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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OPTRONIC TECHNOLOGIES, INC,

Plaintiff,

v.

NINGBO SUNNY ELECTRONIC CO.,  
LTD., et al.,

Defendants.

Case No. 16-cv-06370-EJD (VKD)

**ORDER GRANTING NINGBO  
SUNNY'S MOTION TO QUASH  
ORDER TO APPEAR FOR  
JUDGMENT DEBTOR EXAMINATION**

Re: Dkt. No. 554

Ningbo Sunny Electronic Co. (“Ningbo Sunny”) moves to quash an order to appear for a judgment debtor examination sought by Optronic Technologies, Inc. (“Orion”). At Ningbo Sunny’s request, this Court set a shortened briefing and hearing schedule on that motion, and held in abeyance the order setting the examination, pending resolution of the motion to quash. Dkt. No. 560. Upon consideration of the moving and responding papers, this Court finds the matter suitable for determination without oral argument, and the January 28, 2020 hearing is vacated. Civ. L.R. 7-1(b). For the reasons discussed below, the Court grants Ningbo Sunny’s motion to quash.

Orion previously sought a January 28, 2020 judgment debtor examination of Ningbo Sunny, with the examination to occur at this courthouse, and specifically requesting that Mr. Wenjun “Peter” Ni appear and testify on Ningbo Sunny’s behalf. The application was brought “[p]ursuant to California Code of Civil Procedure Section 708.110, made applicable to this action by Federal Rule of Civil Procedure 69(a)(2)” (Dkt. No. 551), and stated that “[t]he person to be examined resides or has a place of business in this county or within 150 miles of the place of examination” (Dkt. No. 551-1).

United States District Court  
Northern District of California

1           After this Court granted Orion’s application (Dkt. No. 552), Ningbo Sunny filed the  
2 present motion to quash, challenging the location and date of the debtor exam. First, Ningbo  
3 Sunny argues that Orion failed to comply with California Code of Civil Procedure sections  
4 708.110 and 708.160 because Mr. Ni and Ningbo Sunny reside in China and have no place of  
5 business within the same county as this Court or within 150 miles of this courthouse.  
6 Additionally, Ningbo Sunny requests that the examination be re-set for a date after February 4,  
7 2020 due to Mr. Ni’s unavailability from January 25 through February 1, 2020 for the Chinese  
8 New Year holiday. Dkt. No. 554-1 ¶ 2. Here, Ningbo Sunny says that it does not seek to avoid a  
9 judgment debtor exam, but it would like the exam to take place on a mutually agreeable date that  
10 does not fall during the Chinese New Year. Dkt. No. 563 at ECF 2.

11           With respect to the venue of the requested debtor exam, California Code of Civil  
12 Procedure section 708.160(b) provides:

13                   A person sought to be examined may not be required to attend an  
14 examination before a court located outside the county in which the  
15 person resides or has a place of business unless the distance from the  
16 person’s place of residence or place of business to the place of  
17 examination is less than 150 miles.

18           Cal. C.C.P. § 708.160(b). As demonstrated by the parties’ briefing, the point of contention is  
19 whether section 708.160(b) applies to Ningbo Sunny at all.

20           On this issue, although the parties have accurately described the particular cases they cite,  
21 neither side has provided this Court with a complete statement of the applicable law. Here,  
22 Ningbo Sunny’s opening brief relies primarily on Langer v. Gorial, No. 14-cv-2304-BAS (MDD),  
23 2015 WL 4873074 (S.D. Cal. Aug. 13, 2015), in which the district court concluded that an  
24 application for a judgment debtor examination could not be granted where the applicant failed to  
25 say where the judgment debtor resided, among other required information. Langer, however,  
26 provides little, if any, guidance on the question whether section 708.160(b) applies to Ningbo  
27 Sunny, which indisputably is based in China. Citing to several district court decisions, Orion  
28 contends that section 708.160(b) does not apply to foreign-based defendants, such as Ningbo  
Sunny. See, e.g., Vedatech, Inc. v. St. Paul Fire & Marine Ins. Co., Nos. C04-1249 VRW, C04-  
1403 VRW, C04-1818 VRW, 2008 WL 2790200, at \*2 (N.D. Cal. July 17, 2008); Kremen v.

