

MEMO ENDORSED**TROY LAW, PLLC**

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41-25 Kissena Blvd., Suite 119, Flushing, New York 11355**Via ECF****The Honorable Valerie Caproni
United States District Court
Southern District of New York
40 Foley Square
Room 240
New York, New York 10007**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/26/2015**RE: Plaintiff's Request for Rule 37.2 Informal Conference Regarding
Defendants' Deficient Responses to First Set of Interrogatory and
Production of Document Requests and Compel Defendants to Produce
"John" Zhu for Defendants' Depositions
Zhao et al v. L&K Restaurant, Inc. et al, 14cv6103 (VEC)**

October 23, 2015

Dear Hon. Judge Caproni:

This office represents the Plaintiffs in the above referenced matter. In accordance with Local Rule 37.2, Plaintiffs respectfully request your Honor's assistance to facilitate the curing of Defendants deficient discovery responses and compel Defendants to produce "John" Zhu to be deposed as detailed below.

Plaintiffs filed the Complaint in the Southern District of New York on August 5, 2014. *See* Docket No. 1 On September 4, 2014, the parties entered into a Stipulation to extend the time for Defendants to file an Answer to September 25, 2014. After extensive motion practice, Defendants filed an answer to the complaint. *See* Docket No. 35. The parties sent a proposed case management plan and scheduling order on June 19, 2015. *See* Docket No. 42. The parties' case management plan and scheduling order was so ordered on June 26, 2015. *See* Docket No 44. All fact discovery was to be completed no later than August 26, 2015. On August 24, 2015, both parties filed a joint letter requesting to extend the completion of discovery. *See* Docket No. 50. The next day, the Court granted the joint request and set a deadline for the completion of fact discovery to November 5, 2015, while scheduling a status conference for November 6, 2015. *See* Docket No. 51.

I. *Deposition of "John" Zhu*

Plaintiffs filed their complaint on August 5, 2014, listing "John" Zhu as an individual Defendant. In the complaint, Plaintiffs allege, *inter alia*, that "John" Zhu is the owner, officer, director, and/or managing agent of L & K Restaurant, Inc., d/b/a Asian Wok at 88 Fulton Street, New York, NY 10038, who had hiring and firing power. *See* Docket No. 1 ¶¶ 15-17. In fact, Plaintiffs alleged "John" Zhu fired Plaintiff Ying Jie Zhao. *See* Docket No. 1 ¶ 18.

It is clear from the Defendant counsel's filed documents including but not limited to the Notice of Appearance and Motion to Dismiss, Defendant's counsel represent named Defendant "John" Zhu. *See* Docket Nos. 12-13. In fact, Defendants responded to all of Plaintiffs' discovery requests on behalf of "John" Zhu. Through the discovery process and Plaintiffs' Motion for Conditional Class Certification, Defendants supplied an employee list of individuals who performed work as the restaurant Defendants listed Lishuang Zhu's position as "head chef." Plaintiff Ying Jie Zhao recollects that he was fired by a head chef by the last name "Zhu." As a result, Plaintiffs highly believe that Lishuang Zhu on that list is "John" Zhu.

On August 7, 2015, Plaintiffs served Defendants with a notice of deposition of "John" Zhu. In effort to arrange deposition, Plaintiffs contacted Defendants' counsel, requesting to confirm the presence for deposition of Mr. Lishang Zhu on October 13, 2015. Defendants' counsel did not provide any response. We renewed our request on October 22, 2015 and have been told by Defendants' counsel that they could not confirm the presence of Mr. Lishuang Zhu aka "John" Zhu, because they were not representing him and he would not be present at scheduled day for depositions, October 26, 2015. Plaintiffs do not find that answer acceptable. Plaintiffs have a right to depose Mr. Zhu. Plaintiffs are now seeking Court intervention to have Defendants produce "John" Zhu a/k/a Lishuang Zhu for Defendants' depositions.

II. *Defendants' Discovery Responses Deficiencies*

On July 14, 2015, Plaintiffs served Defendants with their discovery requests, which included Plaintiffs first set of interrogatories, first request for document production and Plaintiffs' Rule 26 (a) Disclosures. Defendants sent their discovery responses on August 7, 2015. However, Plaintiffs did not find Defendants' responses adequate, and sent a deficiency letter regarding Defendants responses to Plaintiffs' first set of discovery requests on October 20, 2015. Defendants' sent their amended responses to Plaintiffs on October 23, 2015. Plaintiffs are still not satisfied with the adequacy of Defendants' responses. As a result, Plaintiffs had to cancel the scheduled depositions and seek court intervention.

For the reasons stated above, Plaintiffs respectfully ask for the Court's intervention in facilitating the curing of these deficiencies and refusal to produce Defendant "John" Zhu for depositions. Plaintiffs respectfully request a Local Rule 37.2 informal conference to address the current discovery dispute between the parties. Thank you for your time and consideration in this matter.

Respectfully submitted,
TROY LAW, PLLC
/s/John Troy
John Troy,
Attorney for Plaintiff

Via ECF
CC: Jian Hang, Esq
Kevin Vorhis, Esq

William Michael Brown, Esq.
Marisol Santos, Esq.
Attorneys for Defendants

Pursuant to Rule 2(B) of the Court's Individual Practices, parties must (1) meet and confer and then (2) jointly call Chambers to schedule a teleconference regarding any discovery dispute that the parties have been unable to resolve without Court intervention. Because Plaintiff's counsel failed to comply with the Court's Individual Practices, counsel will not be eligible for any fees relating to the drafting of this letter. The parties are directed to meet and confer in person regarding this dispute and, if Court intervention is still required, then the parties should jointly call Chambers on Thursday, October 29, 2015 at 4:00 p.m.

SO ORDERED.



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Date: 10/26/2015