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

MOHAMMAD HAMED, by his authorized agent, WALEED HAMED,	)	
Plaintiffs,	)	
v.	)	CIVIL NO. SX-12-CV-370
FATHI YUSUF and UNITED CORPORATION,	)	
Defendants.	)	

DEFENDANTS' MOTION TO COMPEL LIMITED DEPOSITIONS OR, ALTERNATIVELY, TO EXCLUDE TESTIMONY PENDING COMPLETION OF LIMITED DEPOSITIONS

Defendants, pursuant to Federal Rules of Civil Procedure 26 and 37, hereby move to compel the oral depositions of Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed for the limited purpose of responding to Plaintiffs' premature summary judgment motion and otherwise preparing for the hearing in this action that is currently scheduled for January 25, 2013. In the alternative, Defendants move to exclude any testimony or evidence from the foregoing deponents, including at the January 25, 2013 hearing, until such time as the deponents appear for meaningful depositions or are excused from doing so by court order.

Introduction

This Motion to Compel is made necessary by Plaintiffs' insistence in proceeding with a specious summary judgment motion that has been filed before any aspect of substantive discovery has been completed, and before this Court has rendered any scheduling order or substantive rulings. The Motion is also occasioned by Plaintiffs' refusal to agree to limited depositions that are exclusive of Defendants' rights to conduct discovery in the normal course of litigation. The need for limited depositions is especially critical given the Court's scheduling – again, at Plaintiffs' insistence – of an

oral hearing on January 25, 2013, at which hearing the subject matter of the limited depositions will be contested by the parties.

As set forth below, a plaintiff cannot be permitted to thwart his opponent's ability to launch a defense in the normal course by filing a premature summary judgment motion and then by seeking to limit the opponent's discovery rights. Defendants respectfully request that this Court compel the deponents' appearance at the noticed limited depositions; or, alternatively, exclude any testimony or evidence from the deponents, including at the January 25, 2013 hearing, until such time as they appear for meaningful depositions.

Relevant Background

1. Plaintiffs initiated this commercial dispute regarding an alleged "partnership" on or about September 18, 2012, by filing their initial Complaint, as well as a Motion for a Temporary Restraining Order and/or a Preliminary Injunction.

2. Defendants timely removed the action.

3. On October 10, 2012, Defendants moved to dismiss the Complaint.

4. On October 19, 2012, prior to a resolution of Defendants' motion to dismiss, Plaintiffs filed their First Amended Complaint, which added a third count to the First Amended Complaint, and is the only pleading presently before the Court.

5. On November 5, 2012, Defendants moved to dismiss the First Amended Complaint, by renewing their initial such motion.

6. Defendants' renewed motion to dismiss is pending.

7. A few days later, on November 7, 2012, based on the posture of the action at that point, the parties confirmed in writing their earlier agreement of November 6, 2012, to mutually

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postpone substantive discovery. (Nov. 7, 2012 Letter from J. DiRuzzo, Esq., to J. Holt, Esq. (attached as Exhibit "1" hereto)).

8. The District Court remanded the action on November 16, 2012.

9. On November 21, 2012, Defendants filed a Motion to Strike Self-Appointed Representative, requesting that, prior to resolving any other substantive motions, this Court strike Waleed Hamed as Mohammad Hamed's self-appointed representative or "authorized agent." (Nov. 21, 2012 Motion to Strike Self-Appointed Representative at 1).

10. Defendants' motion to strike is pending.

11. On November 12, 2012, notwithstanding Plaintiffs' agreement to postpone substantive discovery until December 3, 2012 (Ex. "1" hereto), and while the action was still in the District Court, Plaintiffs moved for partial summary judgment (D.V.I. Doc. # 36) regarding Count I of the First Amended Complaint.

12. Count I is the primary relief requested in this action, as Plaintiffs seek summary judgment therein as to:

> (a) a judicial declaration regarding the existence of an alleged partnership between Mohammad Hamed and Fathi Yusuf;
>
> (b) Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(a), to 50% of the alleged partnership's profits, assets and receivables; and
>
> (c) Mohammad Hamed's supposed entitlement, under 26 V.I.C. § 71(f), to "fully and equally participate" in the alleged partnership's operations.

(Nov. 12, 2012 Motion for Partial Summary Judgment at 12).

13. Significantly, there is a fundamental dispute between the parties as to whether Mohammed Hamed is a *bona fide* partner or joint venturer who has any alleged "partnership" rights

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under the Virgin Islands Uniform Partnership Act or any other authority. (*See generally* Renewed Motion to Dismiss (D.V.I. Doc. # 29) (requesting, among other alternative relief, "a more definite statement as to the formation, scope and nature of the alleged partnership to enable Defendants to properly respond to" the First Amended Complaint)).

14. Plaintiffs' summary judgment motion therefore plainly fails on the merits, because the parties dispute genuine issues of material fact, and any claims regarding the existence of an alleged "partnership" cannot be decided on the present record as a matter of law.

15. On December 20, 2012, Defendants also filed a motion under Federal Rule of Civil Procedure 56(d) asserting that, at best, Plaintiffs' summary judgment motion is entirely premature and should be denied *without prejudice* until resolution of the various pending substantive motions, including Defendants' motion to strike; and until Defendants otherwise have a sufficient opportunity to conduct general discovery. (Dec. 20, 2012 Rule 56(d) Motion). Should this Court not grant the Rule 56(d) request, Defendants moved for an enlargement of time within which to prepare a substantive response to the summary judgment motion. (*Id.*).

16. Defendants' Rule 56(d) motion is pending.

17. On the same date, December 20, 2012, based on Defendants' desire to defend against Plaintiffs' claims given the unique procedural posture of the action, Defendants advised Plaintiffs that the parties should avail themselves of all discovery options under the applicable rules. (Dec. 20, 2012 Letter from J. DiRuzzo, Esq., to J. Holt, Esq. (attached as Exhibit "2" hereto)).

