

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX


MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.:)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
)	

PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER

Plaintiff hereby moves for a protective order pursuant to Rules 26, 30 and 37 of the Federal Rules of Civil Procedure. The basis of this motion is more fully set forth in the attached memorandum, which is incorporated herein by reference. For the reasons set forth herein, it is respectfully requested that the relief sought be granted.

Pursuant to Rule 26(c)(1) and Rule 37(d), plaintiff's counsel hereby certifies that counsel for the parties have met and conferred on the dispute raised herein and have been unable to resolve this discovery dispute.

Dated: January 14, 2013



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Christiansted, VI 00820

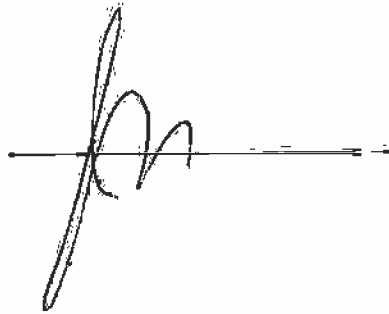
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2013, I served a copy of the foregoing motion by hand on:

Nizar A. DeWood
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

And by email (jdiruzzo@fuerstlaw.com) and mail to:

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

A handwritten signature in black ink, appearing to read "JD", is written over a horizontal line. The signature is stylized and cursive.

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED,)	
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Plaintiff,)	CIVIL NO. SX-12-CV- 370
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FATHI YUSUF and UNITED CORPORATION,)	ACTION FOR DAMAGES
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)	

MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR A PROTECTIVE ORDER

Defendants have noticed five depositions, of the plaintiff and his four sons -- for January 23rd and 24th.¹ **See Exhibit A.** However, Rule 26(d) provides in part as follows:

(d) TIMING AND SEQUENCE OF DISCOVERY.

(1) **Timing.** A party **may not** seek discovery from any source before the parties have conferred as required by Rule 26(f). . . .

In this case, no such Rule 26(f) scheduling conference has taken place. **See Exhibit A.** Thus, these depositions were improperly noticed.

As such, it is respectfully submitted that the Court needs to enforce the mandate of Rule 26(d) and grant a protective order striking the deposition notices until the Rule 26(f) conference has taken place, and (more importantly) initial self-disclosure of documents related to those depositions has taken place.

It should be noted that the parties have tried to resolve this matter. Plaintiff has *repeatedly* agreed to allow these five depositions to go forward without the Rule 26(f)

¹ The plaintiff’s sons are all co-managers of the three Plaza Extra supermarkets that are the subject of this dispute -- along with three of defendant Yusuf’s sons. One Yusuf and one Hamed son manage one of each of the three stores.

conference on a limited scope (limited to the pending summary judgment motion) so long as the defendants produced all documents it intended to use as exhibits at the deposition at least 10 days before the scheduled depositions.² **See Exhibit A.**

The defendants agreed to proceed on the limited scope as discussed, but refused to disclose the documents they intended to use as exhibits at these limited depositions. **See Exhibit A.**

The requirement that these documents be produced is entirely reasonable. It is clear that had the parties proceeded with the Rule 26(f) conference before depositions, defendants would have had to provide self-disclosure of these documents pursuant to Rule 26(a)(1)(ii). That would have included all documents they deemed sufficiently relevant to what they call this central issue -- before any depositions would have taken place. That rule provides in pertinent part as follows:

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

-
- (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

Thus, the plaintiff's request for just the documents that may be used as exhibits in these

² The plaintiff has filed a motion for partial summary judgment. The defendants claim they need to do these limited depositions in order to respond to that motion, but have failed to provide a reasonable explanation for why that is so. Indeed, the plaintiff's motion is based 100% on judicial admissions by defendants made either in their papers here or in sworn statements under oath with their counsel present. *No external or other evidence is presented.* So it is hard to understand why these depositions have any relevance to the pending motion for partial summary judgment.

limited depositions is clearly reasonable, as the defendant has to produce all relevant documents under Rule 26 before proceeding further.

