

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

MOHAMMAD HAMED , by his)	CIVIL NO. SX-12-CV-370
authorized agent WALEED HAMED ,)	
)	ACTION FOR DAMAGES,
Plaintiff/Counterclaim Defendant,)	INJUNCTIVE RELIEF
)	AND DECLARATORY RELIEF
vs.)	
)	JURY TRIAL DEMANDED
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants/Counterclaimants,)	
)	
vs.)	
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants)	
)	

EMERGENCY MOTION FOR PROTECTIVE ORDER CANCELLING DEPOSITIONS

Defendants/counterclaimants Fathi Yusuf and United Corporation (collectively, the “Defendants”), through their undersigned counsel, pursuant to Super. Ct. R. 39(a) and Fed. R. Civ. P. 26(d), made applicable to proceedings in this Court by Super. Ct. R. 7, respectfully move this Court to enter a protective order cancelling six (6) depositions noticed for April 2, 2014 through April 4, 2014.

FACTUAL BACKGROUND

1. On December 5, 2013, this Court entered an Amended Scheduling Order directing that “[a]ll fact discovery, including written discovery and fact witness depositions, shall be completed by **March 15, 2014**” (emphasis in original).

2. On February 19, 2014, Defendants filed a Motion To Further Extend Scheduling Order Deadlines (“Motion to Extend”). Plaintiff/counterclaim defendant Mohammed Hamed (“Plaintiff”) filed his Opposition to the motion on February 25, 2014 and Defendants filed their

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Reply on March 5, 2014. Accordingly, the Motion To Extend is fully briefed and awaiting this Court's disposition.

3. Four newly added counterclaim defendants "appeared" for the first time in this case on February 18, 2014 and February 21, 2014 by filing answers and motions to dismiss. One of the newly added counterclaim defendants, Plessen Enterprises, Inc. ("Plessen"), has yet to enter an appearance and is now in default despite Plaintiff's motion to dismiss Plessen as a counterclaim defendant filed on March 3, 2014.

3. Pursuant to four notices of deposition dated February 25, 2014, Plaintiff noticed the depositions of Defendants Mahar Yusuf, Nejeah Yusuf, Yusuf Yusuf, and John Gaffney, United's comptroller (the "Six Deponents") for March 12-14, 2014.

4. On February 27, 2014, counsel for Plaintiff and Defendants met in St. Croix to discuss settlement proposals.

5. On February 28, 2014, counsel for Plaintiff and Defendants agreed that the depositions of the Six Deponents would be rescheduled to the week of March 31, 2014 to devote attention to the settlement process.

6. On March 4, 2014, Plaintiff renoticed the depositions of the Six Deponents for April 2-4, 2014.

7. On March 24, 2014, counsel for additional counterclaim defendant Waheed Hamed ("Waheed"), who also is co-counsel for Plaintiff, provided electronic notice of his self-described "Me Too" Notice of Deposition. A copy of the email and attached Notice of Deposition is attached as **Exhibit A**.

8. On March 27, 2014, counsel for Defendants sent the email attached as **Exhibit B** in an effort to resolve the discovery dispute. Despite a telephone conference between counsel

this morning, no resolution could be reached because counsel for Waheed would not agree that Defendants could seek discovery from his client outside the existing deadline.¹

ARGUMENT

A. GIVEN THE PENDENCY OF THE MOTION TO EXTEND AND THE PROVISIONS OF FED. R. CIV. P. 26(d)(1), THIS COURT SHOULD CANCEL AND REQUIRE RESCHEDULING OF THE DEPOSITIONS OF THE SIX DEONENTS.

As argued in the Motion To Extend and the Reply to Plaintiff's Opposition to that motion, it makes no sense that a discovery schedule establishing a March 15, 2014 fact discovery deadline would apply to the five newly added parties, four of whom appeared in the case less than one month before the deadline and one which has yet to appear. Moreover, Fed. R. Civ. P. 26(d)(1) provides that a "party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosures under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order" (emphasis added). The undersigned respectfully represents as an officer of this Court that Defendants have not conferred with the five newly added counterclaim defendants, as required by Fed. R. Civ. P. 26(1). Accordingly, since none of the exceptions set forth in Rule 26(d)(1) apply under the circumstances of this case, Waheed "may not seek discovery from" Defendants or any other source.

If this Court does not enter an appropriate protective order, the Six Deponents will be exposed to multiple depositions by Plaintiff as well as the newly added parties, which clearly are not subject to the existing scheduling order. While the proposal set forth in Exhibit B was rejected by counsel for Waheed, even if he had agreed that his client could be deposed at a

¹ Oddly, counsel for Waheed did indicate he would agree to his client being deposed in the immediate future, namely, next week.

reasonable, later date, that would not have protected the Six Deponents from being deposed by another newly added party. In this case, Waheed simply wants to "have his cake and eat it too." He wants to obtain fact discovery outside the currently established deadline, but be able to avoid providing any discovery because the deadline has passed. This is patently unfair.

