

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 7, Honorable Charles F. Adams Presiding**

Maggie Castellon, Courtroom Clerk  
191 North First Street, San Jose, CA95113  
Telephone: 408.882.2170

**To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email [department7@scscourt.org](mailto:department7@scscourt.org). Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)**

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**LAW AND MOTION TENTATIVE RULINGS**

**DATE: APRIL 11, 2024    TIME: 1:30 P.M.**

**PREVAILING PARTY SHALL PREPARE THE ORDER  
UNLESS OTHERWISE STATED (SEE [RULE OF COURT 3.1312](#))**

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**LAW AND MOTION TENTATIVE RULINGS**

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23CV413573	Rocke v. Pink Chicku LLC (Class Action/PAGA)	On the court's own motion, this matter is continued to a future date. Counsel must contact the Complex Coordinator to arrange for a new hearing date.
<a href="#">LINE 2</a>	21CV375422	Temujin Labs Inc. v. Fu	See <a href="#">Line 2</a> for tentative ruling.
<a href="#">LINE 3</a>	21CV375422	Temujin Labs Inc. v. Fu	See <a href="#">Line 2</a> for tentative ruling.
<a href="#">LINE 4</a>	21CV375422	Temujin Labs Inc. v. Fu	See <a href="#">Line 2</a> for tentative ruling.
<a href="#">LINE 5</a>	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See <a href="#">Line 2</a> for tentative ruling.

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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 6</a>	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See <a href="#">Line 2</a> for tentative ruling.
<a href="#">LINE 7</a>	20CV373138	Envirodigm, Inc. v. Apple Inc.	Tentative ruling provided directly to the parties.
<a href="#">LINE 8</a>			
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			

## **Calendar Line 1**

Case Name:

Case No.:

**- oo0oo -**

## Calendar Line 2

(Please note: this ruling also applies to Calendar Lines 3, 4, 5 & 6)

**Case Name:** *Temujin Labs, Inc., et al. v. Abittan, et al.*

**Case No.:** 20CV372622

**Case Name:** *Temujin Labs, Inc. v. Franklin Fu*

**Case No.:** 21CV375422

These related actions arise from the business dealings of: (1) Temujin Labs Inc., a Delaware corporation (“Temujin”); (2) a related Cayman Islands corporation; and (3) Temujin’s co-founders, who go by the aliases of Lily Chao and Damien Ding.<sup>1</sup> These business dealings involve the development of Temujin as a financial technology company operating under the name “Findora.”

In Case No. 20CV372622 (“*Abittan*”), Temujin alleges that Defendants and Cross-Complainants Ariel Abittan, Benjamin Fisch, and Charles Lu conspired to: (a) assert a false claim of ownership of its business; (b) misappropriate its trade secrets; (c) usurp and interfere with control over its assets, such as social media accounts; and (d) interfere with its relationships with investors and business partners. Mr. Abittan, a former business partner of Ms. Chao and Mr. Ding, filed a cross-complaint alleging, among other things, that Ms. Chao and Mr. Ding stole from and defamed him. Mr. Fisch and Mr. Lu filed a separate cross-complaint, asserting that Ms. Chao and Mr. Ding misrepresented a host of important facts about their business and activities to induce Mr. Fisch and Mr. Lu to work for Temujin.

In Case No. 21CV375422 (“*Fu*”), Temujin alleges that its former consultant, Defendant and Cross-Complainant Franklin Fu, demanded additional under-the-table payments for himself and secret payments to certain investors rather than performing his duties in good faith. In a cross-complaint, Mr. Fu alleges that Ms. Chao and Mr. Ding repeatedly lied to him about a range of subjects, including Temujin’s technology and even their own identities.

Ms. Chao and Mr. Ding received terminating sanctions for concealing their identities after several rounds of discovery motion practice and Temujin, Ms. Chao and Mr. Ding received issue and evidentiary sanctions for discovery misconduct arising from noncompliance with Court orders. A prove-up hearing was conducted by the Court on January 8, 2024, with default judgments subsequently entered in favor of Mr. Abittan and Messrs. Lu and Fisch on their Cross-Complaints against Ms. Chao and Mr. Ding.

