

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

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.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER SUIT,
ACTION FOR DAMAGES AND CICO
RELIEF**

JURY TRIAL DEMANDED

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MAY 22, 2017, NOTICE
RE ENTRY OF SCHEDULING ORDER**

The Plaintiff filed a motion asking this Court to enter a scheduling order on March 9, 2017, when the Defendant Yusuf refused to participate in the required Rule 26(f) scheduling conference since it had filed a Rule 12 motion to dismiss. See **Exhibit 1**. A proposed order was submitted with that motion, which remains pending.

After the V.I. Supreme Court adopted new civil rules, which expressly stated that the filing of a Rule 12 motion did not stay discovery, counsel sent an email to defense counsel on April 11, 2017, pointing out this new rule and attaching a revised proposed scheduling order. See **Exhibit 2**.

The Defendants then delayed this matter for over another month. During that time, counsel for the Plaintiff agreed to certain revisions if a proposed order could be

agree to, but no stipulation was ever reached. Finally, on May 22, counsel for the Plaintiff sent an email saying he would file his own order if an agreement was not promptly reached, with his proposed order attached. See **Exhibit 3**.

Realizing that they might not get the benefit of the Plaintiff's concessions made in an effort to reach an agreement, the Defendants filed a joint motion later the same day on May 22, 2017, seeking to get those concessions without giving in on their own position that discovery should be limited for months!

As the parties never reached an agreement, this Court needs to enter a scheduling order. The Plaintiff hereby submits the Order he believes is reasonable based upon the facts in this case, which are not complicated. It is the same order sent to defense counsel on April 11, 2017, except for a modification based upon the delay caused by the Defendants in responding to his April 11th request to agree to a scheduling order.

One final comment is in order. The proposed order submitted by the Defendants on May 22, 2017, proposes to delay written discovery until mid-July and fact depositions until November. However, as the Rule 26(f) conference has taken place, that discovery can begin now. Thus, there is no reason to enter an order stopping this discovery process that has already begun.

In summary, it is respectfully submitted that this Court should not delay the discovery in this case, which the Defendants have already frustrated for months by not agreeing to even hold a Rule 26(f) conference until April of 2017 despite the fact that this case was filed long ago.

In summary, it is respectfully requested that the proposed scheduling order submitted by the Plaintiff with this response be entered.

Dated: May 24, 2017

Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiffs
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page limitation set forth in Rule 6-1(e), and was served this 24 day of May, 2017, by mail and email on:

Gregory H. Hodges

Stefan Herpel

Lisa Komives

Counsel for Fathi Yusuf

Law House, 10000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00802

ghodges@dtflaw.com

sherpel@dtflaw.com,

lkomives@dtflaw.com

James Hymes VI Bar No. 264

Counsel for Isam and Jamil Yousef

P.O. Box 990

St. Thomas, Virgin Islands 00804-0990

jjm@hymeslawvicom

rauna@hymeslawvi.com

EXHIBIT 1

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

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.: 2016-SX-CV-650

DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES
AND CICO RELIEF

JURY TRIAL DEMANDED

PLAINTIFF'S MOTION TO ENTER A SCHEDULING ORDER

The Plaintiff sent defense counsel a proposed scheduling order on February 9, 2017. See **Exhibit 1**. There has been absolutely no response to that request. Instead, the Defendant has filed a Motion to Stay Discovery, totally ignoring this email and the attached proposed Order.

As four weeks have now passed without a response, it is respectfully requested that this Court enter a scheduling order, as other courts have done in similar circumstances. See, e.g. *Peroulis v. Kozak*, 2007 WL 9637059, at *3 (D. Nev. Nov. 15, 2007) ("The Court previously entered a scheduling order in this case after Defendant's refusal to participate in a Rule 26(f) conference.").

A proposed Scheduling Order is being filed with this motion.



