



case.” In addition, Defendants explained that “certain financial documents have been secured by the Department of Justice pursuant to the criminal action which are relevant to the issues in this case” and then explained that “[s]uch documents will be available following a sentencing hearing which is expected to take place in the near future.” See Emergency Motion at p. 4. These two issues, in addition to other reasons for extending discovery, further warranted the need for a single discovery schedule following the addition of the parties and receipt of the financial documents from the Department of Justice. At the time the Amended Scheduling Order was entered these issues remained outstanding. Now, the additional parties have been added but they have only recently been served and the Department of Justice documentation still has not been received. Hence, Defendants seek a further extension of the discovery schedule so as to implement a comprehensive schedule that accommodates all parties and all claims and allows for the retrieval of relevant documents which should be available in the near future. The Defendants note, however, that even with the understanding that additional time would still be required as a result of these contingencies, the parties have undertaken to diligently pursue discovery by exchanging written discovery and scheduling depositions.

**A. Newly Added Parties Have Just been Served and Answers Are not Yet Due**

On December 23, 2014, Defendants filed their Answer and Counterclaim against Mohammad Hamed (“Hamed”) and five (5) additional parties, Waleed Hamed, Waheed Hamed, Mufeed Hamed, Hisham Hamed (collectively the “Hamed Family Members”) and Plessen Enterprises (“Plessen”) (the “Hamed Family Members” and “Plessen” are referred to collectively as the “Newly Added Parties”). Within the time allowed for amendment as a matter of right, on January 13, 2014, Defendants filed their First Amended Counterclaim and thereafter undertook to serve the Newly Added Parties. The Newly Added Parties were served recently and their

answers are coming due. Specifically, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed were served on February 7, 2014. Plessen was served on February 11, 2014. One of the Newly Added Parties, Waheed Hamed, filed an answer and motion to dismiss on February 18, 2014.

As a result, neither the Defendants nor the Newly Added Parties have had an opportunity to engage in any discovery. Further, as most of the Newly Added Parties have not yet been required to file their answers, it is unknown what defenses they will raise and/or whether they will raise counterclaims or cross-claims.

**B. Additional Information from Department of Justice is Still Unavailable**

As explained previously in Defendants' Emergency Motion, financial documents have been secured by the Department of Justice pursuant to the criminal action, which are directly relevant to the issues in this case. Those voluminous documents will be available following a sentencing hearing which is expected to take place in the near future. Although United has sought to expedite the sentencing hearing, see Renewed Joint Motion For A Telephonic Status Conference attached as **Exhibit A**, to date, no sentencing hearing has been set by the District Court. Accordingly, at this time, voluminous, highly relevant documents remain unavailable.

**II. Argument**

A discovery schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).<sup>1</sup> Defendants submit that good cause is shown for a further modification of the Amended Scheduling Order which will benefit all of the parties, accommodate the Newly Added Parties, allow for the extensive discovery that is needed and

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<sup>1</sup> Pursuant to Super. Ct. R. 38: "Pre-trial procedure, as provided by Rule 16 of the Federal Rules of Civil Procedure, shall not be mandatory in the superior court, but may be employed in the discretion of the . . . trial judge . . . ."

provide a more orderly process for the resolution of this litigation which involves multiple parties and numerous claims.

**A. The Current Deadlines Do Not Account for the Extensive Additional Discovery Needed or the Newly Added Parties.**

While much has been produced<sup>2</sup>, much remains to be completed. Tax records including the prior and newly filed returns, banking records, business records, corporate filings, property records and other documents dating back to 1986, which tend either to substantiate or disprove the existence of an oral partnership as well as the terms thereof, must be produced and reviewed. Certain records secured by the Department of Justice pursuant to the criminal action relating to the tax issues will be available following a sentencing hearing which has not yet occurred but which is expected to occur soon. While this was the case when the Emergency Motion was filed, additional efforts to hasten the sentencing hearing have been taken including the filing of several unopposed motions in the criminal action, namely: a Joint Motion To Request Telephonic Status Conference filed on December 16, 2013 and a Renewed Joint Motion For A Telephonic Status Conference filed on February 3, 2014. Until such sentencing takes place, voluminous, highly relevant records are not available to the parties in this case. Additional time will be needed to secure those documents and absorb them. Also, it is anticipated that records from third-party banks, many of which are not located within the United States, will be necessary to properly trace funds and account for the transactions between the parties. Moreover, valuations as to the assets of the alleged "partnership" must be secured, tested and cross-examined. Further, multiple witnesses must be deposed as to the various claims. A number of members of both the Hamed and Yusuf families possess substantive information as to the facts at issue in this case. They each must be deposed. The parties have undertaken to schedule their depositions inside the

