

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**

**REPLY TO MOTION OF DEFENDANTS ISAM YOUSUF AND JAMIL YOUSUF  
TO STAY DISCOVERY PENDING DISPOSITION OF THEIR MOTION TO DISMISS  
AMENDED COMPLAINT**

The two "Yousuf" Defendants (Isam and Jamil) have moved to stay discovery pending a decision on their Rule 12(b)(6) motion to dismiss, even though it has not yet been technically filed, as the proposed draft exceeds 20 pages. Thus, until the motion to file excess pages is granted, the motion to stay discovery is premature as well. It should also be noted that the co-defendant, Fathi Yusuf, has filed his own motion to stay discovery, which is virtually identical to the new one filed by the Yousef defendants, which is fully briefed and remains pending.

With the foregoing comments in mind, it is respectfully submitted that the Yousef motion should be denied in all respects. First, Rule 12(b)(6) does not provide for a stay

or the postponement of any of the obligations imposed under Rule 26, which are designed to get a case moving. In addressing an identical stay request after the filing of a Rule 12(b)(6) motion, the court in *Turner v. Nationstar Mortg.*, 2015 WL 12763510, at \*2 (N.D. Tex. Mar. 6, 2015) held:

The BDFTE Defendants' motion to abate is based only on their position that their pending motion to dismiss “has the potential to dispose of some or all of the claims asserted against them.” But, as this Court has noted before, “no federal rule, statute, or binding case law applies to automatically stay discovery pending a ruling on ... a 12(b)(6) motion to dismiss.” The BDFTE Defendants essentially “are seeking to invoke a rule that a pending motion to dismiss stays discovery— but no such rule applies in these circumstances,” and, “[i]n fact, such a stay is the exception rather than the rule.” “[H]ad the Federal Rules contemplated that a motion to dismiss under Fed.R.Civ.P. 12(b) (6) would stay discovery, the Rules would contain a provision to that effect. (Citations omitted).(Emphasis added)

In short, motions to stay discovery should rarely be granted simply because a Rule 12(B)(6) motion has been filed.<sup>1</sup>

Moreover, the Yousuf’s argument that a stay should be granted because their proposed Rule 12(b)(6) motion if meritorious is no different than what any proponent of such a motion would assert. Of course, the Plaintiff will file an opposition to that motion once it is permitted to be filed, which will and assert that the “Yousuf’s” Rule 12(b)(6) motion is frivolous for the same reasons the Rule 12(b)(6) motion filed by Fathi Yusuf is

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<sup>1</sup> The Virgin Islands Rules of Civil Procedure, adopted on April 1<sup>st</sup> state in V.I.R. Civ. P. Rule 26 (d)(4) as follows:

**(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.

Likewise, to further limit the scope of Rule 12(b)(6) motions, V.I.R. Civ. P. 8 reverted to only requiring notice pleadings, abolishing the more stringent *Iqbel/Twombly* standards.

also frivolous.<sup>2</sup> In short, a court cannot rely on such summary assertions by counsel in addressing a motion to stay.

Likewise, a re-hashing of the same issues to be raised in a Rule 12(b)(6) motion in a separate motion to stay is simply a further burden on this Court's otherwise overly crowded docket, as the merits of the motion will be before the Court in the pending Rule 12(b)(6) pleadings once they are permitted to be filed.

Finally, arguing that there is no prejudice to the opposing party is simply not true. Any delay in moving a case forward is prejudicial. In fact, this Court has adopted a plan to make sure cases move expeditiously. **Moreover, the "Yousuf" defendants have not attached any affidavits in support of their claim of prejudice to them if discovery proceeds.**

In summary, to seek a stay, one must have a specific reason other than the assertion that his or her motion is somehow more meritorious than other Rule 12(b)(6) motions. As the "Yousuf" defendants have failed to offer any reason specific to this case that would warrant a stay of discovery, it is respectfully submitted that the motion should be denied. A proposed order is attached.

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<sup>2</sup> Likewise the new arguments raised by the Yousef's as to personal jurisdiction and service are equally frivolous, as their first counsel filed a general notice of appearance (see **Exhibit 1**) that waives these defenses, as will be discussed in the opposition to be filed, as the Yousuf defendants failed to cite the relevant law on these two issues. See, e.g., *In re Najawicz*, 52 V.I. 311 (V.I. 2009) (general notice of appearance waives all objections to personal jurisdiction and service); 5 V.I.C. § 115 ("A voluntary appearance of the defendant shall be the equivalent to personal service of the summons on him."); 14 V.I.C. § 607(j) (persons engaging in CICO conduct have consented to this Court's jurisdiction).

