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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

**THOMPSON THOMPSON & ALCANTARA, P.C.**  
238 Archbishop Flores Street, Suite 801  
Hagåtña, Guam 96910  
Telephone: (671) 472-2089  
Facsimile: (671) 477-5206

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FILE NO OPA-PA: 18-002

Attorneys for David Yao

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**  
**PROCUREMENT APPEAL**

IN THE APPEAL OF ) **APPEAL NO. OPA-PA-18-0002**  
)  
KORANDO CORPORATION, ) **MOTION TO QUASH SUBPOENA**  
)  
Appellant. )  
\_\_\_\_\_ )

Non-Party witness David Yao submits this Motion to Quash the subpoena served on him by Appellant Korando Corporation herein on January 25, 2019. The basis for the Motion is that there are reasonable alternatives which would avoid undue burden on Mr. Yao rather than forcing him, and the rest of Team Guam, from having to withdraw from the 2019 VICTOR Oceania Championships and the VICTOR Oceania Mixed Team Championships to be held in Melbourne, Australia during the week of February 11, 2019 should the subpoena not be quashed.

**I. FACTUAL SUMMARY**

Mr. Yao is currently a Construction Contracts Administrator with Parsons Transportation Group, which is not a party to this Appeal. *See* Declaration of David Yao (“Yao Decl.”), ¶ 1 (Feb. 5, 2019). On January 25, 2019, Mr. Yao was served with a subpoena commanding his appearance at the hearing to be held herein on February 11,

**ORIGINAL**

2019. The subpoena was issued on behalf of Appellant Korando Corporation through its counsel Vanessa Williams. Yao Decl., ¶ 3.

However, since July 2018, Mr. Yao has been scheduled to participate, as a member of Team Guam, on behalf of the Guam National Badminton Federation in the 2019 VICTOR Oceania Championships and the VICTOR Oceania Mixed Team Championships to be held in Melbourne, Australia during the week of February 11, 2019. Yao Decl., ¶ 4.

Mr. Yao purchased his airline tickets to participate in this tournament as a member of Team Guam in October, 2018. A copy of his airline tickets to the tournament is attached to his declaration filed contemporaneously herewith. *See* Yao Decl., Exhibit 1.

In addition to the cost of his airline tickets, Mr. Yao has also incurred lodging and other such expenses totaling approximately \$655.00, which he would lose if he has to withdraw from the tournament. Yao Decl., ¶ 5.

Perhaps most importantly, if Mr. Yao is forced to withdraw the tournament, the other three Team Guam members will also have to withdraw from the tournament, as Team Guam does not have any back up players at this time. Yao Decl., ¶ 6. Further, if Team Guam is forced to withdraw from the tournament, it will forfeit the tournament entry fee and also have to pay an additional withdrawal fee. Yao Decl., ¶ 7.

Beginning on January 30, 2019, Mr. Yao's counsel attempted to discuss these issues with Korando Corporation's counsel by telephone. *See* Declaration of Mitchell F. Thompson ("Thompson Decl."), ¶ 2 (Feb. 5, 2019). As these efforts were to no avail, Mr. Yao's counsel sent an email to Korando Corporation's counsel, suggesting that a

deposition of Mr. Yao might be an acceptable alternative. Thompson Decl., Exhibit 1. Korando Corporation's counsel declined this suggestion. Thompson Decl., Exhibit 2.

Mr. Yao's counsel then suggested that the parties could stipulate to his testimony, pursuant to Section 12108(d) of the OPA Procurement Appeals Rules of Procedure. Thompson Decl., Exhibit 3. As Ms. Williams has not yet accepted this proposal, and with the hearing date fast approaching, Mr. Yao felt it prudent to file the instant Motion.

## **II. THE SUBPOENA SHOULD BE QUASHED TO ALLOW MR. YAO AND TEAM GUAM TO PARTICIPATE IN THE TOURNAMENT**

Federal courts have quashed subpoenas when requiring the witness to comply would expose him or her to undue burden. *See Moore v. Armour Pharm Co.*, 927 F.2d 1194 (11th Cir. 1991) (district court properly quashed subpoena served on government scientists; plaintiff's need for scientists' testimony was outweighed by scientists' role in researching issues related to AIDS); *Alexander v. Jesuits of Missouri Province*, 175 F.R.D. 556 (D. Kan. 1997) (court quashed subpoena which required witness, who was pregnant, to drive 60 miles to attend deposition set for 8:00 a.m.).

In this case, Mr. Yao, and the rest of Team Guam face an undue burden if Mr. Yao must withdraw from the tournament to testify at the hearing during the week of February 11, 2019. To mitigate any concern of Korando Corporation, Mr. Yao has suggested several reasonable alternatives to avoid forcing him, and the rest of Team Guam, from having to withdraw from the tournament. Mr. Yao first proposed that Korando Corporation take his deposition, but Korando Corporation was not agreeable to that proposal. Next, Mr. Yao suggested that the parties could stipulate as to what he would have testified to had he been present at the hearing, pursuant to Section 12108(d). Finally,

another option would be to re-open the hearing after February 19, 2019, to allow Mr. Yao to testify upon his return from the tournament.

Section 12108(d) of the OPA Procurement Appeal Rules of Procedure provides that hearings under those rules are to be informal. Testimony may be written, oral or otherwise. The parties may even stipulate as to the testimony that would be given if a witness had been present. Section 12108(d) authorizes the alternatives suggested by Mr. Yao. It is unfortunate that Korando Corporation has been unwilling to resolve this issue.

### **III. CONCLUSION**

Under these circumstances, Mr. Yao, and the other members of Team Guam, face an undue burden should the subpoena not be quashed. Mr. Yao has proposed several reasonable alternatives which would mitigate any concern of Korando, but Korando has yet to expressly agree to any such alternative. Mr. Yao respectfully requests that the hearing officer quash the subpoena, and instead direct that Mr. Yao be allowed to provide his testimony in another manner other than by requiring him to testify at the hearing during the week of February 11, 2019.

Respectfully submitted this 5<sup>th</sup> day of February, 2019.

**THOMPSON THOMPSON & ALCANTARA, P.C.**  
Attorneys for David Yao

By:   
**MITCHELL F. THOMPSON**