

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and
UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED
HAMED, MUFEED HAMED,
HISHAM HAMED,
and PLESSEN ENTERPRISES, INC.**,

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

**PLAINTIFF HAMED'S OPPOSITION TO DEFENDANTS MOTION TO
FURTHER EXTEND SCHEDULING ORDER DEADLINES**

Once again Defendants ask this Court to extend the scheduling order. They base their request on the same two matters previously raised in their first motion for a continuance, which this Court addressed in the extension it granted (over Plaintiff's objection). As such, Plaintiff respectfully requests that this second motion be denied.

One preliminary comment is in order. After the "meet and confer" on February 18th regarding this matter, Plaintiff's counsel did suggest extending the fact discovery the next day so that additional written discovery could be done (along with some other slight modifications to the discovery schedule), as Plaintiff's primary concern is not moving the current trial date. Those suggestions were summarily rejected, with the

current motion being filed late on February 19th, suggesting the “meet and confer” was just a formality. Counsel prefers to work these matters out so long as the already extended trial date is not extended again. With this comment in mind, a response to the current motion is on order.

I. Introduction - A History of the Sequential Delays

The complaint in this action was filed on October 4, 2012. Defendants removed this matter to federal court. After remand to this Court and the entry of the Preliminary Injunction, Plaintiff stipulated to the exact discovery schedule proposed by Defendants.

On November 27, 2013, Defendant filed an "*Emergency Motion to Extend Scheduling Order Deadlines*", arguing that (1) a ruling on the pending Motion to Dismiss “necessarily impacts the scope of any discovery in this action” and (2) that there are documents which needed to be obtained from the Government.¹ On December 3, 2014, Plaintiff vigorously opposed such an extension, arguing in part as follows:

- “Defendants' "emergency motion" is just another cry of "wolf" in this case. As the Court will recall, Defendants previously sought time to do discovery before having to respond to Plaintiff's summary judgment motion, which this Court granted six months ago. However, **they then failed to do any discovery** before responding to that motion despite the Court's extension allowing them to do this "much needed" discovery.”
- “Second, this Court directed the parties to agree to a scheduling order. . . . after the parties conferred, **the final agreed upon order that was submitted is identical to the one suggested by Defendants.**”
- “Third, the issues Defendants now claim warrant a revised scheduling order -the alleged need for items from the criminal case and a ruling on their Rule 12 motions - were both fully known when Defendants proposed the scheduling order that was eventually adopted.”

¹ Defendants have never subpoenaed any such documents, not is there a need to, as the Government has always made those documents available for inspection and copying upon request in the past.

- **“Indeed, the Government made its files available years ago**, resulting in boxes of documents being produced, thousands of which were then re-produced in this case. . . .The suggestion that there are some new documents not yet seen by counsel for the parties is nothing more than pure speculation.”

Notwithstanding these objections, the Court provided an enlargement of the time for Defendants to complete fact discovery as requested on December 5, 2013. However, in doing so the Court made it very clear this was a limited extension and that defendants had to move this along -- that another six months would NOT be allowed:

Given the volumes of information exchanged in this litigation, the Court accepts Defendants' argument that some additional time to complete discovery is appropriate. **However, there seems no need to add an additional six months to a discovery schedule to which Defendants recently stipulated.** With the Parties acting diligently in completing discovery, there is no reason the case cannot come to trial within the next year. As such, all discovery deadlines will be extended by three (3) months. See *Memorandum* of December 5, 2013 at 2. (Emphasis added.)

Notwithstanding the foregoing admonition, the defendants have now filed this request for another enlargement of discovery, using the same two excuses it previously used.

II. Argument

A. The alleged “need” to do discovery on the counterclaim defendants

The first stated reason for the requested enlargement is that the new counterclaim defendants (the “Hamed Sons”) *had* not yet answered the counterclaim, so that there has been no opportunity to take discovery from them since they were not previously parties. This assertion is disingenuous for several reasons:

- ***Discovery was available in other pending actions.*** The Hamed Sons have been sued for virtually the same claims in two other suits filed AFTER this case was filed, as noted in the two *Memoranda in Support of the Motions to Dismiss* filed last week in this case on behalf of Waleed and Waheed Hamed. Discovery has proceeded in both cases. Thus discovery was fully available there and was in fact done in each of those cases.

- ***Discovery was available here.*** Rule 45 depositions and requests for documents by subpoena were available as to the Hamed Sons here since the case was filed.
- ***There was time after the counterclaims were filed to do discovery here.*** After the first discovery extension was granted, Defendants filed their answer and counterclaims. A complete round of written discovery was then served and responded to by the Plaintiff and Defendant over the next 30 days. However, Defendants chose not to serve the new counterclaim defendants until just recently, after the Plaintiff noticed depositions in this case. In short, between the time that the counterclaims were filed, there was time for Defendants to serve the new counterclaims and promulgate discovery requests, which they did not do.

In short, Defendants sat on their hands in this case, while actively doing discovery in the other related cases against the Hamed Sons. Thus, it is clear that this dilatory conduct was designed to create the appearance of a need for more time to do discovery than any real need to do so. This court admonished Defendants about such conduct, yet they ignored that directive. They should not now be allowed to delay this case further just because of their own dilatory conduct.

B. The documents allegedly in the Governments' possession

The Defendants made this argument previously as well. However, since the Court's extension of the initial discovery dates, Defendants have apparently **done nothing** to obtain these supposedly needed documents. While they claim the Government has not released the documents, they have produced nothing to show that they have requested (or subpoenaed) these documents. Indeed, ever since the criminal case was filed in 2003 the Government has routinely cooperated in making all records available. Apparently the Defendants think they can do nothing and then just routinely get this Court to extend all deadlines.

Indeed, the Defendants have not even explained what these records contain that they do not know about already. The desire to do a "witch hunt" through unidentified

documents is by itself insufficient to seek extension after extension of the discovery deadlines in the case. Moreover, to do nothing to gain access to them is equally unacceptable to justify any further extensions in this case.

IV. Conclusion

Delay—clearly that is Defendants' strategy—just wait until the last second and then file for another discovery extension. This Court should summarily deny the belated and repeated requested extension of all discovery deadlines.

Dated: February 28, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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