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 9 ST. MEER INTERNATIONAL INDUSTRY
 10 AND TRADE CO., LTD.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 ST. MEER INTERNATIONAL
 14 INDUSTRY AND TRADE CO., LTD,

15 Plaintiff,

16 v.

17 QUEST BUSINESS SYSTEMS, INC.,
 18 THOMPSON A. ELLIOTT, JR., and
 19 DOES 1 through 10, inclusive,

20 Defendants.

Case No.: CV13-4985-MEJ

**JOINT CASE MANAGEMENT
 STATEMENT OF PLAINTIFF ST.
 MEER INTERNATIONAL
 INDUSTRY AND TRADE CO. LTD
 AND DEFENDANT THOMPSON A.
 ELLIOTT, JR., AND JOINT RULE
 26(f) REPORT**

CMC: March 13, 2014

21 Plaintiff St. Meer International Industry and Trade Co. (“Plaintiff”) and
 22 Defendant Thompson A. Elliott, Jr. (“Mr. Elliott”) (collectively “the Parties”) hereby
 23 submit the following Joint Case Management Statement and Joint Rule 26(f) Report.

I. JURISDICTION AND SERVICE

24 Plaintiff contends that this Court has diversity jurisdiction over this case
 25 pursuant to 28 U.S.C. § 1332 as Plaintiff is a Chinese company, the identified
 26 defendants are residents of California, and upon information and belief the Doe
 27 defendants are residents of other countries.



1 Defendants Mr. Elliott and Quest Business Systems, Inc. (“Quest”) have been
2 served. Mr. Elliott states he cannot afford an attorney for himself or Quest, and Quest
3 has not appeared. Mr. Elliott is in the process of filing a pro se answer and, in the
4 interests of cooperation and resolution on the merits, Plaintiff has refrained from
5 taking a default. As is discussed below, Plaintiff is attempting through discovery to
6 uncover the identity of the Doe defendants.

7 Plaintiff proposes a deadline for service on the Doe defendants of 6 months
8 from now, after efforts are made to identify them as discussed below.

9 **II. FACTS**

10 **Plaintiff’s Contentions**

11 Plaintiff contends the following: Plaintiff is a company dealing in cotton. In
12 July 2013 Plaintiff entered into a contract with a Tanzanian company called “Fresho”
13 to buy a substantial amount of cotton at a price of \$751,498. During this time,
14 Plaintiff negotiated with Fresho through the email address “ginnery@freshotz.com.”
15 After entering into the contract, Plaintiff awaited instructions from Fresho as to where
16 to send the purchase price to buy the cotton.

17 In August 2013 Doe defendants opened a web site called “freshotzs.com” and
18 an email address ginnery@freshotzs.com. The web site and email address were
19 almost identical to the legitimate Fresho address, save for the “s” at the end, and were
20 calculated to deceive Plaintiff. They used the email address to write to Plaintiff
21 posing as the legitimate representatives of Fresho. Using that ruse, they directed
22 Plaintiff to wire the \$751,498 purchase price for the cotton to an account in the United
23 States belonging to a Defendant Quest Business Systems. They sent convincing false
24 documents and invoices supporting this request, skillfully posing as Fresho.

25 Plaintiff reasonably accepted the communications and false documents and sent
26 the money to the Quest Business Systems account as instructed, expecting that they
27 would receive their cotton in return. Only afterwards did they discover that the
28 criminals had posed as Fresho executives and that Fresho had not received their

1 money and would not be providing the cotton. Mr. Elliott had forwarded Plaintiff's
2 funds to accounts in other countries at the instruction of the Doe defendants. Plaintiff
3 has therefore lost the \$751,498 and contends that Mr. Elliott, Quest Business Systems,
4 and the Doe defendants are jointly and severally liable.

5 Mr. Elliott's Contentions

6 Mr. Elliott asserts that he entered into a business agreement with the Doe
7 defendants in good faith, believing they were investors, and that he did not realize that
8 the wire transactions were fraudulent or that they represented the theft of Plaintiff's
9 funds. He asserts that he did not commit any legal wrong.

