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 CO., LTD.

11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF NEVADA

14 EMTEK (SHENZHEN) CO., LTD., a foreign
 15 limited liability company,
 16 Plaintiff/Counter-Defendant,
 17 vs.
 18 WAIAN LLC, OWEN S. WONG and EMTEK
 19 INTERNATIONAL LLC,
 20 Defendants/Counter-Claimants.
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CASE NO. 2:19-cv-00927-GMN-EJY

**STIPULATION AND ORDER TO
 EXTEND STAY OF DISCOVERY AND
 CONTINUE STATUS CONFERENCE**

22 Pursuant to Local Rule 26-3 and all applicable authority, and by and through their
 23 respective counsel of record, Plaintiff/Counter-Defendant EMTEK (SHENZHEN) CO., LTD.
 24 (“Plaintiff” or “Counter-Defendant”) and Defendants/Counter-Claimants WAIAN LLC, OWEN S.
 25 WONG, and EMTEK INTERNATIONAL LLC (“Defendants” or “Counter-Claimants”) hereby
 26 submit to the Court this *Stipulation and Order to Extend Stay of Discovery and Continue Status*
 27 *Conference*. The primary reasons for this Stipulation are as follows: (1) the pending settlement
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1 discussions between the parties, who are currently negotiating the dissolution of the underlying
2 corporate entity; (2) the COVID-19 pandemic has resulted in numerous restrictions (and some
3 outright bans) on international travel and the obtaining of evidence; and (3) China does *not* permit
4 attorneys to take depositions in China for use in non-Chinese courts. There are additional reasons
5 as well. In connection with this Stipulation, the Parties hereby stipulate and agree as follows:

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7 **I. INFORMATION PURSUANT TO LOCAL RULE 26-3**

8 **A. Discovery completed.**

9 On December 17, 2019, Plaintiff made its Initial Disclosures.

10 On February 4, 2020, Defendants made their Initial Disclosures.

11 On March 31, 2020, Plaintiff/Counter-Defendant produced its First Supplement to
12 Plaintiff's Rule 26(a)(1)(A) Disclosures.

13 On April 30, 2020, Plaintiff/Counter-Defendant produced its Second Supplement to
14 Plaintiff's Rule 26(a)(1)(A) Disclosures.

15 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
16 First Set of Requests for Admission to Defendant/Counterclaimants.

17 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
18 First Set of Requests for Production to Defendant/Counterclaimants.

19 On May 7, 2020, Plaintiff/Counter-Defendant propounded Plaintiff/Counter-Defendant's
20 First Set of Interrogatories to Defendant/Counterclaimant Owen S. Wong.

21 On May 15, 2020, Plaintiff Counter-Defendant served Notice of Intent to Serve Subpoena
22 Duces Tecum on three separate deponents, including: (1) Custodian of Records for JPMorgan
23 Chase, Bank, N.A.; (2) Custodian of Records for Wells Fargo Bank, N.A., (3) Custodian of
24 Records for Citibank, N.A. These subpoenas were subsequently served on the respective
25 deponents and, after delays due to branch closures and other COVID-19 related service delays, as
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1 of the date of this stipulation, Plaintiff Counter-Defendant has begun receiving the requested
2 records and anticipates a forthcoming supplemental production of documents from the deponents.

3 On June 19, 2020, Plaintiff Counter-Defendant produced its Third Supplement to
4 Plaintiff's Rule 26(a)(1)(A) Disclosures.

5 On July 12, 2020, Defendants produced their Second Supplement to Defendants' Rule
6 26(a)(1)(A) Disclosures.

7 On July 23, 2020, Plaintiff Counter-Defendant produced its Fourth Supplement to
8 Plaintiff's Rule 26(a)(1)(A) Disclosures.

9 On July 29, 2020, Defendants produced their Response to Plaintiff/Counter-Defendant's
10 First Set of Requests for Admissions.

11 On August 24, 2020, Defendants produced their Third Supplement to Defendants' Rule
12 26(a)(1)(A) Disclosures.

13 On September 6, 2020, Defendants produced their Fourth Supplement to Defendants' Rule
14 26(a)(1)(A) Disclosures.

15 On September 8, 2020, Defendants produced their Response to Plaintiff/Counter-
16 Defendant's First Set of Requests for Production.