18. Towards those ends, Defendants also served Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed with deposition notices for the limited purpose of responding to Plaintiffs' summary judgment motion. (Dec. 20, 2010 Notices of Deposition (attached as Composite Exhibit "3" hereto)).

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19. In response, on December 24, 2012, dodging a full and fair resolution of the pending summary judgment motion on the merits, Plaintiffs filed a "Motion to Deem Plaintiff's Partial Summary Judgment Motion Conceded and Reply to Defendant's [sic] Rule 56 Request." (Dec. 24, 2012 Motion to Deem Conceded).

20. Plaintiffs also asserted various disingenuous procedural requests regarding the noticed depositions as further pretext to dodge the depositions, asserting that Rule 26 somehow "obligat[es] . . . the production of all relevant documents [a party] intend[s] to use at [] depositions" in advance of the depositions; and that "any time taken in a limited deposition" is inclusive of a party's discovery rights in the normal course of litigation. (Dec. 24, 2012 Letter from J. Holt, Esq., to J. DiRuzzo, Esq. (attached as Exhibit "4" hereto)).

21. Defendants responded to such pretext by noting, in relevant part, that Plaintiffs themselves had created the unusual posture of this action; and that, to avoid the limited depositions, as Plaintiffs desperately seem so intent on doing, Plaintiffs should withdraw their premature summary judgment motion or concede to the Rule 56(d) motion. (Jan. 7, 2013 Letter from J. DiRuzzo, Esq., to J. Holt, Esq. (attached as Exhibit "5" hereto); Jan. 8, 2013 Letter from J. DiRuzzo, Esq., to J. Holt, Esq. (attached as Exhibit "6" hereto)).

22. Additionally, because Plaintiffs' December 24, 2012 filing improperly conflated two briefing papers, *i.e.*, a "motion to deem . . . conceded" and a "reply" in opposition to Defendants' Rule 56(d) Motion, which in substance was a *response* in opposition, Defendants filed a response brief addressing Plaintiffs' arguments directed at the "motion to deem . . . conceded" issues; and a separate reply brief addressing the Rule 56(d) issues. (Jan. 8, 2013 Response to Motion to Deem Conceded; Jan. 8, 2013 Reply in Further Support of Rule 56(d) Motion).

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23. Plaintiffs, who have made no discovery disclosures themselves, repeated their disingenuous requests for Defendants' self-disclosure and for other limitations on Defendants' future discovery rights. (Jan. 9, 2013 Letter from J. Holt, Esq., to J. DiRuzzo, Esq. (attached as Exhibit "7" hereto)).

24. On January 9, 2013, Plaintiffs also filed an "Emergency Motion and Memo to Renew Application for TRO," notwithstanding that none of the feigned "emergency" from the initial such motion for preliminary injunctive relief had come to pass whatsoever. (Jan. 9, 2013 Renewed TRO Motion).

25. Subsequently, by its Order dated January 10, 2013, this Court scheduled an oral hearing on the Renewed TRO Motion for January 25, 2013, at 10:00 AM, at which hearing the subject of the limited depositions, among other factual issues, will be contested by the parties.

26. That same day, Defendants indicated that they "w[ould] proceed with the already noticed depositions in the interest of moving this case forward, as any [discovery] disputes . . . c[ould] be preserved on the record during the depositions and, if necessary, c[ould] be brought to the Court's attention at a later date." (*See* Jan. 10, 2013 Letter from J. DiRuzzo, Esq., to J. Holt, Esq. (attached as Exhibit "8" hereto)).

27. Defendants also advised that, given the Court's January 10, 2013 Order, they would file revised Notices of Limited Depositions for the already agreed upon deposition dates that did not conflict with the scheduled January 25, 2013 hearing, *i.e.*, on January 23 and 24, 2013, which are the depositions at issue in the instant Motion. (*Id.*; *see also* January 11, 2013 Notices of Limited Deposition (Composite Exhibit "9" hereto)).[1]

[1] Plaintiffs had previously confirmed their availability for depositions on January 23 and 24, 2013. (*See* Dec. 24, 2012 Letter (Ex. "4") at 1).

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28. On January 14, 2013, still desperate to dodge at all costs any questioning of the deponents, including of Plaintiffs Mohammad Hamed and Waleed Hamed, Plaintiffs filed a Motion for Protective Order for the ostensible reason that Plaintiffs "did not receive any deposition exhibits within the requested time period." (*See* Jan. 14, 2013 Letter from J. Holt, Esq., to J. DiRuzzo, Esq. (attached as Exhibit "10" hereto); Jan. 14, 2013 Motion for Protective Order)).

29. That reason and Plaintiffs' Motion for Protective Order are mere pretext to avoid the limited depositions.

30. Indeed, Plaintiffs' hypocrisy highlights their true intent of turning the normal course of litigation on its head while, at the same time, avoiding a full and fair resolution on the merits.[2]

31. Plaintiffs and the other deponents should be compelled to appear at the noticed depositions; or, alternatively, should be precluded from offering any testimony or evidence at the January 25, 2013 hearing until such time as they appear for meaningful depositions or are excused from doing so by court order.

Memorandum of Law

A. Legal Standards

Rule 37 of the Federal Rules of Civil Procedure provides that "a party may move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). Rule 26 also provides, in

[2] As noted above, following the parties' agreement to stay substantive discovery given the posture of the action at that time, Defendants – not Plaintiffs – subsequently suggested that the parties proceed with full discovery and, thereafter, Defendants have attempted to do just that by, in relevant part for purposes of this Motion, scheduling the limited depositions at issue. (*See* Dec. 20, 2012 Letter (Ex. "2")). Thus, while Plaintiffs suggest that Defendants' litigation tactic before this Court has been "delay, delay, delay" (Jan. 9, 2013 Reply in Support of Motion to Deem Conceded at 1), the *record* not only plainly refutes that suggestion but demonstrates that Plaintiffs – not Defendants – in fact seek to "delay, delay, delay" at all costs any meaningful scrutiny of their claims by, among other things, filing a specious Motion for Protective Order shortly before the subject depositions and the January 25, 2013 hearing.