10 **III. LEGAL ISSUES**

11 Plaintiff anticipates that one of the primary legal issues in the case will be the
12 methods by which Plaintiff may seek to identify the Doe defendants responsible for
13 the fraud. After some additional discovery, Plaintiff may move for Letters Rogatory
14 or for a request under an appropriate Mutual Legal Assistance Treaty to a foreign
15 nation in an attempt to identify the Doe defendants.

16 **IV. MOTIONS**

17 Plaintiff anticipates filing motions asking the Court to issue Letters Rogatory or
18 requests under appropriate Mutual Legal Assistance Treaties to foreign nations as part
19 of an effort to identify the Doe defendants.

20 **V. AMENDMENT OF THE PLEADINGS**

21 Plaintiff anticipates moving to amend the Complaint upon determining the
22 identity of the Doe defendants.

23 **VI. EVIDENCE PRESERVATION**

24 Plaintiff and Mr. Elliott will abide by the Guidelines Relating to the Discovery
25 of Electronically Stored Information, have met and conferred pursuant to Rule 26(f)
26 regarding preserving physical and electronic evidence.

27 **VII. DISCLOSURES**

28 Plaintiff and Mr. Elliott have agreed to make the reciprocal disclosures required

1 by Rule 26(a)(1) before the Case Management Conference on March 13, 2014. Those
2 disclosures will include the emails and related documents in the possession of each
3 party and identification of the witnesses known to each party.

4 **VIII. DISCOVERY**

5 Plaintiff and Mr. Elliott have already taken the following steps:

- 6 1. Mr. Elliott has voluntarily disclosed his email correspondence with the Doe
7 Defendants and a spreadsheet showing transactions with Plaintiff's funds.
- 8 2. The key documents forming Plaintiff's case are already attached as exhibits
9 to the Complaint.
- 10 3. After discussion with Mr. Elliott and review of the documents he provided,
11 Plaintiff has subpoenaed multiple Internet Service Providers related to the
12 web sites and email addresses used by the Doe defendants in the fraud.
13 Some of those subpoenas remain outstanding, and Plaintiff is in the process
14 of issuing additional subpoenas to additional Internet Service Providers
15 revealed in the responses to the initial subpoenas. In other words, the Doe
16 Defendants used certain addresses to commit the fraud and to communicate
17 with Mr. Elliott and with Plaintiff; Plaintiff has subpoenaed information that
18 has revealed that the Doe Defendants used yet other email addresses to
19 create those email addresses, and is following up on the second string of
20 email addresses. In addition, before the Case Management Conference,
21 Plaintiff will have issued subpoenas to Quest Business Systems' banks
22 seeking records showing the receipt and subsequent transmission of
23 Plaintiffs' funds to foreign countries.

24 Plaintiff will eventually seek to depose Mr. Elliott and to serve him with
25 requests for production of documents and interrogatories. Mr. Elliott reserves the
26 right to use all discovery methods available to him.

27 However, Plaintiff and Mr. Elliott respectfully ask the Court to stay discovery
28 as between them for 120 days, and revisit the discovery plan at that time. During that

1 time, Plaintiff will take the following steps to obtain discovery from other sources:

- 2 1. Plaintiff will continue to pursue its subpoenas to Internet Service Providers
3 in an effort to identify the Doe Defendants so that they may be named and
4 Plaintiff may present the Court with a plan for serving them. Plaintiff will
5 also pursue subpoenas to Quest Business Systems banks to develop the exact
6 identity of the accounts receiving wires of Plaintiffs' funds.
- 7 2. Plaintiff will pursue discussions with criminal investigators in China and
8 Tanzania in an effort to identify the Doe Defendants, and will produce any
9 information obtained to Mr. Elliott, and use the information to prepare to
10 move forward in this case.
- 11 3. Plaintiff will evaluate the information it receives and determine whether to
12 make a motion to this Court for issuance of Letters Rogatory or requests
13 under a Mutual Legal Assistance Treaty to identify Doe Defendants.

