DONGXIAO YUE 2777 ALVARADO ST., SUITE C SAN LEANDRO, CA 94577 REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED SELF-REPRESENTED	GAOGAO HAN BUILDING 38, SUITE B111 DONGBAZHONGLU, DISTRICT CHAOYANG REDACTED REDACTED SELF-REPRESENTED

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DONGXIAO YUE, Plaintiff, v. GAOGAO HAN, an individual, HANSHAN.CO, HANSHAN.INFO and DOES 1-10 Defendants.	Case No. C15-3463-HSG **JOINT LETTER BRIEF ON DISCOVERY DISPUTES TO MAGISTRATE JUDGE**

Dear Magistrate Judge Kim:

The parties conferred by telephone on November 11, 2016 to resolve their discovery disputes. On November 24, 2016, the parties held another telephone conference and were able to resolve some of the disputes. On December 1, 2016, the parties held the third telephone conference, during which Mr. Han stated that he would refuse to produce the source code requested in Plaintiff RFP No.5 and would refuse to produce any private communications. Mr. Han alleges that "Mr. Yue did not serve his response to request for production properly and refuse to reserve the documents in proper method." The parties request the Court to issue an Order on both resolved and unresolved matters, so as to make clear the obligations of the parties. The parties' positions are provided in the pages that follow.

Date: December 3, 2016

/s	/s/
Dongxiao Yue	Gaogao Han

PLAINTIFF DONGXIAO YUE'S POSITION

1. Han Must Produce the Source Code He Allegedly Wrote to Replace Tube.JS

Plaintiff's Request for Production ("RFP") No 5 asks Han to produce "All SOURCE CODE YOU allegedly used to replace TUBE.JS." (**Exhibit 1**.) TUBE.JS is the code that Han copied from Plaintiff. Plaintiff is entitled to the discovery of the alleged source code for his claims of copyright infringement, defamation and unfair competition.

Han's response to RFP No 5 was: "This request is vague. Defendant does not have any documents to replace TUBE.JS." (**Exhibit 2**.) After Plaintiff explained what the request sought, Mr. Han refused to produce the source code.

As alleged in the Complaint, after being caught stealing Plaintiff's Tube.JS code, Defendant Han engaged in a persistent campaign to injure Plaintiff's professional competence and career using false claims that Han replaced Plaintiff's "large pile of code" with one line of code. See Complaint ¶¶ 29-36. For instance, on November 1, 2014, Han posted that "to accomplish posting images, posting audio and video with one key, was just one line of code... This is essentially the main content of Yue Dongxiao's patent. Saying this, let's count it as defaming him!" On November 2, 2014, Han blogged: "Had Yue Dongxiao known that one line of code could solve these many problems, he wouldn't have written a large pile of code and applied for patent protection." The next day, Han wrote in another blog article: "to replace his program to achieve those functions such as pasting images, I wrote one line of code in the backend." (Complaint ¶¶ 33-34). Han admitted making these statements in his second amended answer. Although Han's alleged code appeared to be copied from elsewhere but disguised as his own, many people believed Han's false statements, and joined Han in spreading the attacks against Plaintiff's professional competence as a software developer. (Complaint ¶¶ 31, 33, 61-62.)

To prove Plaintiff's defamation and unfair competition claim, he may have to show that Han's statements about writing one line of code to replace Plaintiff's many lines of code were false. Discovery of the code that Han used to replace Tube.JS is thus essential to the Plaintiff's defamation and unfair competition claims.

The discovery of Han's replacement code is also necessary for Plaintiff's copyright claims. Han's response to RFP No. 6 states that he has no documents to show that he had any education, training or skill in PHP and JavaScript programming languages. (Ex. 2.) If a jury believed Han's bare assertion that he -- an unskilled layperson -- wrote one line of code to replace Plaintiff's "large pile of code", they may reach a conclusion that Plaintiff's copyrighted software and intellectual production worth next to zero.

