

7. It is hornbook law that when a party that engages in affirmative activity in federal court waives the right to seek a remand. *See In re Moore*, 209 U.S. 490 (1908) (if a non-removing party has taken action in federal court, *such as amending the complaint*, that party has essentially acquiesced in the federal court's jurisdiction) (emphasis added), *overruled in part on other grounds, Ex Parte Harding*, 219 U.S. 363 (1911); *see also Koebnen v. Herald Fire Ins. Co.*, 89 F.3d 525, 528 (8th Cir. 1996); *Johnson v. Odeco Oil & Gas Co.*, 864 F.2d 40, 42 (5th Cir.1989); *Riggs v. Plaid Pantries, Inc.*, 233 F. Supp. 2d 1260, 1271 (D. Or. 2001).

8. Moreover, by proceeding with the merits of the case, a plaintiff waives the entitlement to remand. 28 U.S.C. § 1447(c); *Williams v. Howard Univ.*, 984 F.Supp. 27, 29 (D.D.C.1997); *Koebnen v. Herald Fire Ins. Co.*, 89 F.3d 525, 528 (8th Cir.1996); *Fidelity & Deposit Co. of Md. v. Burden*, 53 F.2d 381, 381 (2d Cir.1931); *Medlin v. Andrew*, 113 F.R.D. 650, 652 (M.D.N.C.1987). *See also Lapoint v. Mid-Atl. Settlement Services, Inc.*, 256 F. Supp. 2d 1, 3 (D.D.C. 2003) (“courts have denied motions for remand when a plaintiff has litigated the substance of its claim *via a motion for summary judgment* or a trial.”).

9. Absent leave, Local Rule 7.1(a) only permits a motion, a response in opposition, and a reply.

10. In the present action, because the Plaintiffs’ filed their motion for summary judgment (Doc. # 34), motion to show cause (Doc. # 31) and notice of intent to serve a subpoena (Doc. # 20) *after* the Defendants’ filed their response in opposition to the Plaintiffs’ motion for remand (Doc. # 19). Accordingly, the additional factual and legal basis for the Defendants’ newfound opposition had not yet come to pass.

11. The Defendants request leave to file a sur-reply of no greater than five (5) pages in length to address this new issue.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court granting them leave to file a sur-reply brief of no more than 5 pages, and granting any further relief that the Court deems just and appropriate.

Respectfully submitted,

/s/Joseph A. DiRuzzo, III
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

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CERTIFICATE OF SERVICE

I hereby certify that, on Nov. 14, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following:

Joel Holt, Esq.
2132 Company St. Suite 2
Christiansted VI 00820

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

/s/Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III