14 Mr. Elliott currently lacks funds to hire an attorney for himself or for Quest
15 Business Systems. Moreover, Mr. Elliott seeks to convince Plaintiff that he was not a
16 knowing participant in the Doe Defendants' fraud, and to convince Plaintiff to enter
17 into a settlement reflecting that assertion. Without accepting Mr. Elliott's
18 representation, Plaintiff agrees to the stay of discovery to (1) give Mr. Elliott more
19 time to see if he can secure legal assistance, (2) pursue the identity of the Doe
20 Defendants who are the primary wrongdoers, and (3) prevent undue and possibly
21 unnecessary consumption of resources by any party.

22 Once Plaintiff has completed the discovery discussed above, and has
23 determined whether it will move this Court to issue Letters Rogatory or a request
24 under a Mutual Legal Assistance Treaty, Plaintiff respectfully requests leave to submit
25 a full discovery plan as to the Doe Defendants.

26 **IX. CLASS ACTIONS**

27 This is not a class action.



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X. RELATED CASES

Plaintiff and Mr. Elliott are unaware of any related cases.

XI. RELIEF SOUGHT

Plaintiff seeks its stolen \$751,498 plus costs and punitive damages. Mr. Elliott seeks a defense verdict in his favor.

XII. SETTLEMENT AND ADR

Mr. Elliott is still evaluating the settlement options available to him. Plaintiff believes that formal settlement methods are premature until Plaintiff has used the processes discussed above to identify the Doe Defendants. However, Plaintiff anticipates consenting to Early Neutral Evaluation. Moreover, Plaintiff and Mr. Elliott have informally cooperated and discussed potential resolution as between them.

XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

Plaintiff and Mr. Elliott consent to a Magistrate Judge for all purposes.

XIV. OTHER REFERENCES

The parties do not believe that reference to binding arbitration or for other purposes is appropriate.

XV. NARROWING OF ISSUES

Plaintiff and Mr. Elliott believe that, to the extent they cannot settle the dispute as between them, they can substantially narrow the issues in dispute to one: whether Mr. Elliott participated in the Doe Defendants' fraud or made false or negligent representations. It is premature to determine whether Plaintiff will be able to narrow issues with any Doe Defendants subsequently identified.

XVI. EXPEDITED TRIAL PROCEDURE

Prior to identifying the Doe Defendants it is premature to determine whether expedited trial procedures may be appropriate.



1 **XVII. SCHEDULING**

2 As is set forth above, Plaintiff and Mr. Elliott respectfully request that the Court
3 stay the matter for 120 days while Plaintiff pursues subpoenas and extra-judicial
4 methods to develop leads on the identity of the Doe Defendants and determines
5 whether to apply to the Court for Letters Rogatory or requests under appropriate
6 Mutual Legal Assistance Treaties. Prior to identification of the Doe Defendants
7 scheduling would be premature.

8 **XVIII. TRIAL**

9 Plaintiff and Mr. Elliott request a jury trial, in the event the matter goes to trial.
10 Before identification of the Doe defendants a time estimate is difficult, but Plaintiff
11 estimates 4 court days.

12 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES**
13 **OR PERSONS**

14 Plaintiff has filed the requisite Certification of Interested Entities or Persons.
15 Mr. Elliott is seeking advice and assistance in doing so.

16 **XX. RULE 26(f) ISSUES**

17 Counsel for Plaintiff and Mr. Elliott met and conferred telephonically within the
18 deadline set by the court on the subjects required by Rule 26 and the applicable local
19 rules, and as is set forth in this report, discussed possible resolutions and agreements
20 regarding discovery and case management. As is discussed above, Plaintiff and Mr.
21 Elliott request a 120 day stay of this matter while Plaintiff attempts to identify the Doe
22 Defendants. Plaintiff and Mr. Elliott respectfully request that the Court stay
23 submission of a discovery plan until that time.

