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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SULEIMAN ABDULLAH SALIM,
MOHAMED AHMED BEN SOUD,
OBAIDULLAH (AS PERSONAL
REPRESENTATIVE OF GUL RAHMAN),

Plaintiffs,

v.

JAMES ELMER MITCHELL and JOHN
"BRUCE" JESSEN

Defendants.

No. 2:15-cv-286-JLQ

**DECLARATION OF
LAWRENCE S.
LUSTBERG IN SUPPORT
OF PLAINTIFFS'
MOTION TO EXTEND
CERTAIN DEADLINES
OR IN THE
ALTERNATIVE TO
COMPEL**

Without Oral Argument
March 1, 2017

DECLARATION OF LAWRENCE S. LUSTBERG, ESQ.
No. 2:15-cv-286-JLQ

AMERICAN CIVIL LIBERTIES
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901 Fifth Ave, Suite 630
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1 I, Lawrence S. Lustberg, a member of the Bar of the States of New Jersey
2 and New York and admitted *pro hac vice* to the Bar of this Court, declare under
3 penalty of perjury as follows:
4

5 1. I am a Director at the law firm of Gibbons P.C., co-counsel for
6 Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and
7 Obaidullah (as personal representative of Gul Rahman) (collectively,
8 “Plaintiffs”) in the above-captioned action. I submit this declaration in support
9 of Plaintiffs’ Motion to Extend Certain Deadlines or in the Alternative to
10 Compel.
11
12

13 2. On September 6, 2016, counsel for Defendants sent an email
14 serving subpoenas on John Rizzo and Jose Rodriguez for depositions. A true
15 and correct copy of the aforementioned email correspondence is attached hereto
16 as **Exhibit 1**.
17

18 3. On September 23, 2016, the government moved for a protective
19 order requiring that those depositions be conducted by written questions rather
20 than orally. *See* ECF No. 73.
21

22 4. On October 4, 2016, the court denied the government’s motion for
23 a protective order and ordered the parties to meet and confer concerning
24 deposition scheduling. *See* ECF No. 80.
25
26

1 5. On December 12, 2016, Defendants listed Mr. Rodriguez and Mr.
2 Rizzo as witnesses for trial. *See* ECF No. 123.
3

4 6. On December 21, 2016, without conferring with Plaintiffs,
5 Defendants sent an email serving subpoenas for the depositions of John Rizzo
6 for January 23, 2017 and Jose Rodriguez for January 24, 2017. A true and
7 correct copy of the aforementioned email correspondence is attached hereto as
8
9 **Exhibit 2.**

10 7. Plaintiffs were unavailable on those dates, and responded that day
11 (December 21, 2016) that “Keeping in mind the impending discovery cut-off
12 deadline, we are available earlier in the month, and we propose that Mr.
13 Rodriguez’s deposition be held on January 13, and Mr. Rizzo’s deposition be
14 held on January 17.” A true and correct copy of the aforementioned email
15 correspondence is attached hereto as **Exhibit 3.**
16
17

18 8. Plaintiffs received no response, and on December 28, 2016 wrote
19 again, additionally proposing that the depositions be split so that Defendants
20 received 4.5 hours to ask questions, and Plaintiffs have 2.5 hours. A true and
21 correct copy of the aforementioned email correspondence is attached hereto as
22
23 **Exhibit 4.**
24

1 9. On December 31, 2016, Defendants sent an email advising that Mr.
2 Rizzo and Mr. Rodriguez were unavailable on Plaintiffs' proposed dates. A true
3 and correct copy of the aforementioned email correspondence is attached hereto
4 as **Exhibit 5**.

6 10. On January 12, 2017, Defendants sent an email proposing that the
7 deposition of Mr. Rodriguez be held on January 26, 2017 and that Mr. Rizzo's
8 deposition be held on January 27, 2017 in Washington DC. A true and correct
9 copy of the aforementioned email correspondence is attached hereto as **Exhibit**
10 **6**.