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<sup>2</sup> Hundreds of thousands of pages of documents have been produced by both sides and additional written discovery was propounded by both the Plaintiff and Defendants following the last amendment to the Scheduling Order.

current discovery period during the week of March 10<sup>th</sup>. However, without the Department of Justice documents, many of the financial records which will be necessary to thoroughly examine the parties and witnesses are not available. In addition, such information is essential to the expert witnesses and accounting and financial professionals, who will need the information for their assessments and then will need to be deposed as well.

The additional time is needed for all parties to the case, Plaintiff, Defendants, and the Newly Added Parties. Hence, an extension of the discovery period equally benefits all of the parties. As the Newly Added Parties would not be subject to the current discovery deadlines (nor should the Defendants be inhibited in their ability to pursue discovery from the Newly Added Parties) additional discovery must be allowed as to the First Amended Counterclaim and the Newly Added Parties. If left in its current posture, the case will result in multiple discovery periods for the various parties, commencing and ending at different periods and resulting in duplication of work and resources.

These reasons, many of which were sufficient to support the extension of the discovery period previously, remain open and are sufficient to constitute good cause for a further extension of the current discovery period. Hence, a single discovery period to commence and end at a date certain would insure an orderly and expeditious resolution of this matter.

**B. Defendants/Counterclaimants Have Conferred with Counsel for Hamed**

On February 18, 2014, counsel for the Defendants conferred with counsel for Hamed regarding the proposed extension sought in this motion. While the parties worked to reach an agreement regarding an appropriate extension, they ultimately were unable to agree upon the extended deadlines. The undersigned hereby certifies that counsel for the parties met and

conferred in an effort to agree upon a stipulated modification to the Amended Scheduling Order, but despite their good faith efforts to reach an agreement, they were unable to do so.

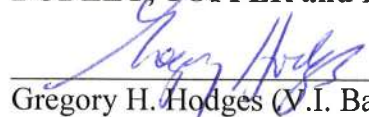
**III. Conclusion**

The interests of judicial economy are best served by having one comprehensive discovery period for the litigation. With the current factual discovery deadline ending on March 15, 2014, a speedy resolution is needed. Following the Court's earlier rulings as to the discovery deadline, the parties have diligently pursued discovery in this case. The additional claims made against the Newly Added Parties provide further grounds for extending the discovery deadline. Even as to the claims which currently exist, much discovery remains to be completed as additional information, which the parties know exists and is directly relevant, eludes review as it is currently with the Department of Justice. The extension is not sought for purposes of delay but rather to preserve the orderly flow of the litigation. Such an extension benefits *all* parties and does not operate to unduly prejudice one side. However, the looming deadlines now require the Court's attention. Hence, all of these reasons demonstrate good cause to extend the discovery period. A proposed Second Amended Scheduling Order setting forth proposed, revised deadlines is submitted for the Court's consideration.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: February 19, 2014

By:

  
\_\_\_\_\_  
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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of February, 2014, I caused the foregoing Motion To Extend Scheduling Order Deadlines to be served upon the following via e-mail:

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

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	CASE # 1:05-cr-15
	:	
vs.	:	
	:	
UNITED CORPORATION, et al.	:	
	:	
Defendants.	:	
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**RENEWED<sup>1</sup> JOINT MOTION FOR A TELEPHONIC STATUS CONFERENCE**

COMES NOW Plaintiff, THE UNITED STATES OF AMERICA, and the Defendant, UNITED CORPORATION, by and through their respective undersigned attorneys, and hereby move to respectfully request the Court schedule a telephonic status conference to determine which, if any, issues must be resolved prior to setting the sentencing hearing for United Corporation's guilty plea.