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relevant part, that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)," *i.e.*, before, as in this action, a scheduling conference is to be held or a scheduling order is due. *See* Fed. R. Civ. P. 26(d)(1); *see also* Fed. R. Civ. P. 26(f)(1). However, an exception to this rule applies "when authorized by [the Federal Rules of Civil Procedure], by stipulation, or by court order." Fed. R. Civ. P. 26(d)(1). "Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998).

B. Discussion

Although Plaintiffs, through their counsel, feign a "willing[ness] to engage in limited discovery," by way of the limited depositions at issue in this Motion, Plaintiffs condition any such discovery on their argument that "the Rule 26 Self Disclosure obligations" somehow require, according to Plaintiffs, that Defendants self-disclose to Plaintiffs "all relevant documents [Defendants] intend to use at the depositions as exhibits" at least 10 days before the depositions to help Plaintiffs "prepare[]" their case. (Dec. 24, 2012 Letter (Ex. "4") at 2 (citing Rule 26); *see also* Jan. 9, 2013 Letter (Ex. "7") at 2)). The argument is frivolous.

1. Plaintiffs Created This Situation and Cannot Now Be Heard to Complaint About It.

As a threshold matter, Plaintiffs have created the unusual procedural posture of this action by, among other things, insisting on the following extraordinary relief before the Rule 26(f) conference: (1) a temporary restraining order and/or a preliminary injunction; and (2) a summary judgment on the primary relief requested in this action, *i.e*, Count I of the First Amended Complaint. (Plaintiffs' Sept. 18, 2012 Motion for Temporary Restraining Order and/or Preliminary Injunction; Plaintiffs' Jan. 9, 2013 Renewed TRO Motion; and Plaintiffs' Nov. 12, 2012 Motion for Partial

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Summary Judgment). Plaintiffs also oppose Defendants' Rule 56(d) request for an opportunity to conduct discovery in the normal course prior to any resolution of the premature summary judgment motion. (Plaintiffs' Dec. 24, 2012 Motion to Deem Conceded).

As such, "[i]t goes without saying that a plaintiff cannot be permitted to thwart his opponent's ability to launch a defense by filing a summary judgment motion before the Rule 26(f) conference and then insisting that discovery in advance of the conference is premature." *McKinzy v. Norfolk S. R.R.*, 354 Fed. Appx. 371, 375 (10th Cir. 2009). Plaintiffs' instant arguments thus "are downright frivolous." *Id.* In other words, because Mohammad Hamed and Waleed Hamed initiated this action, and have insisted on obtaining premature relief, they "ha[ve] no basis, either under the federal rules or [otherwise], to resist [Defendants'] attempt to learn the basic facts underlying [the Hameds'] claims." *Id.* (affirming trial court's grant of a Rule 56(d) motion under circumstances similar to the present circumstances, including where "the grounds for the motion are self-evident").

Accordingly, having created this situation, Plaintiffs cannot now be heard to complain about it. *Id.*. *See also Collins v. Allstate Ins. Co.*, Case No. 2:09-cv-01824, 2009 U.S. Dist. LEXIS 115778, at *18-19 (E.D. Pa. Dec. 11, 2009) (granting "additional" limited depositions before ruling on premature motion for partial summary judgment; noting that "'it is well established that a court 'is obligated to give a party opposing summary judgment an adequate opportunity to obtain discovery,' especially when, as here, relevant facts are within the control of the moving party.") (quoting *Doe v. Abington Friends Sch.*, 480 F.3d 252, 257 (3d Cir. 2007)) (additional citation omitted); *Mims-Johnson v. Bechtal Nat'l Inc.*, Case No. CV-10-3119, 2012 U.S. Dist. LEXIS, at *14 (E.D. Wash. Feb. 16, 2012) (granting non-moving party leave to exceed default 10-deposition limit prior to opposing premature partial summary judgment motions; noting that such party "should have the benefit of the [additional] discovery"); *Nat'l Med. Care, Inc. v. Sec. of Health of Puerto Rico*, Case No. 2007 U.S. Dist.

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LEXIS 10432, at *17 (D.P.R. Feb. 14, 2007) (granting non-moving party "limited discovery" prior to opposing premature summary judgment motions; accepting party's argument that absence of limited discovery would "plac[e] them in a disadvantageous position at the summary judgment stage"); *Univ. of West Va. Bd. of Trustees v. Vanvoorhies*, Case No. 1:97-CV-144, 1999 U.S. Dist. LEXIS 23048, at * (N.D.W. Va. Nov. 16, 1999) ("conclude[ing] that precaution and prudence require[d] the limited deposition testimony" at issue in that case prior to any resolution of pending summary judgment motions).

2. Plaintiffs' Reliance on Rule 26 is Mere Pretext.

Separately, Plaintiffs' argument that, before the Rule 26(f) conference, Rule 26 otherwise requires the self-disclosure of "all relevant documents [Defendants] intend to use at the depositions as exhibits" at least 10 days before the depositions is mere pretext designed to avoid any meaningful analysis of Plaintiffs' claims. First, the plain language Rule 26 requires no such self-disclosure. Second, Plaintiffs' argument is not supported by any case law or other authority whatsoever.