In any event, the defendant has refused to agree to this request (**see Exhibit A**), requiring the plaintiff to invoke Rule 26(d), as it is clearly unreasonable to expect the plaintiff to agree for him and his sons to be deposed without the benefit of being able to review the documents they will be questioned about at the depositions. In this regard, the modern rules of civil procedure are designed to avoid precisely such ambush, surprise and prejudice. Discovery has its virtues; trial by ambush has gone the way of copies by carbon paper. *Smith v. J.I. Case Corp.*, 163 F.R.D. 229, 232, 33 Fed. R. Serv. 3d 424, 1995 WL 547933 (E.D. Pa. 1995). This is the type of ambush that modern federal discovery rules are designed to prevent.

In short, the plaintiff needs to review these documents in order to be properly prepared for these depositions. **See Exhibit A.**

As such, the plaintiffs hereby request this Court enforce the mandate of Rule 26(d) and enter a protective order striking the deposition notices for these five depositions. A proposed order is attached

Dated: January 14, 2013



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340-773-8709

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5000 Est. Coakley Bay, L6
Christiansted, VI 00820
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340-642-4422

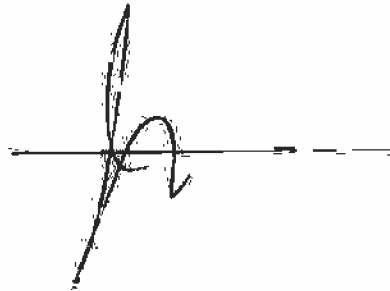
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And by email (jdiruzzo@fuerstlaw.com) and mail to:

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1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED By His Authorized Agent WALEED HAMED ,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV- 370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION	)	ACTION FOR DAMAGES
	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.	)	JURY TRIAL DEMANDED
)	

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows

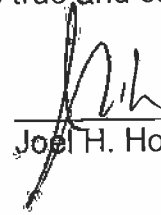
1. I am counsel for the plaintiff in this case.
2. On December 20, 2012, the defendant noticed the depositions of the plaintiff and plaintiff's four sons for the week of January 21st.
3. After numerous letters were exchanged regarding these depositions, they were reduced in scope and re-noticed for January 23rd and 24th, limiting the depositions to the issues raised in the plaintiff's pending motion for partial summary judgment. See **Exhibit 1**.
4. However, the plaintiff also objected to these depositions proceeding unless the documents that would be used as deposition exhibits were produced sufficiently in advance of the depositions to allow the deponents (including the plaintiff) to be prepared to respond to questions about the exhibits. See **Exhibit 2 at p.2**. The defendants refused to comply with this request. See **Exhibit 3**. The plaintiff again requested compliance with this request (see **Exhibit 4 at p.2**), which the defendant ignored, requiring this motion. See **Exhibit 5**.
5. No Rule 26(f) scheduling conference has taken place yet in this case.
6. As noted in the attached correspondence, the plaintiff agreed to allow the depositions to go forward without the Rule 26(f) conference on a limited scope (limited to the pending summary judgment motion) so long as the defendants produced all documents it intended to use as exhibits at the deposition at least 10 days before the scheduled depositions.



7. The plaintiff needs to review these documents in order to be properly prepared for these depositions, as provided by the rules.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 14, 2013



Joel H. Holt

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED
Plaintiff,

CASE # SX-12-CV-370

vs,

FATHI YUSUF & UNITED CORPORATION,
Defendants.

NOTICE OF LIMITED DEPOSITION

TO: Joel H. Holt, Esq.
2132 Company St.
St. Croix, VI 00820
email: holtvi@aol.com

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay
Unit L-6
Christiansted, VI 00820
carl@carlhartmann.com

PLEASE TAKE NOTICE, pursuant to Fed. R. Civ. P. 30, that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following place and time

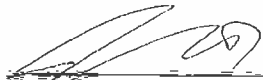
Witness: Waheed Hamed
Date: January 23, 2013
Hour: 9:00 a.m.
Place: The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820



The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken for purposes of discovery and for use at trial in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure.

The deposition of the deponent will be limited to the facts asserted by the Plaintiffs in the Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law in Support, both filed on November 12, 2012.