There is nothing vague about Plaintiff's request. Han posted online that he wrote one line of code "to replace [Plaintiff"s] program to achieve those functions". (Complaint ¶ 34). In a letter of September 29, 2016, Plaintiff further explained to Han that this request seeks to discover "the SOURCE CODE [Han] claimed to have written to replace TUBE.JS."

Moreover, Han had and still has the requested source code. As of September 3, 2016, the HANSHAN website was operating, Han, as the owner and administrator of HANSHAN, can readily produce the requested source code.

During the November 24, 2016 telephone conference, Han told Plaintiff that he did have the code, but *producing it would hurt Plaintiff's reputation*. This is an invalid basis for not producing the code. On December 1, 2016, Mr. Han again refused to produce the code.

Thus, the Court should order Han to produce all the source code responsive to RFP No 5, in native format with original timestamps.

II. Han Should Be Ordered to Produce All Responsive Documents, including Communications and Postings Related to Plaintiff's Claims

Plaintiff's RFP Nos. 10-18 requested Han's communications and postings related to Plaintiff's copyrights and allegations of copyright infringement. To each of these requests, Han responded that "Defendant will produce all related documents to this request", without objections. Similarly, Han did not object to RFP Nos 20-27. (Ex. 2.)

It is known that Han exchanged emails with his service providers about the infringement. It is also known that Han had private communications with web users on HANSHAN website about the alleged infringement and Plaintiff's copyright and defamation claims. In fact, Han had previously submitted a screenshot of his email box, showing various related emails. It is further known that Han had communicated with "Domains by Proxy" to change the contact information of HANSHAN.CO. Han has full access to HANSHAN website and is able to retrieve web pages and private messages from it. He certainly can produce his emails responsive to the RFPs.

Four months after being served the RFPs, Han has only produced four blog articles and a web page packed in an RAR[1] archive (Sep 28, 2016) (Ref. Dkt. 119-1 ¶6.)

During the November 24, 2016 telephone conference, Han agreed to produce all responsive documents by December 1, 2016. However, on December 1, 2016, Mr. Han informed Plaintiff that he will not produce his private communications. Plaintiff requests that the Court issue an Order directing Han to produce all responsive documents in compliance of Magistrate Judge Kim's standing order, including Han's private communications responsive to Plaintiff's document requests.

III. Han Should Be Ordered to Attend His Noticed Deposition

On November 6, 2016, Plaintiff served a notice on Defendant Han for his deposition on November 21, 2016. (Ex.3.) Han failed to respond to the notice.

During the November 24, 2016 telephone conference, Han agreed to attend a deposition on December 19, 2016 by telephone, and Yue agreed to have Yue's deposition taken the next day on December 20, 2016.

IV. The Court Should Deem Plaintiff's first set of Requests for Admission Admitted by Han

On September 13, 2016, Plaintiff served his first set of Requests for Admission ("RFA") on Defendant Han. (Exhibit. 3.) On November 11, 2016, Plaintiff told Han that since he failed to timely respond to the RFAs, they are deemed admitted.

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[1] An RAR archive is similar to a ZIP archive.

On November 24, 2016, Han served his responses to the RFAs (Exhibit 4), in which Han did not admit two facts that were not subject to reasonable dispute (RFA #2 and RFA # 4). During telephone conference the same day, Plaintiff told Mr. Han that the RFAs are not subject to reasonable dispute, Plaintiff may seek costs for establishing the truthfulness in the matters that Han failed to admit. Plaintiff's position is that since Han did not timely respond to the RFAs No 1 to 5, they are deemed admitted.

V. Han's Incapacity to Download a file and Join 28 Email Attachments

On October 17, 2016, Plaintiff sent an email to Han, with a link to download a 280MB ZIP file which contained 1308 documents in PDF and native format from ZZB server. See Dkt. 119-1, Exhibit 12. The server log indicates that Han first downloaded the ZIP file at 6:43 PM of November 28 **for the first time**, with 287788834 bytes transferred. On November 29, 2016, Han emailed Plaintiff stating that he couldn't download the file. Han asked Plaintiff to split the files. Plaintiff then split the files into 28 smaller ones per Han's request, and made them available for download. Han again claimed that he could not download the files. Plaintiff then split the ZIP file into 28 smaller files, and sent them to Han in 28 emails with the files attached. Han said he couldn't open the files. Plaintiff then emailed Han brief instructions. Han again complained. Plaintiff then sent Han a four-page document showing how to assemble the 28 email attachments step-by-step.