Now before the Court are the following motions: (1) Mr. Lu’s motion to compel further responses to requests for admission (“RFA”) to Temujin; (2) Mr. Fisch’s motion to compel further responses to RFA to Temujin; (3) Mr. Lu’s motion to compel further responses to Requests for Production of Documents (“RPD”) to Temujin; (4) Mr. Fisch’s motion to compel further responses to RPD to Temujin; (5) Mr. Fu’s motion to compel further responses to form interrogatories (“FI”) to Temujin Cayman; (6) Mr. Fu’s motion to compel further responses to RPD to Temujin Cayman; (7) Mr. Lu’s motion to compel further responses to FI to Temujin; (8) Mr. Fisch’s motion to compel further responses to FI to Temujin; and (9) the Temujin

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<sup>1</sup> The Temujin entities, a related entity called Discreet Labs Ltd., Ms. Chao, and Mr. Ding are referred to collectively herein as the “Temujin Parties.”

Parties' motions for a protective order and to quash person most qualified ("PMQ") deposition notice (in both the *Abittan* and *Fu* cases). These motions are all opposed.<sup>2</sup>

## **I. MESSRS. LU AND FISCH'S MOTIONS TO COMPEL**

### **A. Legal Standard**

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 ("*Kirkland*").) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid.*)

A party propounding interrogatories and requests for admission may also move for an order compelling further responses if it deems an answer is evasive or incomplete and/or an objection is without merit or too general. (Code Civ. Proc., §§ 2030.300, subd. (a) and 2033.290, subd. (a).) The statutes do not require any showing of good cause in support of such a motion. (See *id.*, §§ 2030.300 and 2033.290; see also *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221 ("*Coy*").) The burden is on the responding party to justify any objections or failure to fully answer. (*Coy, supra*, 58 Cal.2d at pp. 220–221.)

### **B. Timeliness of the Temujin Parties' Opposition**

Messrs. Fisch and Lu (collectively, "Defendants") assert that the Temujin Parties' consolidated opposition to seven of their eight motions to compel is untimely and therefore should be stricken.

On January 11, 2024, the Court (Hon. Kulkarni) entered an order setting the briefing schedule for Defendants' motions to compel further responses to FI, RFA and RPD from the Temujin Parties, with any oppositions to those motions due on March 15, 2023. However, the Temujin Parties did not file their consolidated opposition until March 28, 2024, thirteen days past the aforementioned deadline, and *after* Defendants filed an initial reply that day indicating the Temujin Parties failure to file their opposition.<sup>3</sup> Although the Temujin Parties filed their opposition about 14 hours after Defendants filed and served their initial reply, the opposition offers *no explanation* for its untimely filing.

The Court agrees with Defendants that the Temujin Parties' failure to timely file their opposition is particularly objectionable given the circumstances, with the subject discovery dispute being a long-standing issue in this case. On December 8, 2024, the Court set a deadline of January 22, 2024 for Defendants to file any motions to compel, after Defendants

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<sup>2</sup> Mr. Abittan's request to join in the opposition to the motions for a protective order/quash the deposition subpoenas is GRANTED.

<sup>3</sup> Defendants' deadline to file replies was March 29, 2024. Defendants filed a second reply on that date.

established that they had met and conferred significantly and that their discovery had been outstanding for years- including in many instances about *nine months prior to the partial discovery stay in the case* and in all instances by now about *six months after the partial discovery stay*. The parties were directed to meet and confer one more time but the Court noted that no further information discovery conference (“IDC”) was needed if the meet and confer efforts did not resolve the parties’ dispute. The January 22, 2024 deadline did not relate to the potential 45-day deadline, which the Court expressly did not decide (“the Court is not taking a position on whether such a Motion would be timely”), and Defendants were advised that they had to file a motion to compel if they wanted relief. By not filing their opposition until March 28, the Temujin Parties deprived Defendants of the two weeks to which they were entitled to file substantive replies.

