

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX 22 P 4:25

HISHAM HAMED, individually, and
derivatively on behalf of SIXTEEN PLUS
CORPORATION,

Plaintiff,

v.

FATHI YUSUF, ISAM YOUSUF and
JAMIL YOUSEF,

Defendants,

and

SIXTEEN PLUS CORPORATION,

a nominal defendant.

CASE NO.: SX-16-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF

JURY TRIAL DEMANDED

**DEFENDANTS' NOTICE REGARDING SUBMISSION
OF PROPOSED SCHEDULING ORDERS BY PARTIES**

The parties to this case, through their respective counsel, have conferred by email regarding entry of a proposed scheduling order in this case. Pending before this Court is Defendant Fathi Yusuf's January 9, 2017 Motion to Dismiss First Amended Complaint, Plaintiff's January 20, 2017 Motion for Partial Summary Judgment on Count III of the First Amended Complaint, and Defendant Fathi Yusuf's February 24, 2017 Motion for a Stay of Discovery Pending a Ruling on his Motion to Dismiss.

All of the Defendants submit that the Court should enter an order staying discovery pending resolution of the Motion to Dismiss. Plaintiff opposes a stay of

discovery, as set forth in his March 9, 2017 Opposition.¹ In the alternative, Defendants are willing to stipulate to entry of the attached scheduling order that builds in approximately two months before discovery would commence. See Defendants' Proposed Scheduling Order, attached hereto. That two-month period would give the Court additional time to decide motions that, if granted, will obviate the need for discovery and avoid attorney fees that will otherwise be expended in preparing and responding to discovery requests and in any discovery motion practice.

The Plaintiff and Defendants have reached agreement on most aspects of the proposed scheduling order; their dates other than the date for commencing discovery are very similar. Their disagreement centers on the sequence of discovery methods and when written discovery should commence.

V.I. R. Civ. P. 26(d)(3)(A) provides that "unless the parties stipulate or the court orders otherwise for the parties and witness's convenience and in the interests of justice . . . methods of discovery may be used in any sequence."² Defendants' proposed scheduling order establishes that sequence by creating a Rule 26 initial disclosure deadline of July 1, 2017, having other written discovery (requests to produce, interrogatories and the like) commence on July 15, 2017 and be completed on October 31, 2017, to be followed by deposition discovery, which would be completed by January 15, 2018. This is consistent with the sequence of discovery that is customarily observed by the Superior Court in its scheduling orders.

¹Defendant Fathi Yusuf submitted a reply in support of his motion for stay on March 27, 2017.

²The convenience of parties and any non-party witnesses and the interests of justice plainly support entry of a scheduling order that builds in additional time for the Court to decide a dispositive motion that could render discovery from those parties and witnesses unnecessary.

Plaintiff disagrees with the sequence of discovery proposed by Defendants, and has taken the position that any discovery method, including deposition discovery, may commence as soon as the Rule 26 conference is concluded and an Order entered.

Defendants Fathi Yusuf, Isam Yousuf and Jamil Yousef reiterate the request in the February 28, 2017 Motion for Stay that this Honorable Court enter a stay of discovery in this case pending the Court's resolution of the outstanding Motion to Dismiss the First Amended Complaint. If the Court is inclined to enter a scheduling order at this time, then in the alternative, Defendants respectfully request entry of the attached scheduling order, rather than the scheduling order proposed by Plaintiff.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: May 22 2017

By:



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LAW OFFICES OF JAMES HYMES III, PC

DATED: May 22, 2017

By:

James L. Hymes, III / *SLH*
with permission
5-22-17

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Counsel for Yousef Defendants

CERTIFICATE OF SERVICE

It is hereby certified that on the 22nd day of May, 2017, the foregoing, **DEFENDANTS' NOTICE REGARDING SUBMISSION OF PROPOSED SCHEDULING ORDERS BY PARTIES** and a proposed **SCHEDULING ORDER** were served via e-mail addressed to:

Joel H. Holt, Esq.
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Joel H. Holt

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SCHEDULING ORDER

Comes now the Court and hereby enters the following Scheduling Order:¹

1. DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **July 1, 2017**.
- b. The parties will conduct fact discovery with written discovery to commence on or after **July 15, 2017**, and be completed by **October 31, 2017**. Depositions may commence on or after **November 1, 2017**, and are to be completed by

¹Defendant Fathi Yusuf filed a Motion to Stay Discovery in this matter on February 24, 2017 pending resolution of his Motion to Dismiss, which Plaintiff has opposed. Defendants Isam and Jamil Yousef will be joining in that motion as their response to the Amended Complaint. Defendants' primary position is that discovery should be stayed pending resolution of the Motion to Dismiss; they agree to entry of this order in the alternative.

January 15, 2018. Any and all discovery demands previously served on either party shall be re-served following court approval of this discovery scheduling plan.

- c. Each party will file expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on any issue in which they have the affirmative burden of proof by **March 15, 2018**. Responsive Expert Reports will be filed by **April 30, 2018**. Expert Depositions will be taken after all reports are received but before **May 31, 2018**.
- d. Limits of ten (10) depositions per side and twenty (20) interrogatories, twenty (20) requests to admit, and twenty (20) document requests per party will apply.
- g. There are no other matters of discovery pertinent at this time.

2. MEDIATION

Mediation shall be completed no later than **November 15, 2017**.

3. MOTIONS

All dispositive motions shall be filed no later than **June 30, 2018**.

4. TRIAL DATE

The earliest date by which this case should be reasonably expected to be ready for trial shall be **September, 2018**.

5. LENGTH OF TRIAL

The estimated length of time expected to try the case to verdict is three (3) days.

6. OTHER MATTERS

None anticipated at this time.

SO ORDERED this _____ day of _____, 2017.

JOMO MEADE
Judge of the Superior Court

ATTEST:

Estrella H. George
Clerk of the Court

By: _____
Deputy Clerk

Dist: Joel H. Holt, Esq.
Stefan B. Herpel, Esq.
Lisa M. Kömives, Esq.
James L. Hymes, III, Esq.