Respectfully submitted,



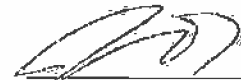
Joseph A. DiRuzzo, III
USVI Bar # 1114
FUERST ITTLEMAN DAVID & JOSEPH, PL
1001 Brickell Bay Drive, 32nd Floor
Miami, Florida 33131
305.350.5690 (O)
305.371.8989 (F)
jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing document was served via USPS to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, and via email: holtvi@aol.com; Carl J. Hartmann III, Esq., 5000 Estate Coakley Bay, Unit L-6, Christiansted, VI 00820, carl@carlhartmann.com.

Respectfully submitted,



Joseph A. DiRuzzo, III
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Dated Jan. 11, 2013

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED

Plaintiff,

CASE # SX-12-CV-370

vs

FATHI YUSUF & UNITED CORPORATION,

Defendants.

NOTICE OF LIMITED DEPOSITION

TO : Joel H. Holt, Esq.
2132 Company St.
St. Croix, VI 00820
email: holtvi@aol.com

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay
Unit L-6
Christiansted, VI 00820
carl@carlhartmann.com

PLEASE TAKE NOTICE, pursuant to Fed. R. Civ. P. 30, that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following place and time:

Witness: Hisham Hamed
Date: January 23, 2013
Hour: 1:30 p.m.
Place: The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken for purposes of discovery and for use at trial in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure.

The deposition of the deponent will be limited to the facts asserted by the Plaintiffs in the Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law in Support, both filed on November 12, 2012.

Respectfully submitted,



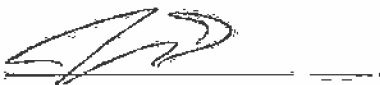
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Dated Jan. 11, 2013

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Respectfully submitted,



Joseph A. DiRuzzo, III
USVI Bar # 1114
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jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED

Plaintiff,

CASE # SX-12-CV-370

vs.

FATHI YUSUF & UNITED CORPORATION,

Defendants.

NOTICE OF LIMITED DEPOSITION

TO: Joel H. Holt, Esq.
2132 Company St.
St. Croix, VI 00820
email: holtvi@aol.com

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay
Unit L-6
Christiansted, VI 00820
carl@carlhartmann.com

PLEASE TAKE NOTICE, pursuant to Fed. R. Civ. P. 30, that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following place and time:

Witness: Mufeed Hamed
Date: January 23, 2013
Hour: 4:00 p.m.
Place: The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken for purposes of discovery and for use at trial in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure.

The deposition of the deponent will be limited to the facts asserted by the Plaintiffs in the Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law in Support, both filed on November 12, 2012.

Respectfully submitted,



Joseph A. DiRuzzo, III
USVI Bar # 1114
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jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing document was served via USPS to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, and via email: holtvj@aol.com; Carl J. Hartmann III, Esq., 5000 Estate Coakley Bay, Unit L-6, Christiansted, VI 00820, carl@carlhartmann.com.

Respectfully submitted,



Joseph A. DiRuzzo, III
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Dated Jan. 11, 2013

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED
Plaintiff,

vs.

FATHI YUSUF & UNITED CORPORATION,
Defendants.

CASE # SX-12-CV-370

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TO: Joel H. Holt, Esq.
2132 Company St.
St. Croix, VI 00820
email: holtvi@aol.com

Carl J. Hartmann III, Esq.
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Christiansted, VI 00820
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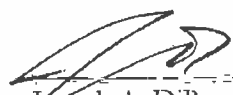
PLEASE TAKE NOTICE, pursuant to Fed. R. Civ. P. 30, that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following place and time:

Witness: Waleed Hamed
Date: January 24, 2013
Hour: 9:00 a.m.
Place: The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken for purposes of discovery and for use at trial in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure.

The deposition of the deponent will be limited to the facts asserted by the Plaintiffs in the Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law in Support, both filed on November 12, 2012.

Respectfully submitted,



Joseph A. DiRuzzo, III
USVI Bar # 1114
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jdiruzzo@fuerstlaw.com

Dated Jan. 7, 2013

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing document was served via USPS to the following: Joel H. Holt, Esq., 2132 Company St., St. Croix, VI 00820, and via email: holvi@aol.com; Carl J. Hartmann III, Esq., 5000 Estate Coakley Bay, Unit L-6, Christiansted, VI 00820, carl@carlhartmann.com.