McKinzy, decided by the U.S. Court of Appeals for the Tenth Circuit and cited above, appears to be the closest case on point. The plaintiff in *McKinzy*, like Plaintiffs here, moved for summary judgment before the defendant in that case, like Defendants here, had filed a responsive pleading. 354 Fed. Appx. at 373. The trial court imposed a stay of discovery pending its ruling on the summary judgment motion, but "specifically excluded from the stay [] any discovery the defendant might seek under Fed. R. Civ. P. 56(f)," which is now re-numbered as Fed. R. Civ. P. 56(d). *Id.* The defendant in *McKinzy* then requested a "preliminary deposition" of the plaintiff, as here, to "inquir[e] into the factual bases underlying [the plaintiff's] claims. *Id.* (noting the defendant's additional need for the limited deposition to, as here, respond to the plaintiff's motion for summary judgment and file a cross-motion for summary judgment). *Cf.* (Defendants' Dec. 20,

2012 Rule 56(d) Motion at 8 (reflecting Defendants' "inten[tion] to oppose Plaintiffs' Motion for Summary Judgment and . . . to file their own summary judgment motion once discovery is complete")).

Although the plaintiff in *McKinzy* objected to the limited deposition, the trial court "order[ed] him to appear for his deposition, which he did." 354 Fed. Appx. at 373. The defendant subsequently filed a cross-motion for summary judgment, to which the plaintiff never responded. *Id.* The trial court eventually denied the plaintiff's summary judgment motion and granted the defendant's cross-motion. *Id.* An appeal followed, including as to the issue of the discovery order granting a limited deposition. *Id.* at 374. Significantly, the court in *McKinzy* held as follows:

> McKinzy's arguments with respect to this issue are downright frivolous. As the plaintiff in a discrimination lawsuit, McKinzy had no basis, either under the federal rules or the district court's previous orders, to resist [the defendant]'s attempt to learn the basic facts underlying his claims. It goes without saying that a plaintiff cannot be permitted to thwart his opponent's ability to launch a defense by filing a summary judgment motion before the Rule 26(f) conference and then insisting that discovery in advance of the conference is premature. Furthermore, as we explained in McKinzy's last appeal, the district court does not abuse its discretion in granting a discovery request under Rule 56(f) [now, Rule 56(d)] without an affidavit where, as here, the grounds for the motion are self evident. *See McKinzy v. Union Pac. R.R.*, No. 09-3108, 349 Fed. Appx. 303, 2009 U.S. App. LEXIS 22666, [] at *2 (10th Cir. Oct. 15, 2009) (finding no abuse of discretion in granting continuance where need was readily apparent from the docket sheet). It was the immediacy of McKinzy's motion that precluded [the defendant] from submitting evidence in response, a situation readily apparent from the docket sheet. As such the court acted well within its discretion in ordering McKinzy to appear for a deposition.

Id. at 375 (affirming the trial court's judgment). The Tenth Circuit's foregoing analysis in *McKinzy* is dispositive of Plaintiffs' arguments in this action regarding the subject limited depositions. A copy of *McKinzy* is attached as Exhibit "11" hereto.

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Moreover, Rule 26 expressly excludes from its initial disclosure requirements any information to be used "solely for impeachment." Fed. R. Civ. P. 26(a)(1)(A)(ii). Plaintiffs' instant ostensible reason for moving for protection in this action, *i.e.*, the lack of "receive[ing] any deposition exhibits" in advance of the limited depositions, is thus entirely speculative and can be rejected on this basis alone. *See, e.g., Brinckerhoff v. Town of Paradise*, Case No. S-10-0023, 2010 U.S. Dist. LEXIS 126895, at *5-6 (E.D. Ca. Nov. 18, 2010) (denying motion for protective order to prohibit party from using evidence that was not disclosed under Rule 26(a) prior to depositions, where party opposing the motion for protection "attempted to use the [disputed evidence] for impeachment purposes only," and thus "was not required to disclose" the evidence).

At bottom, "Rule 26 is intended for disclosure of information that is not produced through formal discovery, but becomes separately known to a party." *Id.* at *4. Rule 26 is *not* intended for disclosure of information in advance of limited depositions that are necessitated by the requesting party's own doing, especially, as in this action, where the scope of depositions is already limited to the subject of the requesting party's own premature summary judgment motion. Plaintiffs' papers, including their January 14, 2013 Motion for Protective Order, do not cite to a single case that establishes otherwise.

3. The Requested Limited Depositions are Appropriate and Exclusive of Any Future Discovery Rights.

The limited depositions at issue – *i.e.*, of Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed (Composite Ex. "3" hereto) – are entirely appropriate, based on the allegations in the First Amended Complaint and in Plaintiffs' Motion for Partial Summary Judgment. Indeed, the deponents are all family members and were all employees at certain of the supermarket stores at issue in this action during the relevant periods alleged in the

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First Amended Complaint.[3] Further, as alleged by Plaintiff Mohammad Hamed, "[t]he acts referenced [in the First Amended Complaint] attributable to Mohammad Hamed are acts done either directly by Mohammad Hamed or for him by his authorized agents, all of whom are family members acting as his authorized agent from time to time." (First Amended Complaint at ¶ 2).

Thus, the limited depositions of Mohammad Hamed and of his family members and self-appointed "authorized agents" are clearly critical to Defendants' preparation of a substantive response to Plaintiffs' summary judgment motion, and preparation for the January 25, 2013 hearing. Tellingly, Plaintiffs do not dispute the appropriateness of Defendants' designation of the specific deponents at issue, as Plaintiffs' objections in the matter have focused only on procedural issues relating to self-disclosure under Rule 26 and on whether the limited depositions are exclusive of Defendants' future discovery rights under Rule 30 – and have not focused on, or even mentioned, the deponents' respective designations. (*See, e.g.*, Jan. 9, 2013 Letter (Ex. "7" hereto) at 2 (arguing that "any time taken for the limited depositions as now noticed will count against the seven hour limitation for depositions under Rule 30" and that Defendants "need to produce documents" in advance of the hearing under Rule 26 to help Mohammad Hamed "and his family . . . prepare[]" for the depositions)).