13 11. On January 18, 2017, Plaintiffs sent an email agreeing to these
14 dates. A true and correct copy of the aforementioned email correspondence is
15 attached hereto as **Exhibit 7**.

17 12. On January 16, 2017, and then again on January 20, 2017, during
18 the depositions of Defendants Mitchell and Jessen, Plaintiffs again attempted to
19 confirm with Defendants that Plaintiffs would receive 2.5 hours of deposition
20 time during the Rodriguez and Rizzo depositions. Defendants gave Plaintiffs no
21 indication that there was any possibility that they would cancel the depositions.

24 13. On January 24, 2017, two days before Mr. Rodriguez's scheduled
25 deposition and three days before Mr. Rizzo's scheduled deposition, Defendants

1 informed Plaintiffs that they had decided to cancel the scheduled depositions in
2 exchange for declarations provided by Mr. Rodriguez and Mr. Rizzo. A true
3 and correct copy of the aforementioned correspondence is attached hereto as
4 **Exhibit 8**.

5
6 14. On January 25, 2017, Defendants' counsel emailed copies of the
7 declarations without the attached exhibits to Plaintiffs' counsel. Attached hereto
8 as **Exhibit 9** is a true and correct copy of an email from Brian Paszaman, dated
9 January 25, 2017.
10

11
12 15. On January 26, 2017, Defendants provided the complete
13 declarations executed by Mr. Rodriguez and Mr. Rizzo, and informed Plaintiffs'
14 counsel that these Declarations would be used in support of a forthcoming
15 motion for summary judgment.
16

17 16. On that same date, Plaintiffs' counsel sent an email serving
18 subpoenas on Mr. Rodriguez and Mr. Rizzo and stated their willingness to
19 conduct the depositions at any location and on any date before February 17,
20 2017. A true and correct copy of the aforementioned email correspondence is
21 attached hereto as **Exhibit 10**.
22

23
24 17. On January 26, 2017, counsel for Mr. Rodriguez and Mr. Rizzo
25 sent an email stating that the earliest dates available were March 7 and 9. A true
26

1 and correct copy of the aforementioned email correspondence is attached hereto
2 as **Exhibit 11**.

3
4 18. On January 30, 2017, counsel for the Defendants informed
5 Plaintiffs' counsel that Defendants' counsel are attached for a jury trial during
6 the first two weeks of March, and that it was therefore possible that they would
7 not be available on March 7 and 9. In order to provide for this eventuality,
8 Plaintiffs' counsel agreed to seek an extension of discovery for this purpose
9 through the end of March.
10

11
12 19. In our conversation of January 30, 2017, Defendants' counsel also
13 indicated that they are working in good faith to attend depositions in South
14 Africa, and to have their medical experts attend there as well, in order to conduct
15 the agreed upon medical examinations. As of January 30, 2017, they had
16 secured the commitment of one of their three experts to do so, and were in
17 consultation with the other two. They proposed extending the discovery
18 deadline for this purpose as well through the end of March to maximize the
19 chances that they would be able to secure the attendance of all three experts, as
20 well as counsel. Depending upon the outcome of their efforts in that regard,
21 counsel for the Defendants reserved their right to oppose proceeding in South
22 Africa. Defendants' counsel has also requested that Plaintiff Salim provide
23
24
25
26

1 alternate locations within 3,000 miles of Washington, D.C. where he can be
2 deposed in accordance with the Court's Order. Plaintiffs' counsel has indicated
3 that there are no other alternatives that would not present the potential for the
4 same problems as occurred with regard to Dominica, because of the lack of
5 direct flights available to Plaintiff Salim.
6
7

8 Dated: January 31, 2017

9 s/ Lawrence S. Lustberg
10 Lawrence S. Lustberg, admitted *pro hac vice*
11 llustberg@gibbonslaw.com
12 GIBBONS P.C.
13 One Gateway Center
14 Newark, NJ 07102

15 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2017, I caused to be electronically filed and served the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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