24 In the event the Court declines this request, Plaintiff and Mr. Elliott report the
25 following pursuant to Rule 26(f)(3):

- 26 a. Plaintiff and Mr. Elliott will made Rule 26 disclosures to each other before
- 27 the Case Management Conference.
- 28 b. The parties will require discovery on all communications with the Doe

1 Defendants, all bank transactions involving Plaintiff's funds, and the identity
2 of the Doe Defendants. In the event the Court denies the stay requested
3 above the parties will seek to complete that discovery within 9 months,
4 given the difficulty in identifying the Doe Defendants.

- 5 c. The parties do not anticipate any difficulties with respect to production of
6 electronic documents.
- 7 d. The parties do not anticipate any difficulties with respect to privilege claims.
- 8 e. The parties anticipate relatively limited discovery as between Plaintiff and
9 Mr. Elliott, comprising written discovery requests and limited depositions
10 (one of Mr. Elliott and one of Plaintiff's designated qualified person). No
11 changes need be made with respect to them to the limits on discovery.
- 12 f. As is set forth above, Plaintiff and Mr. Elliott respectfully request a 120-day
13 stay that may promote identification of the Doe Defendants.

14 DATED: March 6, 2014

BROWN WHITE & NEWHOUSE LLP

15 s/ Kenneth P. White
16 By _____
17 KENNETH P. WHITE
18 Attorney for Plaintiff
19 ST. MEER INTERNATIONAL
20 INDUSTRY AND TRADE CO., LTD.

21 DATED: March 6, 2014



22 By _____
23 THOMPSON A. ELLIOT, JR.
24 Defendant, in Pro Per

25 It is hereby ORDERED that the stipulated request to extend case management and ADR
26 deadlines is GRANTED. The Case Management Conference is continued to
27 August 14, 2014. The last day to meet and confer re: Initial Disclosures,
28 Early Settlement, ADR Process Selection, And Discovery Plan, File ADR Certification,
File Either Stipulation to ADR Process or Notice of Need for ADR Phone Conference
is July 14, 2014. The last day to file Rule 26(f) Report, complete Initial Disclosures or
state objection in Rule 26(f) Report, and file the Case Management Statement is
August 7, 2014. Dated: March 6, 2014

BROWN, WHITE & NEWHOUSE
ATTORNEYS

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- c. The parties do not anticipate any difficulties with respect to production of electronic documents.
- d. The parties do not anticipate any difficulties with respect to privilege claims.
- e. The parties anticipate relatively limited discovery as between Plaintiff and Mr. Elliott, comprising written discovery requests and limited depositions (one of Mr. Elliott and one of Plaintiff's designated qualified person). No changes need be made with respect to them to the limits on discovery.
- f. As is set forth above, Plaintiff and Mr. Elliott respectfully request a 120-day stay that may promote identification of the Doe Defendants.

DATED: March 5, 2014

BROWN WHITE & NEWHOUSE LLP

By _____
 KENNETH P. WHITE
 Attorney for Plaintiff
 ST. MEER INTERNATIONAL
 INDUSTRY AND TRADE CO., LTD.

DATED: March 5, 2014

By Thompson A. Elliott, Jr.
 THOMPSON A. ELLIOT, JR.
 Defendant, in Pro Per

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, California 90071.

On March 6, 2014, I served the following document(s) described as: **JOINT CASE MANAGEMENT STATEMENT OF PLAINTIFF ST. MEER INTERNATIONAL INDUSTRY AND TRADE CO. LTD AND DEFENDANT THOMPSON A. ELLIOTT, JR., AND JOINT RULE 26(f) REPORT** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Mr. Thompson A. Elliott, Jr.
Quest Business Systems, Inc.
P.O. Box 715
Brentwood, CA 94513
help@questbizsystems.com
sales@questbizsystems.com

- BY MAIL:** I deposited such envelope in the mail at 333 South Hope Street, 40th Floor, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 213/613-0550. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.
- FEDERAL:** I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on March 6, 2014, at Los Angeles, California.

s/ Liz Treckler

Liz Treckler