17 On September 8, 2020, Defendants produced their Response to Plaintiff/Counter-
18 Defendant's First Set of Interrogatories.

19 On October 5, 2020, Plaintiff received a supplemental document production of bank
20 records from Citibank, N.A.

21 On November 18, 2020, Defendants produced their Fifth Supplement to Defendants' Rule
22 26(a)(1)(A) Disclosures.

23 On February 26, 2021, Defendants substituted new counsel in this matter.

24 On March 8, 2021, Defendants served their demand for prior discovery.

1 **B. Discovery that remains to be completed.**

2 In the event the Parties are unable to finalize their negotiations, the Parties will need to
3 depose several witnesses, several of whom are based in China, which has continued to restrict
4 travel due to the Covid-19 pandemic. Defendants/Counter-Claimants counsel will want to take a
5 FRCP 30(b)(6) deposition of a representative of Plaintiff/Counter-Defendant. The Parties may also
6 need to conduct expert discovery, including the use of accounting experts in the event the Parties
7 are unable to agree on the amounts in dispute.
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9 **C. Why discovery was not completed.**

10 Discovery has not been completed primarily for three reasons. First, since the stay of
11 discovery that was entered in this case on April 22, 2021, the Parties have been negotiating the
12 resolution of this lawsuit along with the dissolution of the underlying corporate entity, Emtex
13 International LLC, and the corresponding allocation of the entity’s assets and outstanding
14 liabilities. The Parties have exchanged written settlement papers and have reached shared
15 understandings on the bulk of the terms pertaining to the resolution of this lawsuit and dissolution
16 of the entity; however, the Parties are still in negotiations regarding the allocation of certain third-
17 party claims belonging to Emtex International LLC. The parties are continuing to negotiate as to
18 these remaining third-party claims and are hopeful that they will be able to reach a resolution, but
19 have not yet been able to reach a final agreement as to these remaining third-party claims
20 belonging to Emtex International LLC.
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23 Second, the global COVID-19 pandemic has resulted in numerous restrictions (and some
24 outright bans) on international travel and the obtaining of evidence, particularly as to depositions
25 of the remaining party representatives. Plaintiff/Counter-Defendant’s headquarters, along with its
26 representatives and witnesses, is located in Wuhan City, Hubei Province, in the People’s Republic
27 of China (“PRC” or “China”). In fact, Plaintiff/Counter-Defendant’s headquarters,
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1 representatives, and witnesses are located in the very city where the COVID-19 outbreak began.
2 Much discovery is needed from other individuals and entities in China. Because of the worldwide
3 pandemic, China has only recently begun to open international travel and business and other
4 operations. Even so, restrictions remain and travel visas have to be obtained. For these reasons,
5 the Parties have not yet had a chance to conduct meaningful discovery there.
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7 Third, in addition to the issues arising from the pandemic, “China does not permit
8 attorneys to take depositions in China for use in [non-Chinese] courts.”¹ This is generally true
9 even if the depositions are taken voluntarily, remotely, or both. This restriction means that
10 Plaintiff’s representatives will not be able to be deposed while they are inside China or they could
11 be prosecuted by Chinese authorities. They would have to travel outside of China for the
12 depositions, which travel is not without its own restrictions and limitations due to the pandemic.
13 Plaintiff’s representatives will also have to obtain travel visas, which have additional restrictions.
14 Many U.S. consulates in China are currently closed and are not issuing any visas at all. The U.S.
15 embassy in Beijing is only allowing visas on an emergency basis. Requests to the Central
16 Authority under the Hague Evidence Convention for holding depositions while the Plaintiff and its
17 representatives are inside China has not been achieved by either parties’ counsel, and the Parties
18 anticipate that significant delays may be encountered until permission is obtained from the
19 Chinese Central Authority and/or the current COVID international travel restrictions between the
20 United States and China are lifted.
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27 ¹ [https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-](https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html)
28 [Information/China.html](https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html) (last visited July 16, 2021).