Defendants note that after the submission of their untimely opposition, on March 29, 2024, counsel for the Temujin Parties emailed the Court’s complex coordinator stating his understanding that the January 11, 2024 order applied to Mr. Fu’s motion to compel further responses to RPDs<sup>4</sup> from Temujin and that while Temujin had opposed that motion on January 16, 2024, it had yet to receive a reply. But by its express terms, it is clear that the foregoing order applied to *all* defendants, defined as “Defendants and Cross-Complainants Benjamin Fisch Charles Lu, and Frank Fu” and their attendant motions to compel, *plural*. Thus, to the extent that the Temujin Parties are somehow implying that there was ambiguity as to when their oppositions to the rest of the motion at bench were due, that assertion is completely without merit.

Given how late the Temujin Parties’ filed their opposition to the bulk of the motions at issue (seven of eight), the Court strongly believes it is appropriate to disregard its contents, as is its prerogative. (See Cal. Rules of Court, rule 3.1300(d).) This is particularly the case given the voluminous amount of discovery at issue and the clear prejudice suffered by Defendants as the Temujin Parties’ untimely filing deprived them of sufficient time- the two weeks provided by the January 11 order- to substantively respond to the arguments asserted in the opposition. The Court therefore disregards the Temujin parties consolidated opposition.

### **C. Mr. Fu’s Motion to Compel Further Responses to RPDs or Compel Compliance**

In this motion filed in November 2023, Mr. Fu moves to compel further responses from Temujin, without objections to RPD, Set One, Nos. 1-13, 15-29, 30-63, 65-94, 96-98, 101-103, to compel the production of a privilege log where responsive documents are withheld on that basis, to compel the service of verifications to its prior responses to RPD Nos. 26-29, 41-42, 45, 55, 97 and 98, and compliance with counsel’s April 15, 2022 response that it would produce documents responsive to RPD Nos. 14, 26-29, 41, 42, 45, 55, 97 and 98.<sup>5</sup> Mr. Fu also requests that monetary sanctions be imposed against Temujin.

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<sup>4</sup> This standalone motion was filed on November 6, 2023, and thus the January 11 order did not apply to it. The motion was timely opposed by the Temujin Parties.

<sup>5</sup> In its opposition, Temujin accuses Mr. Fu of failing to engaged in meet in confer efforts in good faith, but the materials submitted by Mr. Fu in support of his motion belie this contention. (See Declaration of John Durrant in Support of Mr. Fu’s Motion to Compel Further Responses and Compliance with RPD, Set One, ¶¶ 5-32.)

As the party moving to further responses, the burden is first on Mr. Fu to demonstrate that good exists justifying each of the RPDs for which a further response is requested. Upon review, the Court concludes that such good cause exists as the materials sought by these requests are directly relevant to the allegations (e.g., misrepresentations by Ms. Chao and Mr. Ding to Mr. Fu concerning their qualifications and success of Temujin, as well as its present and future capabilities), claims (e.g., fraud, civil conspiracy, tortious interference with contract, trade secret misappropriation, breach of contract/implied covenant) and defenses asserted by both sides in these actions, the identities of the individuals and entities involved, aliases, and the nature of the relationships between the corporate entities and individuals (e.g., investment or employment), among other things. Thus, the Court will move on to addressing the substance of the responses at issue.

1. *Compel Compliance With Agreement to Produce Responsive Documents*  
(Nos. 14, 26-29, 41, 42, 45, 55, 97, 98)

Mr. Fu first moves to compel Temujin to comply with its agreement to produce documents responsive to the above-captioned requests. Code of Civil Procedure section 2031.320, subdivision (a), provides that if a party responding to a production demand fails to comply with their statement of compliance, the demanding party may move for an order compelling compliance. Here, Mr. Fu establishes, through the declaration of his counsel, that Temujin has failed to produce responsive documents despite its responses affirming that it would do so. Consequently, the Court orders Temujin to produce documents responsive to the subject requests.