CONCLUSION

The foregoing circumstances clearly show why this Court should extend the discovery deadline as requested in the Motion To Extend. Here, Plaintiff's and Defendants' good faith efforts to accommodate settlement by extending limited depositions beyond the current deadline creates unfair advantage for a newly added party seeking discovery beyond the deadline but refusing to provide discovery beyond the deadline. For these reasons, Defendants respectfully request this Court to enter an order cancelling the depositions of the Six Deponents and granting such further relief as is just and proper.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: March 28, 2014

By:



Gregory H. Hodges (V.I. Bar No. 174)
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The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2014, I caused the foregoing to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

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

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com



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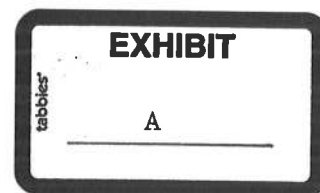
Gregory H. Hodges

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Monday, March 24, 2014 3:57 PM
To: kye@thewalkerlegalgroup.com; mark@markeckard.com; holtvi@aol.com; Gregory H. Hodges; Nizar DeWood
Cc: Japinga, KiM; Cordelia Jones
Subject: Me Too notice for scheduled depos
Attachments: 2014-03-24 Notice of Depositions.pdf

All:

Please see the "me too" depo notice for the depos set for Wed. – Fri. of next week.

Carl Hartmann



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MOHAMMAD HAMED , by his)	
authorized agent WALEED HAMED ,)	
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<i>Plaintiff/Counterclaim Defendant</i> ,)	
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vs.)	CIVIL NO. SX-12-CV-370
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FATHI YUSUF and)	
UNITED CORPORATION ,)	ACTION FOR DAMAGES,
)	INJUNCTIVE RELIEF AND
<i>Defendants/Counterclaimants</i> ,)	DECLARATORY RELIEF
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HISHAM HAMED,)	
and PLESSEN ENTERPRISES, INC. ,)	
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<i>Counterclaim Defendants</i> .)	
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NOTICE

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure and Rule 11 of the V.I. Superior Court Rules, counterclaim defendant Waheed Hamed, through his counsel, will take the videotape deposition of:

- a. FATHI YUSUF on WEDNESDAY, APRIL 2, 2014 at 9:00 a.m. at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709); continuing from the deposition then noticed by Mohammad Hamed until completed or an aggregate time with other aligned parties reaches the maximum time allowed.

- b. Similarly, UNITED CORPORATION on the same subjects set forth in the deposition notice of Mohammad Hamed, on THURSDAY, APRIL 3, 2014 at 9:00 a.m. by video at the office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix 00820, (340) 773-8709.

c. Similarly, JOHN GAFFNEY on THURSDAY, APRIL 3, 2014 at 1 :00 p.m. at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709).

d. Similarly, on FRIDAY, APRIL 4, 2014 at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709):

Nejeh Yusuf 9:00 a.m.
Yusuf Yusuf 10:00 a.m.
Bakir Hussein 11:00 a.m.
Mahar "Mike" Yusuf 1:00 p.m.

Dated: March 24, 2014



Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Unit L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2014, I served a copy of the foregoing by email in compliance with the parties consent to electronic service of all documents in this action on the following persons:

Joel H. Holt, Esq.
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

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Gregory H. Hodges

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P.O. Box 24849
Christiansted VI 00824

Kye Walker

The Walker Legal Group
16AB Church Street 2d Floor
Christiansted, St. Croix, V.I. 00820



Gregory H. Hodges

From: Gregory H. Hodges
Sent: Friday, March 28, 2014 5:32 AM
To: Joel Holt
Cc: Carl Hartmann; mark@markeckard.com; Nizar DeWood; Japinga, KiM; Cordelia Jones; Charlotte Perrell
Subject: Re: Me Too notice for scheduled depositions

Are you and Carl available this morning to discuss these issues before I file an emergency motion for protective order re all the depositions you both have noticed?

Sent from my iPhone

> On Mar 27, 2014, at 7:43 PM, "Joel Holt" <holtvi@aol.com> wrote:

>

> Greg-depositions are open for all parties to ask questions. Not only did you and I not agree to limit them as you suggest, we could not bind other parties to the case.

>

> Sent from my iPhone

>

>> On Mar 27, 2014, at 4:48 PM, "Gregory H. Hodges" <ghodges@dtflaw.com> wrote:

>>

>> Carl,

>> I will object to and seek an appropriate protective order for any such "me too" notices from any of the additional counterclaim defendants unless they agree that the current scheduling order does not in any way preclude my ability to depose them in the future. The accommodation that Joel and I made that allows for the depositions to proceed next week only applied to plaintiff and defendants. It would not be fair for your client(s) to be able to depose mine outside the scheduling order and then claim that the scheduling order precludes future fact depositions. Please advise asap whether you will so agree.

>>

>>

>> Gregory H. Hodges

>> Dudley, Topper and Feuerzeig, LLP

>> Law House, 1000 Frederiksberg Gade

>> St. Thomas, VI 00802

>> Direct: (340) 715-4405

>> Fax: (340) 715-4400

>> Web: www.DTFLaw.com

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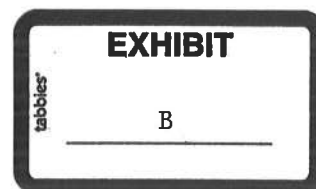
>> THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

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>> -----Original Message-----



>> From: Carl Hartmann [mailto:carl@carlhartmann.com]
>> Sent: Monday, March 24, 2014 3:57 PM
>> To: kye@thewalkerlegalgroup.com; mark@markeckard.com; holtvi@aol.com; Gregory H. Hodges; Nizar DeWood
>> Cc: Japinga, KiM; Cordelia Jones
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CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

ORDER

Upon consideration of Defendants' emergency motion for protective order and for good cause shown, it is accordingly,

ORDERED that the six depositions noticed in this matter on April 2-4, 2014 be, and the same hereby are, **Cancelled**.

Entered this _____ day of March, 2014.

Douglas A. Brady
Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

cc: Nizar A. DeWood, Esq.
Mark W. Eckard, Esq.
Carl J. Hartmann III, Esq.
Gregory H. Hodges, Esq.
Joel H. Holt, Esq.

By: _____
Deputy Clerk