Dated: March 9 2017




Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiffs
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Defendants
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2017, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

Greg Hodges
Stefan Herpel
Lisa Komives
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com



From: Joel Holt <holtvi@aol.com>

To: sherpel <sherpel@dtflaw.com>; lkomives <lkomives@dtflaw.com>

Cc: carl <carl@carlhartmann.com>; kim <kim@japinga.com>

Subject: Hamed v Yusuf

Date: Thu, Feb 9, 2017 6:09 pm

Attachments: hamed.wally.cico.2017 02 09 Proposed Scheduling Order.docx (36K)

Stefan/Lisa-Since you suggested that the parties should file a scheduling order, attached is a proposed order. I am available for a Rule 26 conference to discuss tomorrow or early next week-let me know what works as whether you have any suggested changes.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



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**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES AND
CICO RELIEF**

JURY TRIAL DEMANDED

SCHEDULING ORDER

Come now the parties and hereby submit the following proposed scheduling plan:

1. DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **March 15, 2017**.
- b. The parties will conduct fact discovery with written discovery to be completed by **July 30, 2017**, and depositions to be completed by **October 15, 2017**. Any and all discovery demands previously served on either party shall be reserved 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 **November 15, 2017**. Responsive Expert Reports will be filed by **December 15, 2017**. Expert Depositions will be taken after all reports are received but before **January 15, 2018**.
- d. The parties agree that the presumptive limits of ten (10) depositions per side and twenty five (25) interrogatories 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 **October 15, 2017**.

3. MOTIONS

All dispositive motions shall be filed no later **February 15, 2018**.

4. TRIAL DATE

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

Dated: February , 2017

Joel H. Holt, Esq. (Bar # 6)
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Dated: February , 2017

Stefan B. Herpel
Lisa Michelle Komives
Law House, 10000 Frederiksberg
Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

The Court hereby approves this Scheduling Order submitted by the parties:

**Honorable Judge of the
Superior Court of the Virgin Islands**

Attested By: ESTRELLA H. GEORGE

Acting Clerk of Court

Deputy Clerk

Dist: Joel Holt, Carl Hartmann, Gregory Hodges, Lisa Komives

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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**DERIVATIVE SHAREHOLDER
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JURY TRIAL DEMANDED

SCHEDULING ORDER

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

DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **March 15, 2017**.
- b. The parties will conduct fact discovery with written discovery to be completed by **July 30, 2017**, and depositions to be completed by **October 15, 2017**. Any and all discovery demands previously served on either party shall be reserved 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 **November 15, 2017**. Responsive Expert Reports will be filed by

December 15, 2017. Expert Depositions will be taken after all reports are received but before **January 15, 2018.**

- d. The parties agree that the presumptive limits of ten (10) depositions per side and twenty five (25) interrogatories 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 **October 15, 2017.**

3. MOTIONS

All dispositive motions shall be filed no later **February 15, 2018.**

4. TRIAL DATE

The earliest date by which this case should be reasonably be expected to be ready for trial shall be **March, 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 March, 2017

Honorable Robert A. Molly
Judge, Superior Court

Attested By: ESTRELLA H. GEORGE
Acting Clerk of Court

Deputy Clerk

Dist: Joel Holt, Carl Hartmann, Gregory Hodges, Lisa Komives

EXHIBIT 2

From: Joel Holt <holtvi@aol.com>

To: jim <jim@hymeslawvi.com>; rauna <rauna@hymeslawvi.com>

Cc: ghodges <ghodges@dtflaw.com>; lkomives <lkomives@dtflaw.com>; sherpel <sherpel@dtflaw.com>; carl <carl@carlhartmann.com>; kim <kim@japinga.com>; jwf <jwf@holtvi.com>

Subject: Sixteen Plus

Date: Tue, Apr 11, 2017 9:05 am

Attachments: hamed.wally.cico.2017 04 11 Scheduling Order.docx (35K)

Jim-I sent a proposed scheduling stip to Kye Walker before you substituted into this case, which we never finalized. I modified the dates (again) and have attached it—please let me know if it is acceptable.

Greg/Stefan, Lisa-Under the new civil rules, Rule 26(d)(4) does not allow any party to delay discovery just because a motion to dismiss is pending, stating:

- (4) *Effect on the Discovery Process of Motions Filed.*** The filing of any motion — including potentially dispositive motions such as a motion to dismiss or a motion for summary judgment — shall not stay discovery in the action unless the judge so orders.

Please reconsider your prior response refusing to enter into a scheduling order.