2. *Code-Compliance of Statement of Compliance or Inability to Comply* (Nos. 1-5, 7-11, 13, 15, 18-20, 22, 60, 68, 80-82, 86)

In supplemental responses to the above-captioned requests, Temujin responds that it “will produce responsive non-privileged documents in its possession, custody, or control, *if any*, based on a reasonable search, subject to the entry of an appropriate protective order governing the disclosure of confidential information in this action.” Mr. Fu insists that by using the phrases “if any” and “based on a reasonable search” in their responses, Temujin has failed to comply with applicable provisions of the Discovery Act. The Court agrees. Temujin must provide further responses which clearly “state that the production ... will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.” (Code Civ. Proc., § 2031.220.) To the extent that Temujin cannot fully comply with these requests, its statements of inability to comply “shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand” and provide the other information specified in Code of Civil Procedure section 2031.230. Thus, further responses to these requests are warranted.

3. *Code Compliance of Statement of Compliance or Inability to Company and Verifications* (Nos. 12, 16, 17, 23, 38, 57, 58, 69, 70-72, 74, 83-85, 87, 89-91, 93, 101)

According to Mr. Fu, Temujin did not provide verifications with its second supplemental responses to these requests and responded that it “will run a search on the documents collected and loaded into its search platform to assess the size and breadth of



documents responsive to this request. If the search yields a production that is manageable, it will be produced.” Not only must verifications be provided given that the responses are not comprised solely of objections (see Code Civ. Proc., § 2031.250), but these responses are not code-compliant in the same way that the responses to the requests in the preceding section were not. Consequently, the Court finds that further responses to these requests are warranted, as well as verifications.

4. *Verifications and Statement of Compliance (Nos. 37, 51-53)*

In its second supplemental responses to these requests, Temujin claims it has no responsive documents. However, it did not provide verifications, nor did it provide a statement of compliance that a “diligent search and a reasonable inquiry has been made in an effort to comply with that demand” as required by Code of Civil Procedure section 2031.230. Thus, further responses and verifications to these requests are warranted.

5. *Verifications (Nos. 14, 26-29, 41, 42, 45, 55, 97, 98)*

No verifications were provided with the second supplemental responses to these requests, in which Temujin stated states that it either will produce or has produced certain documents. As these responses are not comprised solely of objections, verifications must be provided.

6. *Further Responses (Nos. 6, 21, 24, 25, 36, 39, 40, 50, 54, 56, 59, 61-63, 65-67, 73, 75-79, 88, 92, 94, 96, 102, 103)*

These requests seek documents relating to: the use of fake names at Temujin (Nos. 24, 25, 39, 40, 66, 78, 79, 102, 103); the financial status and assets of Temujin, including control of company accounts by Ms. Chao and Mr. Ding (Nos. 21, 36, 50, 56, 59, 63, 75, 76, 92, 94, 96); other employees and what representations were made to them by Temujin, Ms. Chao and Mr. Ding (Nos. 61 and 65); alleged wrongdoing by Temujin (e.g., making bribes, regulatory compliance) (Nos. 62 and 73); and Mr. Wang’s status as chauffeur or CEO (Nos. 77 and 88).

In its supplemental responses to Nos. 6, 54 and 67, Temujin asserts numerous objections (overbreadth, undue burden, not reasonably calculated to lead to the discovery of admissible evidence, vagueness and ambiguity, protected by attorney-client privilege, attorney-work product protection, seeking confidential or otherwise protected information) and responds that it will produce responsive documents, but limits the scope of its production. Temujin fails to substantiate the limitations it has made in its responses and with such limitations, the responses do not comply with the applicable provisions of the Discovery Act (see Code Civ. Proc., § 2031.220). Further, the Court is not persuaded by Temujin that any of the objections it asserts have merit, barring those based on privilege. To the extent that any documents have been withheld on this basis, Temujin must produce privilege log identifying any documents withheld and providing a factual basis for the privilege claimed. While Temujin insists in its opposition that these requests are overbroad and “too numerous,” they have not established with any evidentiary showing, as is required, that responding to them would be unduly burdensome and, as Mr. Fu responds, the requests seek relatively basic information that is directly relevant to the claims and allegations of these actions. Moreover, there is no numeric limitation on the number of RPDs that may be propounded. Thus, the Court concludes that further responses to these requests, without objection or limitation, barring those based on privilege, are warranted.