1 Cohen, No. C98-20718 JW, 2008 WL 11455081, at \*2 (N.D. Cal. Mar. 28, 2008); United States v.  
2 Feldman, 324 F. Supp. 2d 1112, 1117-18 (C.D. Cal. 2004). These decisions, however, provide  
3 little or no analytical support for the conclusion that section 708.160(b) exempts foreign-based  
4 defendants. In its reply, Ningbo Sunny counters that, for purposes of section 708.160(b), Ningbo  
5 Sunny is not a foreign defendant because its wholly-owned subsidiary, Meade Instruments Corp.,  
6 is located in Irvine, California. Ningbo Sunny contends that its judgment debtor examination  
7 therefore should proceed in Orange County, California. Here, Ningbo Sunny relies on the plain  
8 language of section 708.160(b) and cites no authority on point.

9 In a decision not cited by either side, a district court confronted with this issue rejected the  
10 proposition that section 708.160(b) absolutely exempts foreign defendants from its application.  
11 Pabban Dev., Inc. v. Kyphon Sarl, No. CV 10-00533 BRO (RNBx), 2015 WL 12731928 (C.D.  
12 Cal. Mar. 10, 2015) (concluding that the magistrate judge did not err in granting a motion to quash  
13 on the ground that there is no exception for “foreign-based” judgment debtors in section 708.160).  
14 Noting that courts have interpreted Rule 69(a)(1) as relating to the judgment execution procedures  
15 available to judgment creditors and Rule 69(a)(2) as relating to post-judgment discovery in aid of  
16 execution, Pabban concluded:

17 Section 708.160 does not result in a substantive abridgment of the  
18 Court's jurisdiction, remove the Court's ability to enforce its  
19 judgments, or limit a judgment debtor's ability to conduct alternative  
20 discovery under the Federal Rules. Rather, section 708.160 merely  
21 requires that, when a judgment creditor elects to utilize a debtor's  
22 examination under California law, the district court exercise “the  
23 same authority to aid judgment creditors as that provided to state  
24 courts under local law.” Duchek, 646 F.2d at 417. As a result, the  
25 Court is not convinced by the reasoning of either Bates, Feldman, or  
26 Vedatech that section 708.160 flatly does not apply to foreign  
27 defendants. This is particularly true given that there is no basis for  
28 this conclusion in the text of the statute itself. Section 708.160 states  
that a court may not require attendance at an examination located  
outside the county in which a person resides if the distance is greater  
than 150 miles. Cal. Civ. Proc. Code § 708.160. There is nothing in  
the text of the statute, or even its legislative history, which suggests an  
exception for foreign defendants.

26 2015 WL 12731928 at \*4. Here, as in Pabban, Orion's application for a judgment debtor exam  
27 demonstrated that Orion elected to proceed with judgment execution procedures available under  
28 California law.


1 This Court agrees with Pabban that section 708.160(b) does not clearly provide an  
2 exception for foreign-based judgment debtors. *Id.* at \*5. Accordingly, Ningbo Sunny’s motion to  
3 quash is granted insofar as the Court’s prior order required Mr. Ni/Ningbo Sunny to appear for a  
4 judgment debtor examination at this courthouse.

5 Nevertheless, Rule 69 does not foreclose Orion’s ability to depose Ningbo Sunny under the  
6 Federal Rules, and section 708.160 does not limit Orion’s ability to conduct alternative discovery  
7 under the Federal Rules. See *id.* at \*4-\*5; see also *Legal Additions, LLC v. Kowalski*, No. C08-  
8 2754 EMC, 2011 WL 3156724, at \*4 (N.D. Cal. July 26, 2011) (stating the “under [Rule]  
9 69(a)(2), a judgment creditor may obtain discovery as provided either by the procedure of the state  
10 where the court is located or by the Federal Rules of Civil Procedure.”). And “[u]nder the Federal  
11 Rules the Court has substantial discretion to designate the site of a deposition.” *Legal Additions*,  
12 2011 WL 3156724, at \*4 (internal quotations and citation omitted). Accordingly, to the extent  
13 Orion chooses to proceed with an examination under the Federal Rules, it shall take the necessary  
14 steps to do so. Unless the parties agree to another date or location, this Court expects that any  
15 such examination will occur in San Jose, California during the week of February 3, 2020 in order  
16 to accommodate Mr. Ni’s unavailability during the Chinese New Year celebrations.

17 As for Orion’s request that this Court issue an order to “preserv[e] the status quo and  
18 prevent[] Ningbo Sunny from accepting payments prior to the examination in its overseas  
19 accounts” (Dkt. No. 561 at ECF 6), this Court has no authority to order such relief. Orion’s  
20 request therefore is denied, without prejudice to Orion’s option to raise the matter with the  
21 presiding judge.

22 **IT IS SO ORDERED.**

23 Dated: January 27, 2020

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26 VIRGINIA K. DEMARCHI  
27 United States Magistrate Judge  
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