Once I hear back from you, I will consider any suggested changes. If any party refuses to agree to a scheduling order, I will ask for sanctions. Thanks.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709



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Case No.: 2016-SX-CV-650

**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES AND
CICO RELIEF**

JURY TRIAL DEMANDED

SCHEDULING ORDER

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

DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **April 30, 2017**.
- b. The parties will conduct fact discovery with written discovery to be completed by **September 30, 2017**, and depositions to be completed by **December 15, 2017**. 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 **February 15, 2018**. Responsive Expert Reports will be filed by

March 30, 2018. Expert Depositions will be taken after all reports are received but before **May 15, 2018.**

- d. The parties agree that the presumptive limits of ten (10) depositions per side and twenty five (25) interrogatories 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 **October 15, 2017.**

3. MOTIONS

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

4. TRIAL DATE

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

Counsel for Plaintiff

Dated: April __, 2017

Counsel for Defendant Yusuf

Dated: April __, 2017

Counsel for Yousef Defendants

Dated: April __, 2017

So Ordered this _____ day of March, 2017

Honorable Jomo Meade
Judge, Superior Court

Attested By: ESTRELLA H. GEORGE
Acting Clerk of Court

Deputy Clerk

Dist: Joel Holt, Carl Hartmann, Gregory Hodges, Lisa Komives, James Hymes

EXHIBIT 3

From: Joel Holt <holtvi@aol.com>

To: sherpel <sherpel@dtflaw.com>; jim <jim@hymeslawvi.com>

Cc: carl <carl@carlhartmann.com>; kim <kim@japinga.com>

Subject: Re: Proposed Scheduling Order

Date: Mon, May 22, 2017 7:29 am

Attachments: Sixteen Plus_Proposed Scheduling Order .docx (34K)

Stefan/Jim-While we tried, this will not work for the same reasons I mentioned before. Indeed, I have never seen a scheduling plan that delays discovery. Unless you want to talk again, I will notify the Court that we had a Rule 26 conference, but were unable to agree upon a scheduling order. I will ask the Court to enter the proposed order that I have attached, as there is no reason to agree to the longer order if we cannot resolve all other issues. Sorry we could not even agree on this item.

Joel H. Holt, Esq.
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8709

—Original Message—

From: Stefan B. Herpel <sherpel@dtflaw.com>

To: 'Joel Holt' <holtvi@aol.com>

Sent: Wed, May 17, 2017 12:43 pm

Subject: Proposed Scheduling Order

Joel,

My email to you of a few minutes ago attached the revised scheduling order, so far as I can tell, but gave it a name of another pleading in a completely unrelated matter. I corrected that glitch, and am resending this with the same name.

Stefan



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**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES AND
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JURY TRIAL DEMANDED

SCHEDULING ORDER

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

DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **June 15, 2017**.
- b. The parties will conduct fact discovery with written discovery to be completed and depositions to be completed by **December 31, 2017**.
- 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 **February 1, 2018**. Responsive Expert Reports will be filed by **March 1, 2018**. Expert Depositions will be taken after all reports are received but before **April 1, 2018**.

d. The parties are permitted ten (10) depositions per side and twenty-five (25) interrogatories per party.

2. MEDIATION

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

3. MOTIONS

All dispositive motions shall be filed no later than **May 1, 2018**.

4. TRIAL DATE

This case shall be ready for trial shall by **July 1, 2018**.

So Ordered this _____ day of _____, 2017

**Honorable Jomo Meade
Judge, Superior Court**

**Attested By: ESTRELLA H. GEORGE
Acting Clerk of Court**

Deputy Clerk

Dist: Joel Holt, Carl Hartmann, Gregory Hodges, Stefan Herpel Lisa Komives, James Hymes

CURRENT PROPOSED ORDER

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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**DERIVATIVE SHAREHOLDER
SUIT, ACTION FOR DAMAGES AND
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JURY TRIAL DEMANDED

SCHEDULING ORDER

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

DISCOVERY PLAN

- a. The parties will submit their respective Rule 26 Self Disclosures by **June 15, 2017**.
- b. The parties will conduct fact discovery with written discovery to be completed and depositions to be completed by **December 31, 2017**.
- 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 **February 1, 2018**. Responsive Expert Reports will be filed by **March 1, 2018**. Expert Depositions will be taken after all reports are received but before **April 1, 2018**.

- d. The parties are permitted ten (10) depositions per side and twenty-five (25) interrogatories per party.

2. **MEDIATION**

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

3. **MOTIONS**

All dispositive motions shall be filed no later than **May 1, 2018**.

4. **TRIAL DATE**

This case shall be ready for trial shall by **July 1, 2018**.

So Ordered this _____ day of _____, 2017

Honorable Jomo Meade
Judge, Superior Court

Attested By: ESTRELLA H. GEORGE
Acting Clerk of Court

Deputy Clerk

Dist: Joel Holt, Carl Hartmann, Gregory Hodges, Stefan Herpel Lisa Komives, James Hymes