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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

**PLAINTIFFS'  
MOTION TO EXTEND  
CERTAIN DEADLINES  
OR IN THE  
ALTERNATIVE TO  
COMPEL**

Without Oral Argument  
March 1, 2017

PLAINTIFFS' MOTION TO EXTEND  
OR COMPEL  
No. 2:15-cv-286-JLQ

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1 Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and  
2 Obaidullah (as personal representative of Gul Rahman) (collectively,  
3 “Plaintiffs”) respectfully request that the Court order an extension of the  
4 February 17, 2017 fact discovery deadline limited to two discrete matters, which  
5 have arisen recently and unforeseeably. Specifically, Plaintiffs seek an  
6 extension of the fact discovery deadline solely in order to (1) permit the  
7 depositions of Jose A. Rodriguez and John A. Rizzo, which are currently  
8 scheduled to occur on March 7 and 9, respectively, or in the alternative, request  
9 that the Court compel the depositions of Mr. Rodriguez and Mr. Rizzo prior to  
10 February 17, 2017; and (2) to provide Defendants with additional time to depose  
11 and examine Plaintiff Salim, as he was unable to enter Dominica for his  
12 deposition and independent medical examination. As detailed below and in the  
13 declarations submitted in support of this motion, to which Defendants have  
14 consented, good cause exists to extend the discovery end date solely for  
15 purposes of these matters through the end of March, 2017.

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21 In support of the application to extend the fact discovery deadline to  
22 permit the depositions of Mr. Rodriguez and Mr. Rizzo to occur on March 7 and  
23 9, respectively, or in the alternative to compel these depositions prior to  
24 February 17, 2017, Plaintiffs aver as follows:  
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1           1.     The deadline for fact discovery in this matter is February 17, 2017.  
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3     *See* ECF No. 59.

4           2.     Defendants first subpoenaed the depositions of Mr. Rodriguez and  
5 Mr. Rizzo, who are included on Defendants’ trial witness list (ECF No. 123), on  
6 September 6, 2016. *See* Declaration of Lawrence S. Lustberg (“Lustberg  
7 Decl.”) at ¶ 2. After denying the Government’s motion for a protective order  
8 requiring that these depositions be conducted by written questions, the Court  
9 ordered the parties to meet and confer concerning deposition scheduling. *See*  
10 ECF No. 80.  
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12           3.     On December 21, 2016, without conferring with Plaintiffs,  
13 Defendants sent an email serving subpoenas for the depositions of John Rizzo  
14 for January 23, 2017 and Jose Rodriguez for January 24, 2017. *See* Lustberg  
15 Decl. at ¶ 6.  
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17           4.     Plaintiffs were unavailable on those dates, and responded that day  
18 that “Keeping in mind the impending discovery cut-off deadline, we are  
19 available earlier in the month, and we propose that Mr. Rodriguez’s deposition  
20 be held on January 13, and Mr. Rizzo’s deposition be held on January 17.” *See*  
21 *Id.* at ¶ 7.  
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1           5.     The parties ultimately agreed that the deposition of Mr. Rodriguez  
2 would be held on January 26, 2017, and Mr. Rizzo's deposition would be held  
3 on January 27, 2017 in Washington, DC. *See Id.* at ¶¶ 10-11.

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5           6.     During the course of these discussions regarding scheduling,  
6 Plaintiffs wrote to Defendants on December 28, 2016 and requested that the  
7 depositions be divided such that 4.5 hours would be allocated to Defendants and  
8 2.5 hours would be allocated to Plaintiffs. *See Id.* at ¶ 8. On January 16, 2017,  
9 and then again on January 20, 2017, during the depositions of Defendants  
10 Mitchell and Jessen, Plaintiffs attempted to confirm with Defendants that  
11 Plaintiffs would receive 2.5 hours of deposition time during the Rodriguez and  
12 Rizzo depositions. Defendants gave Plaintiffs no indication that there was any  
13 possibility that they would cancel the depositions. *Id.* at ¶ 12.