Respectfully submitted,



Joseph A. DiRuzzo, III
USVI Bar # 1114
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jdiruzzo@fuerstlaw.com

Dated Jan. 7, 2013

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His Authorized
Agent WALEED HAMED
Plaintiff,

CASE # SX-12-CV-370

vs.

FATHI YUSUF & UNITED CORPORATION,
Defendants.

NOTICE OF LIMITED DEPOSITION

TO: Joel H. Holt, Esq.
2132 Company St.
St. Croix, VI 00820
email: holtvi@aol.com

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay
Unit L-6
Christiansted, VI 00820
carl@carlhartmann.com

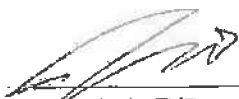
PLEASE TAKE NOTICE, pursuant to Fed. R. Civ. P. 30, that the deposition upon oral examination of the following described person shall be recorded stenographically and will be taken before a person authorized to administer oaths on the following date and at the following place and time:

Witness: Mohammad Hamed
Date: January 24, 2013
Hour: 1:00 p.m.
Place: The DeWood Law Firm
2006 Eastern Suburb, Suite 102
Christiansted, V.I. 00820

The said oral examination to be subject to continuance or adjournment from time to time or place to place until completed, and to be taken for purposes of discovery and for use at trial in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure.

The deposition of the deponent will be limited to the facts asserted by the Plaintiffs in the Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law in Support, both filed on November 12, 2012.

Respectfully submitted,



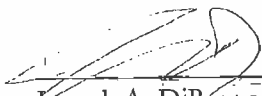
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305.350.5690 (O)
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jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

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Respectfully submitted,



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Dated Jan. 11, 2013

JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

Tele. (340) 773-8709
Fax (340) 773-8677
E-mail: holtvj@aol.com

December 24, 2012

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

Nizar A. DeWood
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

By Email and Mail

Re: Plaza Extra

Dear Counsel:

In response to the December 20th letter sent by Attorney DiRuzzo (copy attached), I decided to respond to both of you since you are both counsel of record in the case.

First, it is not consistent with the practice in this jurisdiction to notice depositions without consulting opposing counsel. I am sure you would not want me to do so without consulting you and I expect the same courtesy.

Second, I am not available on January 22nd, as that is the date of the District Court's annual CLE conference, which Judge Gomez arranges and which I have already signed up to attend. Indeed, both of you should do the same, as the District Court not only puts on a good program, but all of the District Court Judges, Magistrates and other key court personnel attend this event, as you know, including members of the Superior Court and the VI Supreme Court.

Third, the other dates you selected do work for me, so I suggest we just move all of the depositions back one day and finish them on Saturday (the 26th) instead of Friday, unless you think you can get them all done on the 23rd, 24th and 25th. Please let me know.



Fourth, while I am willing to engage in limited discovery so these depositions can proceed (as we have already agreed to do on another matter) without doing a Rule 26 scheduling conference, if you do intend to do these depositions without waiting for a formal scheduling order, you will still need to comply in part with the Rule 26 Self Disclosure obligations regarding the production of all relevant documents you intend to use at the depositions as exhibits. You will also need to do so sufficiently in advance of the depositions so that my client can be prepared to discuss them. I would suggest all such documents be produced 10 days before the scheduled depositions if you do intend to use any exhibits. If this suggestion is not acceptable, please consider this as a request to meet and confer on this issue before I file a protective order as to the use of any documents not produced at least 10 days prior to the depositions. I am available any weekday other than Christmas and New Years Day for such a meet and confer, but I will file the motion for a protective order on January 9th seeking a limited protective order as to the use of any documents if we have not worked this matter out before that date.



