

1 Plaintiff requests in its first Application (#47) the issuance of a letter rogatory to the
2 appropriate judicial authority in Macau to obtain testimonial evidence from non-party witness
3 Andrew W. Scott. Plaintiff also requests in its second Application (#48) the issuance of letters
4 rogatory to the appropriate judicial authority in Malaysia to obtain testimonial evidence from non-
5 party witnesses Chang Kok Leong, Ong Beng Wee, and Aaron Chia Khong Child. Plaintiff further
6 requests in its third Application (#49) the issuance of a letter of rogatory to the appropriate judicial
7 authority in Singapore to obtain testimonial evidence from non-party witness Ah Yoke Wong.

8 Courts enjoy the inherent authority to issue letters rogatory. *See United States v. Staples*,
9 *256 F.2d 290, 292* (9th Cir. 1958). The authority to issue letters rogatory is also implicit in 28
10 U.S.C. § 1781. *Asis Internet Servs. v. Optin Global, Inc.*, 2007 WL 1880369 at *3 (N.D. Calif.
11 2007). Whether to issue such a letter is a matter of discretion for the court. *Id.* A letter rogatory is
12 a written request from a court to a foreign court requesting the production of documents. *Asis*,
13 2007 WL 1880369 at *3 (citing *United States v. Reagan*, 453 F.2d 165, 168 (6th Cir. 1971)). When
14 determining whether to issue a letter, courts will not weigh the evidence sought nor predict whether
15 that evidence will actually be obtained. *Asis*, 2007 WL 1880369 at *3 (citing *DBMS Consultants*
16 *Ltd. v. Computer Assocs. Int'l, Inc.*, 131 F.R.D. 367, 369 (D. Mass. 1990)). Rather, a court's
17 decision whether to issue a letter rogatory requires an application of the discovery scope provided
18 by the Federal Rules of Civil Procedure. *See Evanston Ins. v. OEA, Inc.*, 2006 WL 1652315 at *2
19 (E.D. Calif. 2006).

20 Here, the information Plaintiff seeks is reasonably calculated to lead to admissible evidence
21 and is within the scope contemplated by Rule 26(b) of the Federal Rules of Civil Procedure.
22 Plaintiff's first Application (#47) and third Application (#49) for Letters of Request for
23 Examination of Witnesses include proposed Requests for International Judicial Assistance that
24 comply with the requirements of 28 U.S.C. § 1781 and the Convention on the Taking of Evidence
25 Abroad in Civil or Commercial Matters ("Convention"). Furthermore, under Local Rule 7-2(d),
26 the failure of an opposing party to file points and authorities in response to any motion shall
27 constitute a consent to the granting of the motion. The time to oppose the instant Applications has
28 expired, and no oppositions have been filed.

1 Plaintiff's second Application (#48), however, does not comply with the requirements of
2 section 1781. Specifically, Plaintiff's proposed Request (#48, Exh. 1) in its second Application
3 (#48) does not include (1) the names and addresses of the parties to the proceedings and their
4 representatives, if any; and (2) any requirement that the evidence is to be given under oath or
5 affirmation, and any special form to be used. *See Convention, Article 3, §§ b, h.* Accordingly,

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Issuance of Letters Rogatory re:
7 Examination of Witness in Macau (#47) is **granted**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Issuance of Letters Rogatory re:
9 International Judicial Assistance (#48) is **denied** without prejudice. Plaintiff shall have 14 days
10 from the date of this Order in which to file a revised application that corrects the deficiencies noted
11 in this Order.

12 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Issuance of Letters Rogatory re:
13 Request for the Examination of Witness in Singapore (#49) is **granted**.

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file Plaintiff's proposed
15 Request for International Judicial Assistance (#47, Exh. 1).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file Plaintiff's proposed
17 Request for International Judicial Assistance (#49, Exh. 1).

18 DATED this 11th day of June, 2013.

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21 GEORGE FOLEY, JR.
22 United States Magistrate Judge
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