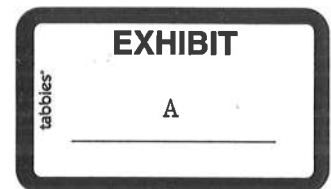
As grounds in support THE UNITED STATES OF AMERICA and UNITED CORPORATION d/b/a Plaza Extra state the following.

On November 13, 2013, the Government and United Corp. moved the Court to schedule a sentencing hearing. Doc. # 1385. On November 20, 2013, the Hamed Defendants responded in opposition stating that "the payment of taxes – remains unresolved." Doc. # 1386 at p. 1.

On December 12, 2013, government counsel received a signed copy of a letter from counsel for Waheed Hamed. This letter, dated December 10, 2013 which was addressed to the Virgin Islands Bureau of Internal Revenue (VIBIR), stated that an enclosed payment of \$3,582 paid in full the outstanding liabilities due on tax returns filed on November 15, 2013 for the years 2002 through

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<sup>1</sup> This motion is similar to the December 16<sup>th</sup> motion (Doc. # 1389).





2012. Government counsel has verified this information with the VIBIR. A similar letter was not received for Waleed Hamed. Further inquiry revealed that tax returns were filed by Waleed Hamed for the years 2002 through 2012 but the amounts reflected on the income tax returns were not paid in full.

Counsel for the Government is available during February with the exception of Tuesday February 11<sup>th</sup> and Wednesday February 19<sup>th</sup>.

Counsel for United Corp. is available during this month with the exception of February 10<sup>th</sup>, 12<sup>th</sup>, and the week of the 24<sup>th</sup>.

**WHEREFORE**, based on the foregoing, the Court should grant this motion.

Respectfully Submitted,

Dated: Feb. 3, 2014

/s/ Joseph A. DiRuzzo, III

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/s/ Lori A. Hendrickson

Lori A. Hendrickson  
Trial Attorney  
United States Department of Justice, Tax Division

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed on ECF on Feb. 3, 2013 and a NEF will be delivery upon the following:

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

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

**SECOND AMENDED SCHEDULING ORDER**

Pursuant to the Order Extending Scheduling Deadlines, entered simultaneously herewith, the discovery schedule and case deadlines are amended as follows:

**1. FACTUAL DISCOVERY**

All factual discovery, including written discovery and fact witnesses depositions, shall be completed by **June 15, 2014**.

**2. PLAINTIFF'S EXPERT REPORTS**

Plaintiff's expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2), if any, shall be submitted by **July 15, 2014**.

**3. MEDIATION**

Mediation shall be completed no later than **April 30, 2014**

**4. DEFENDANTS' EXPERT REPORTS**

Defendants' expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2), if any, shall be submitted by **August 31, 2014**.

**5. STATUS CONFERENCE**

A status conference will be held on **Friday, June 20, 2014 at 9:00 a.m.**, in Courtroom No. 211.

**6. EXPERT DEPOSITIONS**

Depositions of experts shall be completed by **October 15, 2014**.

**7. MOTIONS**

All dispositive motions shall be filed by **November 15, 2014**.

**8. FINAL PRETRIAL CONFERENCE**

A Final Pretrial Conference will be held on \_\_\_\_\_, in Courtroom No. 211.

**9. TRIAL DATE**

A trial date will be set during the **January, February, or March 2015 trial periods**.

All conflicting dates set forth in the Amended Scheduling Order dated December 5, 2013 are VACATED.

DONE and so Ordered this \_\_\_\_\_, of February, 2014.

\_\_\_\_\_  
Douglas A. Brady  
Judge of the Superior Court

ATTEST:

Estrella George  
Acting Clerk of the Court

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

cc: Joel H. Holt, Esq.  
Nizar A. DeWood, Esq.  
Gregory H. Hodges, Esq.  
Carl J. Hartman III, Esq.