Fifth, as you know, you can only depose each witness once in a case, limited to 7 hours. While you have suggested in your Rule 56 affidavit that these depositions are being taken for a limited purpose, your notice contains no such limitation. Thus, if you are only intending on taking these depositions for a limited purpose and wish to reserve the right to a second deposition at a later date, you need to identify the specific areas to which these depositions are limited, so we can stipulate to such a limited deposition. I would certainly consider such a stipulation, but any time taken in a limited deposition would be counted towards the full 7 hours for the deposition of a witness or party. In short, I will agree to a second deposition if you specify the areas for this one and acknowledge that you are aware of the fact that the total time for both depositions is 7 hours. Of course, if you do not wish to limit these depositions, that is your prerogative, but if you do not do so, then you will not be able to depose these witnesses again, no matter how long the depositions last on the dates in question.

Sixth, nothing in this letter is to be construed as an acknowledgement that the plaintiff thinks your Rule 56 affidavit in response to the plaintiff's summary judgment motion has any merit. To the contrary, when I file the plaintiff's reply memorandum, I will hopefully explain why the affidavit and request for more time is without merit based on the applicable law and the undisputed facts relevant to the summary judgment motion.

Please let me know if you have any questions. Likewise, please get back to me on the suggested date changes and the other issues raised in this letter.

Cordially,

Joel H. Holt

JHH/jf

Enclosure



FUERST LITTLEMAN
DAVID & JOSEPH PL

Joseph A. DiRuzzo, III, Esq., CPA
305.350.5690
jdiruzzo@fuerstlaw.com

January 10, 2013

Via USPS and email: holtvi@aol.com


Joel H. Holt, Esq.
Joel H. Holt, Esq., P.C.
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands, 00820

Re: *Hamed v. Yusuf and United*; case no. SX-12-CV-370

Dear Mr. Holt,

I write to respond to a few points raised in your January 9, 2013 letter; and to confirm that Defendants will proceed with the noticed limited depositions of Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed, and Mufeed Hamed.

Specifically, in response to the “[f]ourth” point of your January 9, 2013 letter, Defendants Rule 56(d) motion and related request for limited depositions are made necessary by a premature summary judgment motion that has been filed at this early stage of the proceedings. Indeed, the very fact the depositions are *limited* denotes that they will not count against the default hour- and number-limitations under the applicable procedural rules for discovery in the normal course.

In response to the fifth point of your January 9, 2013 letter, regarding documents, Defendants reiterate their position that Rule 26 does not require any production of documents prior to the subject limited depositions, where, among other reasons, an initial scheduling conference has not been held. 

In sum, under the unique circumstances of this action, Defendants believe that the subject limited oral depositions are exclusive of the default hour- and number-limitations for depositions in the normal course, including the default 7-hour limit for oral depositions under Rule 30(d)(1), and exclusive of any disclosure requirements under Rule 26.

Defendants will proceed with the already noticed limited depositions in the interest of moving this case forward, as any disputes in the matter can be preserved on the record during the depositions and, if necessary, can be brought to the Court’s attention at a later date.

Towards that end, pursuant to its January 10, 2013 Order, the Court has scheduled a hearing on your “emergency” TRO request for January 25, 2013, at 10:00 AM. Accordingly, Defendants will file tomorrow separate Notices of Cancellation of Deposition cancelling the currently noticed



Joel H. Holt, Esq.
Jan. 10, 2013
Re: *Hamed v. Yusuf and United*, case no. SX-12-CV-370
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limited depositions, and will file revised Notices of Limited Deposition for already agreed upon deposition dates that do not conflict with the January 25, 2013 hearing as follows:

<u>Date</u>	<u>Time</u>	<u>Deponent</u>
January 23, 2013	9:00 AM – 12:00 PM	Waheed Hamed
January 23, 2013	1:30 PM – 3:30 PM	Hisham Hamed
January 23, 2013	4:00 PM – 6:00 PM	Mufeed Hamed
January 24, 2013	9:00 AM – 12:00 PM	Waleed Hamed
January 24, 2013	1:00 PM – 5:00 PM	Mohammad Hamed

Kind Regards,



Joseph A. DiRuzzo, III

cc: Carl J. Hartmann, III, Esq., via email only: carl@carlhartmann.com
N. DeWood, Esq., via email only: dewoodlaw@gmail.com

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January 9, 2013

Joseph A. DiRuzzo, III
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd. Fl.
Miami, FL 33131

Nizar A. DeWood
The Dewood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted, VI 00820

By Email and Mail

Re: Plaza Extra

Dear Counsel:

In response to the January 7th and 8th letters sent by Attorney DiRuzzo (copies attached), I am again responding to both of you since you are both counsel of record in the case I have filed on behalf of Mohammad Hamed. Before addressing the points raised in those letters regarding the depositions you have noticed for the week of January 21st, I want to make it clear that any agreement to go forward with those depositions prior to the Rule 26 (f) conference is expressly contingent on the terms set forth herein.

