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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 SYNERGY GREENTECH  
8 CORPORATION,

9 Plaintiff,

10 v.

11 MAGNA FORCE, INC., et al.,

12 Defendants.

CASE NO. C15-5292BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
COMPEL

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14 This matter comes before the Court on Defendants Pat Handly, Jo Klinski, Karl J.  
15 Lamb, Magna Force, Inc. ("Magna Force") and Kenneth Trautman's ("Defendants")  
16 motion to compel (Dkt. 62). The Court has considered the pleadings filed in support of  
17 and in opposition to the motion and the remainder of the file and hereby grants in part  
18 and denies in part the motion for the reasons stated herein.

19 **I. PROCEDURAL AND FACTUAL HISTORY**

20 On August 10, 2010, Plaintiff Synergy Greentech Corporation ("Synergy") and  
21 Magna Force entered into a patent sale and license agreement. On May 30, 2012, an  
22 arbitrator declared the contract void. Dkt. 64, Declaration of Stephen R. Parkinson

1 (“Parkinson Dec.”), Exh. D (“Arbitrator’s Decision”). The decision was affirmed on  
2 appeal.

3 Relevant to the instant motion, the arbitrator made numerous findings of fact.  
4 These findings were based upon the deposition testimony of three people, including  
5 Wayne Erickson and Ulysses Wang, as well as live testimony from five people, including  
6 Mr. Erickson and Mr. Wang. *Id.* at 3–4<sup>1</sup>. The arbitrator found that the agreement was  
7 drafted by Mr. Wang, Kelvin Liu, and Mr. Erickson on behalf of Synergy. *Id.* at 5. He  
8 also found that “[a]ll of the decisions regarding Synergy are made by Mr. Ulysses Wang  
9 and Mr. T.H. Lee . . . ,” and that “[n]o control decisions are made by anyone other than  
10 Chinese nationals.” *Id.* at 7–8. With regard to payments under the agreement, the  
11 arbitrator found as follows:

12 The first \$2,000,000 payment was made from China to Magna Force  
13 (Ex. 40) by CIMIC, a Chinese company. The second \$1,500,000 payment  
14 also came from China (Ex. 45).

15 The third payment apparently came through Synergy (Ex. 58) but  
16 there has been no investment in Synergy by any entity located in the United  
17 States, Canada or Europe.

18 *Id.* at 8. Finally, the arbitrator found that, “[a]t the direction of Mr. Wang, [Defendant Jo  
19 Klinski of Magna Force] kept the involvement of CIMIC in the transaction a secret ‘to  
20 avoid trouble.’” *Id.*<sup>2</sup>

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21 <sup>1</sup> Although unclear, the live testimony was apparently given in Seattle at the arbitrator’s  
22 office.

<sup>2</sup> Synergy has asserted that the parties are precluded from contesting these findings of  
fact. Dkt. 57 at 4.

1 On May 4, 2015, Synergy filed a complaint against Defendants asserting causes of  
2 action for conversion, unjust enrichment, promissory estoppel, common law fraud,  
3 misuse of corporate form, fraudulent misrepresentation, fraudulent inducement,  
4 conspiracy to defraud, fraudulent transfer by Defendants, and fraudulent transfer accepted  
5 by Defendant shareholders. Dkt. 1.

6 On October 16, 2015, Defendants answered and asserted numerous affirmative  
7 defenses, including the defense that Synergy lacks the capacity to sue. Dkt. 15 at 9. The  
8 defense is based in part on the assertion that Synergy is not the entity that made all of the  
9 payments in dispute. *Id.* Defendants also assert various counterclaims based on  
10 allegations that Messrs. Erickson and Wang negotiated and executed the parties' void  
11 contract. *Id.* at 10.

12 On March 1, 2016, Magna Force propounded requests for production. Parkinson  
13 Dec., Exh. A. Magna Force defined Synergy to include "[Synergy], its directors,  
14 employees, officers, agents, representatives, attorneys, contractors, consultants,  
15 subsidiaries, predecessors, successors, and affiliates. Affiliates shall include entities with  
16 common control, ownership, directors, or officers." *Id.* at 4. On March 31, 2016,  
17 Synergy responded and objected to the broad definition of Synergy. Parkinson Dec.,  
18 Exh. B. Specifically, Synergy asserted in relevant part as follows:

19 [Synergy] objects to the definition of "Synergy" to the extent it includes  
20 "affiliates" as it calls for information and/or documents that are beyond  
21 [Synergy's] possession, custody or control. [Synergy] does not have the  
22 authority to order its parent corporation, or other entities that may also be  
controlled by [Synergy's] parent corporation, to produce the requested  
information and/or documents. Accordingly, [Synergy's] responses to the  
Interrogatories and Requests, incorporating the term "Synergy," will be

1 limited to SGC, its directors, employees, officers, agents, representatives,  
2 contractors, consultants, subsidiaries, and predecessors. [Synergy's]  
3 responses will not include information and/or documents related to  
4 [Synergy's] attorneys, parent or affiliates.