As discussed herein, Plaintiffs' arguments regarding Rule 26 are "downright frivolous." *See, e.g., McKinzy*, 354 Fed. Appx. at 375. Likewise, Plaintiffs' arguments regarding the exclusivity of Defendants' future discovery rights – *i.e.*, that any limited discovery in this action, which is necessitated by Plaintiffs' insistence on a premature summary judgment motion, is somehow inclusive of Defendants' future discovery rights and "will count against" those rights – are equally

[3] *See* December 20, 2012 Declaration of Joseph A. DiRuzzo, Esq. (addressing need for Rule 56(d) relief, including limited depositions) (attached as Exhibit "12" hereto); January 17, 2013 Affidavit of Joseph A. DiRuzzo, Esq. (same) (attached as Exhibit "13" hereto).

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frivolous. *Id.* (affirming trial court's grant of limited "preliminary" deposition prior to any response in opposition to deponent's summary judgment motion).[4]

Conclusion

For the foregoing reasons, Defendants pray that this Court enter an Order compelling the appearance of Mohammad Hamed, Waleed Hamed, Waheed Hamed, Hisham Hamed and Mufeed Hamed at the limited depositions that have been noticed for January 23 and 24, 2013; or, alternatively, excluding any testimony or evidence from these deponents, including at the hearing scheduled for January 25, 2013, until such time as they appear for meaningful depositions; finding that the limited depositions, if ordered to go forward, are exclusive of Defendants' future discovery rights; and granting any additional relief that the Court deems appropriate and just.

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[4] *See also Ben Ezra, Weinstein, and Co. v. America Online Co.*, 206 F.3d 980, 983-84 (10th Cir. 2000) (noting trial court's grant of Rule 56(d) motion and of "additional" limited discovery, including depositions); *Collins*, 2009 U.S. Dist. LEXIS 115778, at *1-2 (granting limited depositions prior to any response to motion for partial summary judgment where opposing party's "attorneys ha[d] not had the opportunity to depose representatives" of the moving party); *Mims-Johnson,* 2012 U.S. Dist. LEXIS 20370, at *14 ("defer[ring] hearing on motions for partial summary judgment pending the completion of [ordered limited] discovery," including depositions, as non-moving party "should have the benefit of discovery in opposing the instant [summary judgment] motions"); *National Medical Care*, 2007 U.S. Dist. LEXIS 10432, at *17 (granting 90 days of limited discovery to allow party who was opposing summary judgment motion time to discover facts related to the motion); *Vanvoorhies*, 1999 U.S. Dist. LEXIS 23048, at *6 ("precaution and prudence require[d] the limited deposition testimony" of third-party defendant prior to resolution of pending motions for summary judgment); *Rashid v. U.S. Fidelity and Guar. Co.*, Case No. 2:91-0141, 1992 U.S. Dist. LEXIS 22915, at *10-11 (S.D.W. Va. Sept. 28, 1992) (allowing limited depositions prior to response in opposition to motion for partial summary judgment or, "[a]s an alternative to allowing the depositions," directing moving party to "promptly withdraw" any portions of the summary judgment motion based on the deposition topics at issue in that case); *The Ins. Co. of Penn. v. The Circle K Corp.*, Case No. H-95-0051, 1997 U.S. Dist. LEXIS 8516 at *49-50 (S.D. Tex. Mar. 25, 1997) ("defer[ring] ruling on [party]'s motion for partial summary judgment . . . until the limited depositions permitted . . . have been completed"). None of the foregoing cases that authorize limited discovery in this context, including *McKinzy*, purport to limit the deposing party's future deposition rights under Rule 30 or otherwise. Plaintiffs' arguments to the contrary, which they make absent any legal support, are "downright frivolous." *McKinzy*, 354 Fed. Appx. at 375.

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Respectfully submitted,

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January 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2013, a true and accurate copy of the foregoing was forwarded via email to the following: *Joel H. Holt, Esq.*, 2132 Company St., St. Croix, VI 00820, holtvi@aol.com; and *Carl J. Hartmann III, Esq.*, 5000 Estate Coakley Bay, L-6, Christiansted, VI 00820, carl@carlhartmann.com.

Joseph A. DiRuzzo, III

EXHIBIT "1"

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Joseph A. DiRuzzo, III, Esq., CPA
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November 7, 2012

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. 1:12-cv-99 (D.V.I.)

Dear Mr. Holt,

This letter is to memorialize our conversation from yesterday. In that conversation we agreed to table the issue of discovery until December 3, 2012 with the exception of the subpoena *duces tecum* issued to Robert King. In respect to the subpoena I agreed to inquire as to whether Fathi Yusuf had given Robert King permission to produce the documents to you. Further, I agreed to inquire as to whether Robert King desires to have something in writing from an attorney confirming Fathi Yusuf's permission.

Once I have confirmed these facts I will get back to you.

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

EXHIBIT "2"

FUERST ITTLEMAN DAVID & JOSEPH PL

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

December 20, 2012

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,

This letter is a continuation of our correspondence regarding discovery in the above referenced case (see correspondence dated 10.26.2012, 10.27.2012, 10.29.2012, 10.30.2012, and 11.7.2012).

We had agreed to table the issue of discovery in our November 6, 2012, telephonic conversation. After considering how this case is progressing, and because, to date, numerous substantive motions remain outstanding, including Defendants' Motion to Strike Self-Appointed Representative, I have changed my view that discovery should be stayed. Accordingly, I have no objections to the parties availing themselves to the full array of discovery options as contemplated under the Federal Rules of Civil Procedure.

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

COMPOSITE EXHIBIT "3"

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 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 22, 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.

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 Dec. 20, 2012

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
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 Dec. 20, 2012

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 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: Waleed 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.

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 Dec. 20, 2012

CERTIFICATE OF SERVICE

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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 Dec. 20, 2012

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 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 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.

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 Dec. 20, 2012

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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 Dec. 20, 2012

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

NOTICE OF 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 25, 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.

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 Dec. 20, 2012

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
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 Dec. 20, 2012

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 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 25, 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.