1 **D. Proposed schedule for completing all remaining discovery.**

2 The parties propose that the temporary stay of discovery remain in place, as follows:

3	<u>Description of Deadline</u>	<u>Old Date</u>	<u>New Date</u>
4	Initial Disclosures	<i>Passed</i>	<i>STAYED</i>
5	Amending Pleadings/Adding Parties	<i>Passed</i>	<i>STAYED</i>
6	Interim Status Report	<i>Passed</i>	<i>STAYED</i>
7	Regular Discovery Cut-Off	<i>STAYED</i>	<i>STAYED</i>
8	Initial Expert Disclosures	<i>STAYED</i>	<i>STAYED</i>
9	Rebuttal Expert Disclosures	<i>STAYED</i>	<i>STAYED</i>
10	Expert Discovery Cut-Off	<i>STAYED</i>	<i>STAYED</i>
11	Dispositive Motions	<i>STAYED</i>	<i>STAYED</i>
12	Joint Pre-Trial Order	<i>STAYED</i>	<i>STAYED</i>

13 *The parties would also request that the status conference in this matter that is currently*
 14 *scheduled for July 22, 2021 at 10:00 a.m. be continued about (90) days out from the present*
 15 *date or to a date that the Court deems reasonable for allowing sufficient time for the parties to*
 16 *conclude their remaining settlement negotiations.*

17 **II. GOOD CAUSE.**

18 As discussed in Part I.C above, the Parties would submit that there is good cause for why
 19 discovery has not been completed and why discovery should remain temporarily stayed at this
 20 juncture: (1) since the entry of the temporary stay, the Parties have continued their settlement
 21 negotiations as to the resolution of this lawsuit and dissolution of Emtex International LLC, which
 22 has resulted in the Parties reaching understandings as to the bulk of the negotiation terms – but
 23 additional time is needed to conclude their negotiations as to the allocation of the corporate
 24 entity's remaining third-party claims; (2) the COVID-19 pandemic has resulted in numerous
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1 restrictions (and some outright bans) on international travel and the obtaining of evidence; (3)
2 China does not permit attorneys to take depositions in China for use in non-Chinese courts; and
3 (4) the Parties have been duly diligent, and they have not been dilatory or clogging the Court’s
4 docket; (5) continuing the temporary stay of discovery would not prejudice Plaintiff or Defendants,
5 because all Parties have agreed to continue the stay; (6) the continued stay would not disrupt the
6 Court’s proceedings in this matter because no hearings or trial dates are currently scheduled, apart
7 from the status conference on July 22, 2021, which the parties have asked to be continued by
8 about 90 days; (7) a continued temporary stay of discovery would allow the Parties to continue to
9 engage in meaningful settlement negotiations to conclude their negotiations as to Emtek
10 International LLC’s remaining assets and liabilities, without having to shift their focus, or bear the
11 time and expense, for additional discovery at this time, which discovery would be rendered
12 unnecessary in the first place if the Parties settle; and (8) given that there remain restrictions on
13 international travel and the obtaining of evidence, a stay would allow for a temporary pause until
14 conditions return somewhat more to “normal,” which might allow the Parties to proceed with
15 relatively uninhibited discovery, if they are not able to settle.

18 **III. REQUEST TO EXTEND OTHER DEADLINES.**

19 None at this time.

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1 **IV. CONCLUSION.**

2 Wherefore, Defendants/Counter-Claimants WAIAN LLC, OWEN S. WONG, and
3 EMTEK (“Defendants” or “Counter-Claimants”) and Plaintiff/Counter-Defendant EMTEK
4 (SHENZHEN) CO., LTD. (“Plaintiff” or “Counter-Defendant”) hereby request the Court to enter
5 the foregoing stipulation as an order of the Court and to continue the current stay of discovery.
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7 IT IS SO STIPULATED.

8 Dated this 20th day of July, 2021

Dated this 20th day of July, 2021

9 **FRIZELL LAW FIRM**

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14 *Attorney for*
15 *Defendants/Counter-Claimants*

Attorneys for Plaintiff/Counter-Defendant

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ORDER


Having reviewed the foregoing Stipulation of the Parties, and finding good, just, and sufficient cause therefor, it is hereby entered as an Order of the Court.

IT IS THEREFORE ORDERED AS FOLLOWS:

- 1. Discovery in this matter shall remain STAYED.
- 2. The telephonic status conference scheduled for July 22, 2021 at 10:00 a.m. is hereby continued to October 28, 2021 at 10:00 a.m.

IT IS SO ORDERED.

DATED: July 20, 2021


 UNITED STATES MAGISTRATE JUDGE
 CASE NO.: 2:19-cv-00927-GMN-EJY

Submitted by:
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