PLAINTIFF'S CONCLUSION

Plaintiff expects the case to be tried on the merits and must have full discovery. Plaintiff respectfully requests that the Court issue an order to 1) compel Defendant Han to fully respond to RFP No.5 and produce all source code he allegedly used to replace Plaintiff's code; 2) compel Defendant Han to immediately produce all responsive documents in compliance of Judge Kim's standing order; 3) issue an Order on the parties' depositions and 4) deem the matters stated in Plaintiff's first set Requests for Admissions (Nos. 1-5) admitted by Defendant Han.

DEFENDANT GAOGAO HAN'S POSITION

A. About the Request for Productions from Han to Yue
1. Plaintiff Yue Must send the documents to Defendant effectively

Yue sent his response for production to Han's request on October 17, 2016 with a link of zip file, but, it was not downloadable. Han asked Yue several times to resend by email in November 17, 21, 29 and December 1, Yue had refused to send through email until Dec 1., the new sent small separated zip files by email are still not readable. Han asked Yue send the documents by email in PDF format again on Dec. 1. Yue has not sent the documents with PDF format yet. Yue made technical difficulty to Han to obtain his response for production.

The court should order Plaintiff send his documents to Defendant effectively by the way both side agree and practicable, i.e., through email in PDF format, not other means.

2. The court should extend extra discovery time of 2 months for Defendant to make request for admission

Plaintiff's delay to serve his documents make Defendant has no way to finish request for production and further for request for admission. The court should extend extra 2 months for discovery in order for Defendant to make request for admission if the discovery continues.

B. About the Request for Productions from Yue to Han
1. Defendant Han Do NOT Need to Produce the Source Code Yue Requested for Production ("RFP") No 5

(1). The original request is vague:

Plaintiff 's request question "All SOURCE CODE YOU allegedly used to replace TUBE.JS." But, "Han never said 'to replace Plaintiff's code', but 'to replace his program to achieve those functions such as posting images, I wrote one line of code in the backend.' (dkt. 102-1, Han Decl. 26)". The point is Han did not say writing any source code to replace Plaintiff's [whole] code TUBE.JS, but to replace some features of the code.

Therefore, Han "does not have any documents to replace [the whole] TUBE.JS."

(2). Even if Yue's request No 5 indicated that Han's one line code to replace one feature of TUBE.JS, Han still refused to produce the code by the following reasons:

a. This kind of statement is not a defamation:

The statement, such as "to replace his program to achieve those functions such as posting images, I wrote one line of code in the backend." (dkt. 102-1, Han Decl. 26), is not a defamation in any way. Even if the statement were not true, say, Han used several line code, instead of one line, to replace a feature of Yue's code, the statement would still not to be a defamation.

Therefore, Yue has no reason to request Defendant to produce the source code to support or prove a statement is true, while the statement is not a defamation in anyway.

b. The source code is back end code, it is **confidential** and should be protected for its copyright.

In fact, Han did write one line code to replace one feature of some features of Yue's code. The statement, "to replace his program to achieve those functions such as posting images, I wrote one line of code in the backend." (dkt. 102-1, Han Decl. 26), is true.

The code is back end code, that is protected for its copyright (although not registered) by the technology of back end that "no one can see it". It is **confidential**. Yue has no reason to request the source code to prove a so-called defamation (but not in fact).

The only reason for Yue to request this code is to know the secret of Han's technology through the discovery, which is an unfair competition. The court should deny Yue's request.

c. Plaintiff's point to request the source code does NOT hold. Plaintiff stated:

> The discovery of Han's replacement code is also necessary for Plaintiff's copyright claims. Han's response to RFP No. 6 states that he has no documents to show that he had any education, training or skill in PHP and JavaScript programming languages. (Ex. 2.) If a jury believed Han's bare assertion that he -- an unskilled layperson -- wrote one line of code to replace Plaintiff's "large pile of code", they may reach a conclusion that Plaintiff's copyrighted software and intellectual production worth next to zero.