In its response to the remaining requests, Temujin asserts the same objections as discussed in the preceding paragraph and they similarly lack merit, barring those based on privilege. No substantive response to these requests was provided. As these objections lack merit, further, code-compliant responses, without objections or limitations, are warranted. Again, to the extent that any responsive items are withheld on the basis of privilege, Temujin must produce a privilege log.

In accordance with the foregoing analysis, Mr. Fu's motion to compel further responses/compliance is GRANTED.

### *7. Monetary Sanctions*

In connection with his motion, Mr. Fu requests that the Court impose sanctions against Temujin pursuant to Code of Civil Procedure section 2031.310 in the amount of \$27,582.50. Subdivision (h) of this code section provides that the Court must impose monetary sanctions against any party, person, or attorney who unsuccessfully opposes a motion to compel further responses to RPDs unless it finds that that opposition was substantially justified or other circumstances exist that make the imposition of sanctions unjust. Given that Mr. Fu's motion is granted, Temujin's opposition cannot be characterized as successful, and the Court is not persuaded that this opposition was substantially justified given the responses at issue, nor that imposing sanctions upon the Temujin Parties would be unjust. Thus, the Court finds that Mr. Fu is entitled to monetary sanctions. However the Court will not award the full amount requested as it includes anticipated time (for reviewing the opposition and preparing the reply) that is not substantiated in the reply. Consequently, the Court awards sanctions in the amount of \$19,707 (25.9 hours at \$425/hr + 12 hours at \$725/hr) and Mr. Fu's request is GRANTED IN PART.

### **D. Remaining Motions to Compel**

In the remaining seven motions at issue, Defendants move to compel the following:

- Mr. Fisch moves to compel Temujin to provide further responses to FI Nos, 9.1, 9.2, 14.1 and 17.1,<sup>6</sup> without objections, as well as to serve a verification to the prior FI responses, dated March 28, 2022 (*Abittan*);
- Mr. Lu's moves to compel Temujin to provide further responses to FI Nos. FI Nos. 9.1, 9.2, 14.1 and 17.1, without objections, as well as serve a verification prior FI responses, dated March 28, 2022 (*Abittan*);
- Mr. Lu moves to compel Temujin to provide further responses to RFA Nos. 1, 2, 4, 5 and 6, without objections, as well as serve a verification to its response to RFA No. 3 (*Abittan*);
- Mr. Fisch moves to compel Temujin to provide further, verified responses to RFA Nos. 1, 2 and 4-18, without objections, as well as serve a verification to RFA No. 3 (*Abittan*);

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<sup>6</sup> Messrs. Fisch and Lu's motions regarding compelling further responses to their FIs are incorrectly captioned as motions to compel further responses to RFA. However, the contents of the notices of motion make clear that the subject of these motions are FIs and thus the Court overlooks these typographical errors.

- Mr. Lu's moves to compel Temujin to provide further responses, without objections, and limitations, to RPD Nos. 1-16 and produce a privilege log where responsive items have been withheld on that basis (*Abittan*);
- Mr. Fisch moves to compel Temujin to provide further responses, without objections and limitations, to RPD Nos. 1-24, 27-41 and produce a privilege log where necessary, and comply compliance<sup>7</sup> with its Second Supplemental Responses dated December 1, 2022 that it would produce documents responsive to RPD Nos. 25 and 26 (*Abittan*);
- Mr. Fu moves to compel Temujin Cayman to provide further, verified responses to FI No. 12.1, without objection, as well as a verification to the prior FI responses dated April 22, 2022 (*Fu*).

In connection with each motion, Defendants request that the Court impose monetary sanctions against Temujin.

As the Court has elected to disregard the contents of the Temujin Parties' consolidated opposition to the foregoing motions, it must conclude that the Temujin Parties have failed to justify their objections to the subject requests; consequently, further responses are warrant to the FI and RFA at issue, without objection, barring those based on privilege. As for the RPD, as articulated above, before addressing the substance of the Temujin Parties' requests, Defendants and Mr. Fu must demonstrate that good cause exists justifying the materials sought by these demands. (Code Civ. Proc., § 2031.310, subd. (b)(1).)