5 [Synergy] objects to the definition of "Affiliates" to the extent it  
6 renders the Interrogatories and Requests, incorporating such term,  
7 irrelevant to the issues of this case, not proportional to the needs of this  
8 case, indefinite overly broad and/or unduly burdensome. [Synergy] is the  
9 Plaintiff and counterclaim Defendant in this matter. As such, any  
10 information regarding "entities with common control, ownership, directors,  
11 or officers", is beyond the scope of what is relevant in the instant matter.  
12 [Synergy's] responses will not include information and/or documents  
13 related to any [Synergy] affiliates.

14 *Id.* at 5–6.

15 On June 13, 2016, Magna Force filed a motion to compel production pursuant to  
16 its requests and for an order requiring Synergy to make Messrs. Lee, Wang, and Liu  
17 available for deposition. Dkt. 62. On June 27, 2016, Synergy responded. Dkt. 73. On  
18 July 1, 2016, Magna Force replied. Dkt. 76.

## 19 **II. DISCUSSION**

20 "Parties may obtain discovery regarding any nonprivileged matter that is relevant  
21 to any party's claim or defense and proportional to the needs of the case . . . ." Fed. R.  
22 Civ. P. 26(b)(1). A party seeking discovery may move for an order compelling  
production if a party fails to produce documents as requested. Fed. R. Civ. P.  
37(a)(3)(B)(iv). "For purposes of this subdivision (a), an evasive or incomplete  
disclosure, answer, or response must be treated as a failure to disclose, answer, or  
respond." *Id.* 34(a)(4).

23 In this case, Synergy raises three objections to Magna Force's motion to compel.  
24 First, Synergy contends that documents regarding activities of entities other than Synergy

1 are beyond Synergy’s possession, custody, or control. Dkt. 73 at 3–4. Synergy argues  
2 that

3 [i]nstead of seeking documents related to the activities of these non-party  
4 entities from such entities, they instead seek to impose the burden on  
5 Synergy to produce documents beyond its possession, custody or control  
6 regarding how companies other than Synergy [used or marketed related  
7 products].

8 Dkt. 73 at 3. In other words, Synergy not only wants to keep CIMIC’s involvement in  
9 the transaction a secret, it also wants to keep CIMIC’s involvement irrelevant and/or  
10 beyond the scope of the fallout from a void contract. The Court will not participate in  
11 such a one-sided game of having your cake and eating it as well. Taken to its logical  
12 conclusion, Synergy’s claim should then be reduced to, at most, the “third payment [that]  
13 apparently came through Synergy . . .” because Synergy may not invoke this Court’s  
14 jurisdiction to sue on behalf of payments made by a parent company or affiliates, yet be  
15 shielded from discovery relating to those companies. Moreover, a void contract is  
16 unenforceable at law and remedies are awarded pursuant to principles of equity. *See* Dkt.  
17 80. Thus, Synergy’s argument that discovery should be limited to the actual parties to the  
18 contract rings hollow when the contract is legally unenforceable. Synergy shall either  
19 reassess the scope of its complaint or reassess its responses to discovery.

20 Second, Synergy argues that it is not able to order Messrs. Wang, Lee, or Liu to  
21 appear in the United States for a deposition. Specifically, “Synergy simply takes the  
22 limited position that it cannot compel these persons to appear for depositions” because  
the individuals reside in China and are not employees of Synergy. Dkt. 73 at 5–6. This  
seems to be a reasonable position given that it is unclear whether the Court even has the

1 power to compel a Chinese national who resides in China to attend a deposition or trial.  
2 The Court, however, does have the power to exclude evidence, claims, and defenses. If  
3 there are uncontestable facts that “[a]ll of the decisions regarding Synergy are made by  
4 Mr. Ulysses Wang and Mr. T.H. Lee . . .,” and that “[n]o control decisions are made by  
5 anyone other than Chinese nationals,” then these individuals are effectively parties to the  
6 litigation. “Though the rules do not say so expressly, a subpoena is not necessary if the  
7 person to be examined is a party.” *Pinkham v. Paul*, 91 F.R.D. 613, 614 (D. Me. 1981)  
8 (citing Wright and Miller, *Federal Practice and Procedure: Civil*, s 2107). To the extent  
9 that Synergy’s controlling decision-makers opt to sit for depositions, the parties may  
10 consider depositions by remote means. *See Fed. R. Civ. P. 30(b)(4)*.

11 Third, Synergy argues that the requested discovery is disproportional to the needs  
12 of the case. Synergy, however, only provides unsupported conclusory allegations. *See*  
13 *Dkt. 73* at 6–7. Further, if the requested discovery is not in its possession, custody, or  
14 control, how is Synergy able to plausibly provide an assessment that the discovery is  
15 disproportional to the needs of the case? Therefore, at this time, Synergy’s argument is  
16 completely without merit.

17 In sum, the Court concludes that the requested documents and depositions are  
18 relevant to the claims and defenses in this case. Because it is unclear whether the Court  
19 has the power to compel Chinese-based corporations to produce documents or Chinese  
20 nationals to attend depositions, the appropriate remedies will be the exclusion of claims,  
21 defenses, or evidence at trial. Defendants may seek appropriate remedies in their motions  
22 in limine for Synergy’s failure to produce relevant evidence.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendants' motion to compel (Dkt. 62) is  
3 **GRANTED in part** and **DENIED in part** as stated herein.

4 Dated this 27th day of July, 2016.

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6 BENJAMIN H. SETTLE  
7 United States District Judge

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