Plaintiff does not believe Defendant writing one line code to replace one feature of his code by "large pile of code", which is not the reason to request defendant to produce the source code to prove the fact.

Actually, it is true that Defendant "has no documents to show that he had any education, training or skill in PHP and JavaScript programming languages." Han did have no education and

training in PHP and JavaScript, but it is not necessary no skill in PHP even without document supported. If a jury did not believed Defendant without any education and training in PHP could write one line code to replace Plaintiff's "large pile of code", he/she would not believe Defendant without any education and training and even basic knowledge in LAW before could write all defense motions in this law case without hiring a lawyer. Actually, one could not be an expert in one field, but still could do some small thing in that field without education or training.

d. Defendant's point NOT to request the source code does HOLD. Plaintiff stated:

> During the November 24, 2016 telephone conference, Han told Plaintiff that he did have the code, but producing it would hurt Plaintiff's reputation. This is an invalid basis for not producing the code.

It may not be a good reason for Defendant not to produce the code, but it is a good reason for Plaintiff not to request the code. The one line code (to replace one feature of some features of Plaintiff's code, such as posting image) is a fact. If the court did order that Defendant must produce the code, Plaintiff would see how simple the one line code IS. Furthermore, after two years, Plaintiff still cannot realize the one line code technology by himself, which would just show that the part of Plaintiff's complaint 35 (defamation), the Defendant's statement in subjunctive mood, "Defendant Han further stated that without his teaching, Plaintiff would not have known the core technology of HANSHAN" is just a fact, the defamation allege INDEED does not hold.

Thus, the court should Not order Han to produce the source code responsive to RFP No 5.

2. Han Should NOT Be Ordered to Produce PRIVATE Communications

The private communication is PRIVATE and confidential. As a web administrator, I cannot release the information by myself. And, furthermore, due to the communications are only the web users' concerns about the event, they are not related to the law suit. The only reason for Yue to request this is to damage Han's reputation in the web, which is an unfair competition.

To protect the privacy of other web users and free speech, the court should NOT order Defendant to produce the private communications in the discovery.

3**. The Court Should NOT Deem Plaintiff's first set of Requests for Admission**

Han did not timely respond to the RFAs due to the reason Han did not receive Plaintiff's email service properly, the email went to the junk mail. On November 11, 2016, after Plaintiff sent the second email stating Han failed to timely respond to the RFAs, Han just realized the fact. Defendant's position is that the court should accept Han's response to the RFAs No 1 to 5.

4**. Plaintiff used the discovery as a tool to harass Defendant, the court should stop his action.**

The Facts for this case are simple and clear that Han used Yue's code without knowing the code is copyrighted, Han has admitted this fact. Yue just used the discovery as a tool to harass Han in his request and made difficulties to provide his response properly to Han.

Judge HAYWOOD S. GILLIAM, JR. has referred this case to Magistrate Judge for **Settlement** (the Court order, dkt. 115). At this point, the discovery process should be stopped.

Furthermore, both Yue and Han in their motions use California Code Civ. Proc. § 425.16 (Anti-SLAPP), according to California Code Civ. Proc. § 425.16 g, the discovery process should be stopped.

DEFENDANT'S CONCLUSION

For the foregoing reasons, defendant respectfully requests that the Court issue an order to 1) compel Plaintiff Yue to send response document effectively through email in PDF format. 2), give two month discovery extension for Defendant to make request for admission if the discovery continues. 3) Defendant Han does NOT need to produce any source code to ("RFP") No 5; 4) Defendant Han do not need to produce PRIVATE communications; 5) not need to issue an Order on the parties' depositions and 6) accept Defendant Han's admission response.

Otherwise, due to the case is order to be settled and California Code Civ. Proc. § 425.16 (Anti-SLAPP), the discovery should be stopped for both sides.