Defendants do not endeavor to establish that good cause exists with respect to Lu RPD Nos. 1-8 and 11-13 and Fisch RPD Nos. 3-13, 15-24, 31, 32, 37 and 41 given Temujin's responses to these requests that it would "produce responsive, non-privileged documents in its possession, custody, or control, if any, based on a reasonable search." Defendants insist that by using the phrases "if any" and "based on a reasonable search" in their responses, Temujin has failed to comply with the discovery requirements. The Court agrees. Temujin must provide further responses which clearly "state that the production ... will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code Civ. Proc., § 2031.220.) To the extent that Temujin cannot fully comply with these requests, its statements of inability to comply "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand" and provide the other information specified in Code of Civil Procedure section 2031.230.

The request RPDs at issue seek the following materials:

- Propounded by Lu, documents: "sufficient to show the roles, duties, and responsibilities" of persons listed on specified portions of the Findora website (Nos. 14-16); relating to Temujin Board meetings (No. 9); and relating to Findora and its relationship the Temujin entities (No. 10)
- Propounded by Fisch, documents: relating to Alex Wang, the "authorized signatory for Temujin on Fisch's July 5, 2019 Advisory Agreement and Lu's July 1, 2019

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<sup>7</sup> Code of Civil Procedure section 2031.320, subdivision (a), provides that if a party responding to a production demand fails to comply with their statement of compliance, the demanding party may move for an order compelling compliance.

Employment Agreement (No. 35); relating to Temujin's financial status, including fundraising and investments (Nos. 1, 2, 37-30, 33, 34, 38 and 40); relating to the exportation or provision of Temujin's source code to anyone in China (No. 14); communications with the press about Messrs. Fisch and Lu (No. 36)

Upon review, the Court finds that good cause exists for the materials sought by each of the foregoing requests given allegations by Temujin and Defendants in their respective pleadings (inclusive of answers) that: Messrs. Lu and Fisch misappropriated trade secrets, fomented internal dissent at the company and interfered with its business and investor relationships; its Board never approved releasing the code to open source; misappropriation of investor funds and other fraud by Temujin; Temujin operated as Findora; misrepresentations were made as to what investments were made in Temujin; Messrs. Lu and Fisch engaged in a civil conspiracy to publicize Temujin's source code and tortuously interfered with Temujin's contractual relationships with other entities; that false allegations were made about Messrs. Lu and Fisch to press in China after they resigned from Temujin. The requested materials are clearly directly relevant to the allegations, claims and defenses at issue in this litigation. Given that good cause exists, and Temujin has not substantiated its objections, further responses and production to these requests are warranted, without objections *or* limitations.

Additionally, Fisch demonstrates that while Temujin agreed to produce documents responsive to RPD Nos. 25 and 26, it has yet to do so. Consequently, Temujin is ordered to comply with its responses to these requests.

In accordance with the foregoing, these motions to compel further responses/compliance are GRANTED.

As stated above, Defendants request monetary sanctions in connection with each of their motions in the following amounts: Lu motion re: RFA (\$6,397), Fisch motion re: RFA (\$10,285); Lu motion re: RPD (\$9,562.50); Fisch motion re: RPD (\$6,560); Fu motion re: RPD (\$8,642.50); Lu motion re: FI (\$4,605); and Fisch motion re: FI (\$3,054). These amounts, which the Court finds Defendants are entitled to given that the motions have not been successfully opposed and the Temujin Parties have not demonstrated any substantial justification for their opposition, much less their failure to timely oppose it, are adequately substantiated by the declarations of Defendants' counsel submitted in support of the moving papers and replies. Consequently, these request for sanctions are GRANTED.

## **II. THE TEMUJIN PARTIES' MOTION FOR A PROTECTIVE ORDER AND TO QUASH PMQ SUBPOENAS**

### **A. Legal Standard**

The Temujin parties make this motion pursuant to Code of Civil Procedure sections 1987.1 ("Section 1987.1") and 2025.480. ("Section 2025.420"). Subdivision (a) of the former code section authorizes a party or witness to bring a motion to "quash a subpoena entirely, modify it, or direct compliance with it upon such terms or conditions as the court shall declare," while subdivision (a) of the latter authorizes a deponent or party to move for a protective order prior to a deposition. Pursuant to the foregoing sections, the Court, for good cause shown, may make any order "that justice requires to protect any party, deponent, or other

natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense,” including quashing the subject deposition subpoena in its entirety.