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 Dec. 20, 2012

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
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 Dec. 20, 2012

EXHIBIT "4"

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: *holtvi@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

EXHIBIT "5"

FUERST ITTLEMAN
DAVID & JOSEPH PL

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

January 7, 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,

This letter is in response to your letter dated December 24, 2012, regarding the above-referenced case.

In respect to your contention that the Plaintiffs are limited to seven (7) hours to depose the witnesses in this case, and that any time spent deposing the witnesses will count towards that seven (7) hours, I disagree. You have made the choice to file your motion for partial summary judgment before the parties have provided their initial disclosures, propounded request for admission, interrogatories, and request for production, and before we have filed our answer and counterclaims. Simply stated, the pleadings are not yet closed and the case is not nearly at issue. Consequently, while we will limit the topics for the depositions of your client and his family to the issues raised in the pending motion for summary judgment, we will *not* agree that the Defendants will not have the full amount of time needed to both dispute the factual allegations made by the Plaintiffs and to prove up the factual allegations in any counterclaim(s) made by the Defendants in subsequent depositions. Further, we will not agree to, and this should not be taken of a waiver of, the Defendants seeking leave to enlarge the time needed to depose the witnesses in this case.

If you are unable or unwilling to concede that the limited scope depositions will not count toward the seven (7) hours in the normal course of proceedings, please let me know so that I can move the Superior Court for appropriate relief. Please take this letter as our request to "meet and confer" under the Local Rules.

Finally, in respect to the fourth point you made in your December 24th correspondence, I will address that point under separate cover.

//

//

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

EXHIBIT "6"

FUERST ITTLEMAN DAVID & JOSEPH PL

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

January 8, 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,

This letter is in response to the fourth point made your letter dated December 24, 2012, regarding the above-referenced case.

The fourth point to your letter highlights the unique procedural posture of this case because you have filed a premature motion for summary judgment. Indeed, as of the date of this letter, the following defense motions remain outstanding: (i) Defendants' motion to dismiss, strike, and for a more definite statement; and (ii) Defendants' motion to strike self-appointed representative. Pending a resolution of those motions, the Defendants also may file counterclaims and/or third-party claims.

In your letter, you submit that we "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." However, Rule 26(a)(3) is clear that the parties "must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference...." The Federal Rules of Civil Procedure were created to orderly advance litigation - from complaint, to answer, to discovery, to dispositive motion practice, to trial, and to post-trial motion practice. In filing your summary judgment motion before any resolution of the above-referenced substantive motions, before the parties have provided their initial disclosures, before they have propounded discovery requests, request for admissions, and interrogatories, and before a single deposition has been taken, you have turned the orderly litigation track on its head.

We submit that the most reasonable way to advance this case in an orderly manner is for you to either withdraw your motion for summary judgment (without prejudice to refile) or for you to concede to our Rule 56(d) motion. In doing so, the parties will avoid unnecessary motion practice (e.g. the motion for protective order you referenced under your fourth point in your December 24th correspondence), will avoid having limited issue depositions, and will avoid deposing the parties and witnesses more than once. And, of course, our respective clients will avoid the unnecessary

expenditure of attorney's fees and cost related thereto. Further, we submit that there is nothing special about this particular case that would justify deviating from the normal litigation track under the Federal Rules.

With these points in mind, we ask that you seriously consider our requests to either withdraw your motion for summary judgment or for you to concede to our Rule 56(d) motion. If you are unwilling to either withdraw your motion for summary judgment or concede to our Rule 56(d) motion, we will need to protect our clients' interests. Thus, among other things, absent your withdrawal of the summary judgment motion or concession to our Rule 56(d) motion, we proceed with the limited issue depositions without any advance disclosure of documents, as there is nothing Rule 26 that entitles you to those documents at this point in time.

Please take this letter as our formal initial response to your request to "meet and confer" before you file your limited protective order.

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

EXHIBIT "7"

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: *holtvi@aol.com*

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

EXHIBIT "8"

FUERST ITTLEMAN 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

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:

Date	**Time**	**Deponent**
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

COMPOSITE EXHIBIT "9"

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,

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,

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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: 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,

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Respectfully submitted,

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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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Miami, Florida 33131
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305.371.8989 (F)
jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

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Respectfully submitted,

Joseph A. DiRuzzo, III
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Miami, Florida 33131
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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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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,

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Miami, Florida 33131
305.350.5690 (O)
305.371.8989 (F)
jdiruzzo@fuerstlaw.com

Dated Jan. 11, 2013

EXHIBIT "10"

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: *holtvi@aol.com*

January 14, 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:

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

EXHIBIT "11"

FOCUS - 1 of 19 DOCUMENTS

MICHAEL E. MCKINZY, SR., Plaintiff-Appellant, v. NORFOLK SOUTHERN RAILROAD, Defendant-Appellee.

No. 09-3164

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

354 Fed. Appx. 371; 2009 U.S. App. LEXIS 26192

December 2, 2009, Filed

PRIOR HISTORY: [**1]
(D.C. No. 2:08-CV-02599-CM-JPO). (D. Kan.).
McKinzy v. Norfolk S. R.R., 2009 U.S. Dist. LEXIS 49499 (D. Kan., June 12, 2009)

COUNSEL: MICHAEL E. MCKINZY, SR., Plaintiff - Appellant, Pro se, Overland Park, KS.

For NORFOLK SOUTHERN RAILROAD, Defendant - Appellee: Larry Michael Schumaker, Esq., Schumaker Center For Employment Law, P.C., Kansas City, MO.

JUDGES: Before TACHA, ANDERSON, and EBEL, Circuit Judges.