**Dated:** June 21, 2017



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**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

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

### **CERTIFICATE OF SERVICE**

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e) and that on this June 21, 2017, I served a copy of the foregoing by hand/ email, as agreed by the parties, on:

**Email**

**Greg Hodges, Esq.**  
**Stefan Herpel, Esq.**  
**Lisa Komives, Esq.**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804-0756  
Tel: (340) 774-4422  
ghodges@dtflaw.com  
sherpel@dtflaw.com  
lkomives@dtflaw.com

**Email**

**Kevin A. Rames, Esq.**  
2111 Company Street, Suite 3  
Christiansted, VI 00820  
Tel: (340) 773-7284  
Fax (340) 773-7282  
[kevin.rames@rameslaw.com](mailto:kevin.rames@rameslaw.com)

**Hand Deliver**

**James L. Hymes, III, Esq.**  
V.I. Bar No. 264  
1131 King Street, Suite 310  
Christiansted, VI 00820  
Tel: (340) 776-3470  
Fax: (340) 775-3300  
[jim@hymeslawvi.com](mailto:jim@hymeslawvi.com)



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**NOTICE OF APPEARANCE**

**COMES NOW**, Kye Walker, Esq., of The Walker Legal Group and hereby enters her appearance as counsel for Defendants, Isam Yousuf and Jamil Yousef, in the above-captioned matter. Please direct copies of all future proceedings, pleadings, briefs, correspondence and other papers filed in this proceeding prior to and subsequent to this date to the undersigned counsel at 16AB Church Street, 2<sup>nd</sup> Floor, Christiansted, St. Croix, USVI 00820.

Respectfully Submitted,

THE WALKER LEGAL GROUP  
*Attorney for Defendants Isam Yousuf  
and Jamil Yousef,*

BY: 

Kye Walker, Esq.  
VI Bar No. 995  
2201 Church Street,

DATED: March 13, 2017

  
The Walker Legal Group  
16AB Church St.  
2<sup>nd</sup> Floor  
Christiansted, St. Croix  
USVI 00820  
Tel: 340-773-0801  
Fax: 888-231-0801  
kye@thewalkerlegalgroup.com



Suite #16AB, 2<sup>nd</sup> Floor  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-4611  
Telephone: (340) 773-0601  
Fax: (888) 231-0601  
[kve@thewalkerlegalgroup.com](mailto:kve@thewalkerlegalgroup.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on, a true and correct copy of **NOTICE OF APPEARANCE** was served upon the following parties or their counsel as noted below:

**VIA EMAIL AND HAND DELIVERY :**

**Joel H. Holt, Esq. ( Bar # 6)**  
**Counsel for Plaintiff**  
Law Offices of Joel H. Holt  
2132 Company Street  
Christiansted, St. Croix,  
U.S. Virgin Islands, 00820  
Tel: (340) 773-8709  
Fax: ( 340) 773-8677  
[holtvi@aol.com](mailto:holtvi@aol.com)

**Carl J. Hartmann, III, Esq.**  
**Co-Counsel for Plaintiff**  
5000 Estate Coakley Bay, L-6  
Christiansted, St. Croix,  
U.S. Virgin Islands, 00820  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)

**And via email and U.S. Mail to the following:**

**Stefan B. Herpel, Esq. (V.I. Bar No. 1019)**  
**Lisa Michelle Komives, Esq. ( V.I. Bar No. 1171)**  
**Counsels for Defendant, Fathi Yousuf**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. Virgin Islands, 00804  
Tel: (340)774-4422  
Telefax: (340)715-4400  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)  
[lkomives@dtflaw.com](mailto:lkomives@dtflaw.com)

BY: 

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**ORDER**

This matter is before the Court on the motion of the Yousef Defendants to stay discovery. Upon consideration of the matters before me, the motion is DENIED.

**Dated:** \_\_\_\_\_, 2017

\_\_\_\_\_  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk

CC: Joel Holt, Greg Hodges, Stefan Herpel, Kevin Rames, Jim Hymes