## **B. Substantive Merits**

The Temujin Parties move for a protective order in connection with the PMQ deposition of non-party Jianrong Wang, their purported CEO, as well as to quash Defendants’ second of PMQ deposition notices pertaining to him.

On October 31, 2023, Mr. Fu served a deposition notice on the Temujin Parties to take the deposition of the PMQ on a variety of subjects in Palo Alto, California on December 7, 2023. That same day, Messrs. Lu and Fisch and Mr. Abittan served similar notices on the Temujin Parties for a deposition to take place on December 4 (Messrs. Lu and Fisch) and 6 and 7 (Mr. Abittan), 2023, also in Palo Alto. On November 20, 2023, Mr. Abittan served a notice to take Mr. Wang’s deposition (and for him to produce certain documents at that deposition) on December 11, 2023, in Palo Alto. Finally, on April 21, 2023, Messrs. Fisch, Lu and Abittan served a deposition on the Temujin Parties to take the deposition of its PMQ on May 12, 2023, in Palo Alto.

The Temujin Parties explain that Mr. Wang resides in China, and that attempts by Defendants to force him to travel to Santa Clara County to be deposed should be “summarily denied” because they are prohibited by law. They continue that Defendants have already started the PMQ depositions, the parties have negotiated “extensively” to continue and complete these depositions based on the first round of notices, and Defendants should not be permitted to hold a second round of such depositions based on “dramatically expanded and overbroad notices.” The Temujin Parties further advise that Mr. Wang will travel to Santa Clara to sit for deposition at the next available opportunity, and that his ability to do so hinges on when he can obtain the necessary travel visa. The Temujin Parties additionally characterize the 62 topics contained in the second round of deposition notices as harassing and overbroad and maintain that they have offered practical and reasonable solutions to Defendants to enable Mr. Wang to be deposed, but that Defendants have responded to those solutions in an unprofessional manner.

Given the significant discovery motion practice involved in these cases, the context in which this motion is being made is a critical component in analyzing its merits. As indicated above, Ms. Chao and Mr. Ding have received terminating sanctions for concealing their identities and the Temujin Parties, Ms. Chao, and Mr. Ding have received issue and evidence sanctions for discovery misconduct arising from noncompliance with Court orders regarding discovery, including a finding against the Temujin Parties, Ms. Chao, and Mr. Ding that Ms. Chao and Mr. Ding “utilized numerous identities and aliases to perform work on behalf of Temujin including but not limited to . . . Jianrong Wang,” the individual whose future deposition is the subject of this motion. Ms. Chao and Mr. Ding have claimed- contrary to evidence, Defendants insist- that they have never controlled the Temujin Parties but that their former chauffeur, Mr. Wang, is the CEO of the entities who controls and provides financing to them.

On December 14, 2023, counsel for the parties met and conferred to discuss the timing and sequencing of depositions pursuant to the Court’s December 8, 2023 order. Counsel for the Temujin Parties would not say whether or not Mr. Wang has a visa of any kind, but *did* say

that regardless, his clients (seemingly referencing Ms. Chao and Mr. Ding) would not provide any proof of identity for Mr. Wang or proof that he needed a visa. Although counsel represented that he believed Mr. Wang would be available for deposition in April 2024, no facts supporting this representation were provided. Counsel for the Temujin Parties Jingjing Ye, apparently the only individual in direct contact with Mr. Wang, did not participate in the meet and confer, even while her co-counsel spoke to her on the phone during that time. Counsel that was present could not say when or if Mr. Wang will receive a visa. Defendants complain that as of the date of their opposition to the instant motion, they have no way of knowing when Mr. Wang will get a visa appointment, much less a visa, and insist that under the Discovery Act, the Temujin Parties' PMQ, Mr. Wang, *must* be deposed in Santa Clara County. They explain that they are *not* amendable to a remote deposition of Mr. Wang given its significance and the untoward discovery conduct of the Temujin Parties, Ms. Chao and Mr. Ding in these actions, nor the Temujin Parties' suggestion that Mr. Wang be deposed in Hong Kong due to the significant expense of doing so.