First, I appreciate your withdrawing the notice for January 22nd, as I am looking forward to that conference. I hope to see you there.

Second, the motion for summary judgment will not be withdrawn. Rule 56(b) allows a summary judgment motion to be filed at any time after an answer has been filed. In this case, the summary judgment motion was not filed until after you and your client made admissions that made it clear that summary judgment was warranted now.

Third, the Rule 56(d) motion will not be conceded. An opposition to it was filed, which explains why that motion is without merit.



Fourth, any time taken for the limited depositions as now noticed will count against the seven hour limitation for depositions under Rule 30. I do not understand why you would expect that not to be the case, nor will we agree otherwise. You are free to take it up with the Court. If you would like to discuss this point further before doing so, I am available all day today or Friday to do so.

Finally, regarding documents, as previously noted in my December 24th letter, you need to produce documents that you intend to use as exhibits at the scheduled depositions at least 10 days prior to the depositions so that my client and his family can be prepared to respond to them. If you had filed a Rule 26 Self Disclosure, this would not be an issue. Since you want to do limited depositions before complying with Rule 26, you need to produce those documents as indicated. In short, if you want to proceed with limited discovery prior to the Rule 26(f) conference, you need to produce those documents at least 10 days prior to the depositions, which is now January 12th based on the revised deposition dates. Please consider this letter as a formal response to your request for a meet and confer on this issue. If you would like to discuss this point further, I am available all day today or Friday to do so.

I think this letter responds to all of your inquiries, but if I have overlooked anything, please let me know. Please let me know if you have any additional questions as well.

Cordially,

Joel H. Holt

JHH/jf

Enclosure

JOEL H. HOLT, ESQ. P.C.

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January 14, 2013

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By Email and Mail

Re: Plaza Extra

Dear Counsel:

As we did not receive any deposition exhibits within the requested time period, enclosed is the promised motion for a protective order regarding the scheduled depositions for next week. I am sorry we could not resolve this issue, as I am certain you would not let me depose your clients without a proper advance disclosure of documents I intended to inquire about at the deposition.

As for the time issue, even if the depositions were to go forward, we would keep track of the time used in each deposition and would not permit a second deposition to go beyond the 7 hour total for a deposing a witness, as provided under Rule 30.

As for your inquiry regarding the voluntary appearance of these witnesses, in light of your offer to reciprocate regarding Mr. Yusuf and his sons, Mr. Hamed and his sons will voluntarily appear without the need of a subpoena whenever they are deposed.

Please let me know if you have any questions.

Cordially,


Joel H. Holt



**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MOHAMMAD HAMED By His Authorized Agent **WALEED HAMED.**

Plaintiff,
v.
FATHI YUSUF and UNITED CORPORATION,

Defendants.

CIVIL NO. SX-12-CV- 370

**ACTION FOR DAMAGES
INJUNCTIVE AND
DECLARATORY RELIEF
JURY TRIAL DEMANDED**

ORDER

This matter is before the Court on plaintiff's motion for a protective order pursuant to Rules 26, 30 and 37 regarding five (5) depositions noticed by the defendant for January 23 and 24, 2013, of various members of the Hamed family. Upon consideration of the matters before the Court, the motion is **GRANTED**.

Defendants are prohibited from proceeding with the depositions as noticed, as the parties have not held the required Rule 26(f) scheduling conference prior to commencing discovery. As such, the deposition notices are hereby stricken.

Dated:

Hon. DOUGLAS BRADY
Judge, Superior Court

Attested By: VENETIA VELAZQUEZ
Clerk of Court

By: Deputy Clerk

Dist.
cc: Joel H. Holt
Nizar A. DeWood
Joseph A. DiRuzzo, III