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17           7.     Yet, on January 24, 2017, two days before Mr. Rodriguez's  
18 scheduled deposition and three days before Mr. Rizzo's scheduled deposition,  
19 Defendants informed Plaintiffs that they had decided to withdraw their  
20 subpoenas and cancel the scheduled depositions in exchange for declarations  
21 provided by Mr. Rodriguez and Mr. Rizzo. *Id.* at ¶ 13. Defendants' counsel  
22 emailed copies of the declarations to Plaintiffs' counsel, without the attached  
23 exhibits, on January 25, 2017. *Id.* at ¶ 14.

1           8. On January 26, 2017, Defendants provided the complete  
2 declarations of Mr. Rodriguez and Mr. Rizzo, and informed Plaintiffs' counsel  
3 that these Declarations would be used in support of a forthcoming motion for  
4 summary judgment. *Id.* at ¶ 15. In response, Plaintiffs' counsel sent an email  
5 serving subpoenas on Mr. Rodriguez and Mr. Rizzo and stated their willingness  
6 to conduct the depositions at any location and on any date before February 17,  
7 2017. *Id.* at ¶ 16.

10           9. On January 26, 2017, in a series of emails, counsel for Mr.  
11 Rodriguez and Mr. Rizzo stated that the earliest dates available were March 7  
12 and 9. *Id.* at ¶ 17.

14           10. On January 30, 2017, counsel for the Defendants informed  
15 Plaintiffs' counsel that Defendants' counsel are attached for a jury trial during  
16 the first two weeks of March, and that it was therefore possible that they would  
17 not be available on March 7 and 9. In order to provide for this eventuality, and  
18 consistent with ¶ 9 (p. 9) below, Plaintiffs' counsel agreed to seek an extension  
19 of discovery for this purpose through the end of March. Lustberg Decl. ¶ 18.

22           11. Good cause exists for that extension in order to allow the  
23 depositions of Mr. Rodriguez and Mr. Rizzo on March 7 and 9, respectively, or  
24 if necessary, later in the month of March. Should the Court deny this motion,  
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1 Plaintiff respectfully requests that it compel their appearance prior to the  
2 February 17, 2017 discovery cutoff, notwithstanding that counsel for Messrs.  
3 Rodriguez and Rizzo state that they are not available until after those dates. As  
4 detailed above, Defendants had indicated their intention to subpoena Messrs.  
5 Rodriguez and Rizzo since September 6, 2016, and included both individuals on  
6 their trial witness list. Yet, after ignoring multiple requests from Plaintiffs to  
7 come to an agreement with regard to allocating time for questioning, Defendants  
8 unilaterally withdrew their subpoenas mere days before the scheduled  
9 depositions, and have now indicated their intention to rely on the  
10 aforementioned declarations in support of a forthcoming motion for summary  
11 judgment. Absent an opportunity to question Messrs. Rodriguez and Rizzo,  
12 Plaintiffs would, then, be severely prejudiced, as they would be deprived of the  
13 ability to rebut factual assertions made in these declarations—both at summary  
14 judgment and, more critically, at trial.  
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1 In support of the application to extend the fact discovery deadline to  
2 provide Defendants with additional time to depose and examine Plaintiff Salim,  
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4 Plaintiffs aver as follows:

5 1. After diligent efforts to obtain visas to enter the United States for  
6 their depositions, both Plaintiffs Salim and Ben Soud were denied visas. *See*  
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8 Declaration of Hina Shamsi (“Shamsi Decl.”) at ¶ 4.

9 2. On December 20, 2016, this Court held that “[i]f the Defendants  
10 elect to take in-person depositions of the Plaintiffs, the parties shall confer  
11 regarding whether there is [a] mutually agreeable alternative location for the  
12 depositions and exams outside of the United States in a locale where Salim and  
13 Soud may perhaps have better success obtaining entry.” *See* ECF No. 124 at 7.

14 3. Thereafter, the parties agreed that Plaintiffs Salim and Ben Soud’s  
15 depositions and independent medical examinations would take place in  
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Dominica starting on January 29 and continuing during the week of January 30,  
2017. *See* Shamsi Decl. at ¶ 5.