As a general matter, Code of Civil Procedure section 2025.250 sets geographic limits on where a deposition may be taken. For corporations or other entities, the place of deposition depends on whether they are a party to the action, and whether they have a designated principal executive or business office in California. If they are a party, they must be deposed within 75 miles of the designated office in California, or in the county where the action is pending at a place within 150 miles of that office. (Code Civ. Proc., § 2025.250, subd. (b).) Temujin apparently has an office in Palo Alto. As relevant here, it appears to be an open question as to whether the officer or agent designated by a corporation or other entity as its "person most qualified" who resides outside of California can be compelled to attend in the state on a theory that it is the *corporation/entity's* deposition that is being taken. *Toyota Motor Corp. v. Superior Court*, a case discussed by both sides in their papers, expressly declined to address this issue, though it did hold that a party-affiliated witness (officer, director, managing agent or employee) who is not a resident of California *cannot* be ordered to be deposed in the state. (See *Toyota Motor Corp.*, 197 Cal.App.4<sup>th</sup> at 1110.) This is in direct conflict with the preceding holding in *Glass v. Superior Court* (1988) 204 Cal.App.3d 1048, wherein the court held that where a foreign corporation filed suit in California, members of its management who were not residents of the state *could* be compelled to be deposed there. (*Glass*, at 1052-1053.)

The Court does not believe that it needs to resolve the issue of whether it has the power to compel Mr. Wang to attend his deposition in California given the representation of the Temujin Parties' counsel that he is willing to do so at the "next available opportunity."<sup>8</sup> But in the absence of any authority which expressly provides that the Court *lacks* such power, it does not find that good cause exists to quash the subject deposition notices. Nor does the Court find any basis to modify the scope of the notices and the topics set forth therein as it agrees with Defendants that these topics are not "harassing" or "overbroad. These topics- basic

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<sup>8</sup> In their reply, the Temujin Parties state that they have offered to continue the PMQ deposition with Mr. Ding, but this ignores the critical role that Mr. Wang is alleged to hold as CEO of the Temujin entities, as well as Mr. Ding's claimed ignorance of many of the facts relating to the Temujin entities and their operation. The Court also does not believe it need resolve this issue as this is merely a motion to quash and/or for a protective order and not to compel a deposition. While the Court would likely have to resolve this issue if Defendants were to seek some form of affirmative relief in the future, the Court will not do so prospectively.

background information on Temujin, the inducement of Fisch, Lu and Fu to work with it, their employment with and departure from the companies, facts concerning Temujin's allegations of trade secret misappropriation, facts concerning Temujin's other allegations, facts concerning Fisch and Lu's allegations and facts concerning Fu's allegations- and the document requests- minimal identification documents for Mr. Wang to prove his identity- clearly concern relevant matters, and the Temujin Parties make no evidentiary showing that responding to them would subject them to any unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

Accordingly, the Temujin Parties' motion for a protective order and to quash is DENIED.

### **III. CONCLUSION**

Mr. Fu's motion to compel further responses/compliance is GRANTED. Temujin shall provide further, code-compliant responses, without limitations or objections, barring those based on privilege, within 30 days' of this order. Mr. Fu's request for monetary sanctions is GRANTED IN PART in the amount of \$19,707.

The remaining motions to compel further responses/compel compliance by Messrs. Lu, Fisch and Fu are GRANTED. The Temujin Parties shall provide further, code-compliant responses, without limitations or objections, barring those based on privilege, within 30 days' of this order. Their requests for monetary sanctions are GRANTED.

The Temujin Parties' motions for a protective order/to quash are DENIED.

The Court will prepare the order.

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### **LAW AND MOTION HEARING PROCEDURES**

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to [https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

### **Calendar Line 3**

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#### **Calendar Line 4**

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## **Calendar Line 5**

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