil Rule 26.3 (Uniform Definitions in Discovery Requests) of the Local Rules of the United States District Court for the Southern District of New York are incorporated by reference as if set forth fully herein.

B. The term “You,” “Your,” or “Respondent” means J.P. Morgan Chase Bank, N.A, its agents, attorneys, representatives, servants and all other persons acting on its behalf.

C. The term “9th Base” means 9th Base Investment Limited.

D. The term “Account” means 9th Base’s New York bank account with Respondent bearing account number xxxxx2574.

E. The term “Funds” means the wire transfer of funds from Shanghai Xiaosheng Industrial Investment Co. Ltd’s bank account at China Construction Bank to the Account in the amount of US\$31,250,000.00 on or about October 12, 2015.

F. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

G. The term “Document” or “Documents” includes, but is not limited to: all writings and recordings, including the originals and non-identical copies, whether different from the original by reason of any notation made on the copies or otherwise (including, but not limited to, email and attachments, text messages, instant messages, Bloomberg or Reuters messages, correspondence, memoranda, notes, diaries, minutes, data and data compilations, letters, telegrams, communications, cards, transcripts, telegrams, cables, telexes, tapes, files, memoranda, notes, drafts, diaries, affidavits, statements, summaries, verifications, books or records of accounts, telephone records and statements, notebooks, telephone message slips, logs, appointment books,

or appointment calendars), graphic or aural representations of any kind (including, but not limited to, recordings, voicemail, photographs, charts, microfiche, microfilm, videotape, recordings, motion pictures, plans, designs, or surveys) and electronic, mechanical, magnetic, optical or electric records or representation of any kind whether stored online (including home or personal email or other accounts) or affixed in any storage device or media including, but not limited to, personal computer, file server, mainframe computer, notebook or laptop computer, personal digital assistant, hard disk drive, removable media of any kind, or backup tape or archived storage.

H. These requests apply to all documents in Your possession, custody, or control regardless of their location and regardless of whether such documents are held by your agents, employees, consultants, representatives, attorneys, engineers, architects, contractors, or any other person.

I. Documents shall be produced as they are kept in the ordinary course of business. All documents physically attached to each other when located for production must be left attached. All labels or markings on any binders, files, subfiles or dividers must be produced.

J. Whenever the expression "and/or" is used herein, the information called for should be set out both in the conjunctive and disjunctive to bring within the scope of this request all documents that might otherwise be construed to be outside of its scope, and wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

K. Where a claim of privilege is asserted in objecting to any document demand, or sub-part thereof, and a document is not provided on the basis of such assertion, you must identify the nature of the privilege which is being claimed. You must also provide the following types of information: (i) the type of document; (ii) the general subject matter of the document; (iii) the date

of the document; (iv) such other information as is sufficient to identify the document for a subpoena to produce documents, including the author of the document, the addressees of the document, any recipients, and where not apparent, the relationship of the author, addressees, and recipients, to each other.

L. If any document requested herein was at one time in existence, but has been lost, discarded, or destroyed, identify: (a) each such document, including the (i) date, (ii) nature, (iii) subject matter, (iv) person who originated it; and (v) person to whom it was sent; (b) last known custodian of the document; (c) date the document was lost, discarded, or destroyed; (d) reason(s) for discarding or destroying the document; (e) each person having knowledge of the document; and (f) each person having knowledge of the circumstances of it being lost, discarded, or destroyed.

M. This Subpoena to produce documents seeks the production of all documents described, in their entirety, as well as any attachments, drafts, and non-identical copies including, without limitation, to copies that differ by virtue of handwriting or other notes or markings.

REQUESTS

1. All documents concerning the Account from on or about August 1, 2015 including, but not limited to, all account statements, money transfer or message documents, checks, debit memos, cash in tickets and wires.

2. All documents (including bank checks, credit memos, cash out tickets and wire transfers) reflecting the ultimate disposition of the Funds.

3. All documents concerning the Funds.

4. All documents concerning any wire transfers sent or received to the Account from August 1, 2015 to the present.

5. Copies of all bank account records of the Account from August 1, 2015 to the present including, but not limited to, bank statements, checking and savings account statements, deposit slips, deposit details, checks (front and back), cancelled checks (front and back), wire transfers, wire transfer advices, debit and credit card memos and internal transfer tickets.

6. All documents concerning any wire transfer from the Account to Kailai Oil & Gas Holdings, Ltd.