4. Plaintiff Ben Soud successfully traveled to Dominica and  
Defendants’ experts have been conducting medical examinations; his deposition  
is scheduled to occur today and tomorrow.

1           5. Plaintiff Salim left Zanzibar on January 22, 2017 but was denied  
2 boarding multiple times along his journey to Dominica through no fault of his  
3 own. *See* Shamsi Decl. at ¶ 5.

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5           6. Plaintiff Salim's original route was Zanzibar → Dar es Salaam →  
6 Abu Dhabi → Paris → St. Marten → Dominica. On reaching Dar es Salaam, an  
7 immigration official incorrectly informed Plaintiff Salim that he needed transit  
8 visas for Paris and St. Marten and denied him boarding on that basis. After  
9 spending the night in Dar es Salaam and at the airport, Plaintiff Salim was  
10 forced to return to Zanzibar the next day. *See* Shamsi Decl. at ¶ 5.

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13           7. On January 24, 2017, Plaintiff Salim caught the next flight he could  
14 to Abu Dhabi through Oman. In Abu Dhabi he was stopped, questioned harshly  
15 by airline officials about the multiple transit points on his route, held at the  
16 transfer point pending an hours-long airline investigation, and forced to miss his  
17 connecting flight. This stop was also erroneous, as the airline finally  
18 acknowledged, but Plaintiff Salim could no longer guarantee that he could board  
19 and continue on the next legs of his itinerary. *See* Shamsi Decl. at ¶ 10.

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22           8. The parties have conferred and are diligently working to reschedule  
23 Plaintiff Salim's deposition and examinations. Specifically, Plaintiffs have  
24 informed Defendants that Plaintiff Salim has recently successfully traveled to  
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1 South Africa, and the parties are discussing the viability of Johannesburg or  
2 Cape Town as alternatives. *See* Shamsi Decl. at ¶¶ 13, 14. Although further in  
3 terms of miles than Dominica, these alternatives can be easier to reach, through  
4 direct flights from the United States. Additionally, Plaintiffs have renewed their  
5 request that Defense counsel conduct Plaintiff Salim’s deposition via  
6 videoconference, as the Court recognized that that “may be the most reasonable  
7 alternative.” *See* ECF No. 124 at 5, 6. Defendants’ counsel have indicated that  
8 they are working in good faith to attend depositions in South Africa, and to have  
9 their medical experts attend there as well, in order to conduct the agreed upon  
10 medical examinations. As of January 30, 2017, they had secured the  
11 commitment of one of their three experts to do so, and were in consultation with  
12 the other two. They proposed extending the discovery deadline for this purpose  
13 as well through the end of March to maximize the chances that they would be  
14 able to secure the attendance of all three experts, as well as counsel. Depending  
15 upon the outcome of their efforts in that regard, counsel for the Defendants  
16 reserved their right to oppose proceeding in South Africa. Defendants’ counsel  
17 has also requested that Plaintiff Salim provide alternate locations within 3,000  
18 miles of Washington, D.C. where he can be deposed in accordance with the  
19 Court’s Order. Plaintiffs’ counsel has indicated that there are no other  
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1 alternatives that would not present the potential for the same problems as  
2 occurred with regard to Dominica, because of the lack of direct flights available  
3 to Plaintiff Salim. Lustberg Decl. ¶ 19.

4  
5 9. Good cause exists for an extension of the fact discovery deadline  
6 through the end of March in order to provide Defendants with additional time to  
7 depose and examine Plaintiff Salim. As detailed above, Plaintiff Salim made  
8 extraordinary efforts to attend his deposition and examination in Dominica,  
9 however, factors outside of his control prevented his entry into that country.  
10 The parties will continue to work to reschedule Plaintiff Salim's deposition and  
11 examination at an alternate location.  
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14 WHEREFORE, Plaintiffs respectfully request that the Court enter the  
15 Order submitted with this Motion.  
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25 DATED: January 31, 2017  
26 PLAINTIFFS' MOTION TO EXTEND  
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**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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