OPINION BY: Deanell Reece Tacha

OPINION

[*372] **ORDER AND JUDGMENT** *

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Plaintiff-appellant Michael E. McKinzy, proceeding pro se, appeals the district court's entry of summary judgment in favor of Norfolk Southern Railroad on his claims of racial discrimination and retaliation brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and 42 U.S.C. § 1981. Exercising our [**2] jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

The following facts are not in dispute. Norfolk Southern operates an on-line application system, under which prospective employees are invited to complete a single application questionnaire, which can then be used to apply for any job posted on the company's website. Between 2006 and 2008, McKinzy, a licensed journeyman electrician, used this on-line application [*373] process to apply for at least 75 jobs with Norfolk Southern. Although he applied for jobs throughout the country and indicated a willingness to relocate, he specified Illinois as his preferred location, explaining that he was planning a move to Chicago. McKinzy received rejection emails for the overwhelming majority of these positions. He did receive a handful of invitations to attend further "recruiting sessions," mainly for jobs in the northern Illinois area, but after he failed to attend these sessions, Norfolk Southern notified him that he was out of contention for these jobs. McKinzy filed two complaints with the Equal Employment Opportunity Commission (EEOC), accusing Norfolk Southern of refusing to hire him because he is African American. After the EEOC closed its file [**3] and issued a right-to-sue letter,

McKinzy filed this action in the district court on December 2, 2008.

On January 12, 2009, before Norfolk Southern filed a responsive pleading, McKinzy moved for summary judgment. In an order dated January 30, the district court imposed a due date for Norfolk Southern's response and a stay of discovery pending its ruling on the motion. It explained that a stay was prudent because the court had yet to hold a Rule 26(f) conference and because the case was likely to be resolved on cross-motions for summary judgment. The court specifically excluded from the stay, however, any discovery the defendant might seek under Fed. R. Civ. P. 56(f). [1]

> 1 Rule 56(f) provides in relevant part that "[i]f a party opposing the motion [for summary judgment] shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken . . . ."

On February 9, Norfolk Southern filed a motion requesting a preliminary deposition of McKinzy, arguing that, given the numerous jobs he had applied for, it was unclear which [**4] rejections he believed were motivated by unlawful discrimination. Norfolk Southern argued that it could not respond to McKinzy's motion or file a cross-motion without a brief deposition inquiring into the factual bases underlying McKinzy's claims. On February 18, over McKinzy's objection, a magistrate judge granted Norfolk Southern's request, reasoning that the case was likely to be decided on cross-motions for summary judgment and that the information sought would likely affect the resolution of such motions. The court found Norfolk Southern's request to be neither burdensome nor wasteful and reiterated that its previously imposed discovery stay did not apply to specific requests made under Rule 56(f). McKinzy fought this ruling in several motions for reconsideration, but on February 27, the district court judge issued an order overruling McKinzy's objections and ordering him to appear for his deposition, which he did in early March. Norfolk Southern then filed a cross-motion for summary judgment, to which McKinzy never responded.

On June 12, the district court issued an order denying McKinzy's motion and entering summary judgment in favor of Norfolk Southern. With respect to the discrimination [**5] claim, it concluded at the third step of the *McDonnell Douglas* [2] analysis that, even if McKinzy had established a prima facie case of discrimination, he had failed to demonstrate a triable issue as to whether Norfolk Southern's non-discriminatory [*374] reasons for not hiring him were pretextual. Relying on the defendant's unrebutted documentary evidence, the court explained:

> Plaintiff's online applications were primarily rejected at a pre-screening stage--by screeners who did not have access to race information, or to plaintiff's EEOC charges--because the positions for which he applied were outside plaintiff's stated geographic preference, which was Chicago, Illinois, and his area of residence at the time, which was Country Club Hills, Illinois, just south of Chicago. Defendant's uncontested motion establishes that defendant screens for candidates who live in the area of the vacancy. . . . [D]efendant declines applicants who have been invited to a recruiting session for a particular position and who do not attend. On five occasions, plaintiff was invited to recruiting sessions for particular positions, . . . [but] failed to attend any of these sessions, and was therefore not considered for [**6] the positions.

R. Doc. 49 at 4-5. Since McKinzy failed to contest these reasons for the decision not to hire him, the court concluded Norfolk Southern was entitled to judgment as a matter of law on the discrimination claim. It went on to reject the retaliation claim at the first step of the *McDonnell Douglas* analysis, explaining that McKinzy's bare assertion of a causal relationship between the defendant's hiring decisions and his EEOC complaints was insufficient to establish a prima facie case of retaliation. This appeal followed.

> 2 *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802-03, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

II.

"We review the district court's grant of summary judgment *de novo* and must apply the same legal standard used by the district court." *Swackhammer v. Sprint/United Mgmt. Co.,* 493 F.3d 1160, 1167 (10th Cir. 2007) (internal quotation marks omitted). Under this standard, we will affirm a grant of summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there [was] no genuine issue as to any material fact and that the movant [was] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A district court's discovery rulings, including [**7] the court's decision in this case to permit a limited deposition of the plaintiff, is reviewed for abuse of dis-

cretion. *See Regan-Touhy v. Walgreen Co.,* 526 F.3d 641, 647 (10th Cir. 2008).

McKinzy's appeal largely neglects the merits of the district court's summary judgment decision and focuses instead on its discovery rulings. Affording his brief the solicitous construction due pro se filings, however, *see Van Deelen v. Johnson,* 497 F.3d 1151, 1153 n.1 (10th Cir. 2007), we interpret his arguments broadly as a challenge to the court's findings that he failed to show pretext for discrimination or establish a prima facie case of retaliation. Only, McKinzy has no basis to make these challenges. Having failed to respond to Norfolk Southern's summary judgment motion, McKinzy left the company's nondiscriminatory reasons for not hiring him completely unrebutted. Likewise, he failed to counter Norfolk Southern's evidence demonstrating that those responsible for rejecting his job applications were unaware of his EEOC complaints and thus without motivation to retaliate against him. We conclude this alone was sufficient to warrant summary judgment in favor of Norfolk Southern. *See Swackhammer,* 493 F.3d at 1169 [**8] (noting that summary judgment for the employer is appropriate [*375] when its nondiscriminatory explanations remain unrebutted).

As for the order granting Norfolk Southern a limited deposition, McKinzy's arguments with respect to this issue are downright frivolous. As the plaintiff in a discrimination lawsuit, McKinzy had no basis, either under the federal rules or the district court's previous orders, to resist Norfolk Southern's attempt to learn the basic facts underlying his claims. It goes without saying that a plaintiff cannot be permitted to thwart his opponent's ability to launch a defense by filing a summary judgment motion before the Rule 26(f) conference and then insisting that discovery in advance of the conference is premature. Furthermore, as we explained in McKinzy's last appeal, the district court does not abuse its discretion in granting a discovery request under Rule 56(f) without an affidavit where, as here, the grounds for the motion are self evident. *See McKinzy v. Union Pac. R.R.,* No. 09-3108, 349 Fed. Appx. 303, 2009 U.S. App. LEXIS 22666, 2009 WL 3303699, at *2 (10th Cir. Oct. 15, 2009) (finding no abuse of discretion in granting continuance where need was readily apparent from the docket sheet). It was the immediacy [**9] of McKinzy's motion that precluded Norfolk Southern from submitting evidence in response, a situation readily apparent from the docket sheet. As such the court acted well within its discretion in ordering McKinzy to appear for a deposition. The judgment of the district court is therefore AFFIRMED.

Norfolk Southern's motion for sanctions is DENIED, but we echo the district court's warning to McKinzy that he is perilously close to being deemed an abusive litigant. If he continues to appeal dismissals of frivolous discrimination lawsuits, he will be subject to sanctions under this court's inherent powers to control its docket. This may include, among other things, monetary sanctions, dismissal of his appeal, and future filing restrictions.

Entered for the Court

Deanell Reece Tacha

Circuit Judge

EXHIBIT "12"

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

MOHAMMAD HAMED, by his authorized agent, WALEED HAMED,	)	
Plaintiffs,	)	
v.	)	**CIVIL NO. SX-12-CV-370**
FATHI YUSUF and UNITED CORPORATION,	)	
Defendants.	)	

DECLARATION OF JOSEPH A. DiRUZZO

I, Joseph A. DiRuzzo, declare as follows:

1. I am a member in good standing with The Florida Bar and the Virgin Islands Bar Association, and am employed as an associate at the firm of Fuerst Ittleman David & Joseph, PL ("FIDJ"), which represents Defendants Fathi Yusuf and United Corporation in the captioned action.

2. I am one of the attorneys at FIDJ who assists with Defendants' representation in this action, and I am familiar with the pleadings, papers and other communications in the action.

3. The statements made in this declaration are based upon my personal knowledge.

4. To date, based on the papers filed in this Court prior to removal and in the District Court prior to remand, the following substantive motions are briefed and remain pending:

   a. Plaintiffs' Motion for a Temporary Restraining Order and/or a Preliminary Injunction, and accompanying Memorandum, both dated September 18, 2012 (collectively, the "TRO Motion");

   b. Defendants' Motion to Proceed on the TRO Motion as a Motion for Preliminary Injunction dated September 28, 2012;

   c. Defendants' Motion to Strike or, Alternatively, for Leave to File Sur-Reply dated November 2, 2012 (D.V.I. Doc. # 23);

d. Defendants' Renewed Motion to Dismiss and accompanying Memorandum, both dated November 5, 2012 (D.V.I. Doc. ## 28 and 29, respectively);

e. Plaintiffs' Motion and Memorandum for Order to Show Cause dated November 6, 2012 (D.V.I. Doc. # 31);

f. Plaintiffs' Motion for Partial Summary Judgment dated November 11, 2012 (D.V.I. Doc. # 34); and

g. Defendants' Motion to Strike Self-Appointed Representative dated November 21, 2012, which, among other relief, respectfully requests the Court to resolve the motion to strike prior to any other substantive motions.

5. No aspect of the substantive discovery process, including depositions or written discovery requests, has been completed.

6. Further, no party has provided its Initial Disclosures yet, as no status or case management conference has been scheduled yet.

7. In addition, Defendants believe that a resolution of their motion to strike will have significant implications for the subsequent course of proceedings, including the nature and scope of discovery, given Plaintiff Mohammad Hamed's stated desire to prosecute this action by and through a self-appointed representative, *i.e.*, "his authorized agent Waleed Hamed," his son, and Mohammad Hamed's attribution of the allegations in the action to certain unnamed additional "authorized agents" acting "from time to time." (Comparison Document (D.V.I. Doc. # 17) at ¶ 2).

8. There is also a fundamental dispute between the parties as to whether Mohammed Hamed is a *bona fide* partner or a mere joint venturer who has no partnership rights whatsoever under the Virgin Islands Uniform Partnership Act or any other authority. (*See generally* Renewed Motion to Dismiss (D.V.I. Doc. # 29)).

9. Specifically, with respect to Plaintiffs' Motion for Partial Summary Judgment, Defendants believe that there is insufficient information or evidence available to reasonably respond

to the summary judgment motion at this time.

10. Defendants previously had been hesitant, for purposes of judicial economy, to engage in costly and potentially unnecessary discovery pending a resolution of the substantive motions identified above.

11. However, given the current posture of the action, and Defendants' good faith desire to proceed in due course to a resolution on the merits, Defendants, concurrent with the filing of their Rule 56(d) Motion, have served Notices of Deposition to the following individuals: Mohammad Hamed; Waleed Hamed; Waheed Hamed; Hisham Hamed; and Mufeed Hamed.

12. The foregoing individuals have been noticed for oral examination in the Virgin Islands subject to continuance or adjournment from time to time or place to place until completed starting on January 22, 2013, through January 25, 2013, respectively.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 2012.

JOSEPH A. DiRUZZO

EXHIBIT "13"