

**BETTS, PATTERSON & MINES P.S.**

Christopher W. Tompkins (WSBA #11686)

[CTompkins@bpmlaw.com](mailto:CTompkins@bpmlaw.com)

701 Pike Street, Suite 1400

Seattle, WA 98101-3927

**BLANK ROME LLP**

Henry F. Schuelke III (admitted *pro hac vice*)

[HSchuelke@blankrome.com](mailto:HSchuelke@blankrome.com)

600 New Hampshire Ave NW

Washington, DC 20037

James T. Smith (admitted *pro hac vice*)

[Smith-jt@blankrome.com](mailto:Smith-jt@blankrome.com)

Brian S. Paszamant (admitted *pro hac vice*)

[Paszamant@blankrome.com](mailto:Paszamant@blankrome.com)

One Logan Square, 130 N. 18th Street

Philadelphia, PA 19103

Attorneys for Defendants Mitchell and Jessen

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE**

SULEIMAN ABDULLAH SALIM,  
et al.,

Plaintiffs,

vs.

JAMES E. MITCHELL and JOHN  
JESSEN,

Defendants.

NO. 2:15-cv-286-JLQ

**DEFENDANTS' RESPONSE TO  
MOTION TO EXTEND CERTAIN  
DEADLINES**

Without Oral Argument  
March 1, 2017

RESPONSE TO MOTION TO EXTEND  
CERTAIN DEADLINES  
NO. 2:15-cv-286-JLQ

Betts  
Patterson  
Mines  
701 Pike Street, Suite 1400  
Seattle, Washington 98101-3927  
(206) 292-9988

## I. INTRODUCTION

Defendants James Elmer Mitchell and John “Bruce” Jessen (“Defendants”) respond to Plaintiffs’ Motion to Extend Certain Deadlines or in the Alternative to Compel (the “Motion”; ECF 136). While Plaintiffs accurately advise the Court that Defendants do not oppose the relief sought by the Motion, i.e. to extend the fact discovery deadline to afford time to conduct the depositions of Plaintiff Suleiman Abdullah Salim (“Salim”), Jose Rodriguez (“Rodriguez”) and John Rizzo (“Rizzo”) as well as the agreed upon medical examinations of Salim, Defendants file this response to address certain aspects of the factual portrayal in the Motion and to address difficulties posed by the changes in Plaintiff Salim’s deposition and examination arrangements.

### A. Plaintiff Salim’s Deposition and Medical Examination

As the Court may recall from prior filings as well as discussion on January 19, 2017, following argument with respect to Defendants’ Motion to Dismiss, the parties had reached agreement that Plaintiffs Salim and Mohamed Ahmed Ben Soud would each be deposed and have their medical examinations conducted on the island of Dominica during the week of January 30. Declaration of Brian S. Paszamant (“Paszamant Decl.”) ¶ 3. This agreement was achieved following lengthy negotiations and imposed significant burdens on Defendants and their three medical experts – including requiring the experts to substantially revise their pre-existing schedules. *Id.* ¶ 4.

While Plaintiffs’ Motion details Plaintiff Salim’s apparent travails in attempting to travel to Dominica, and notes Plaintiffs’ continued willingness to

1 have Salim's deposition conducted via videoconference<sup>1</sup>, it largely, if not entirely,  
2 overlooks the burden Defendants will incur in proceeding in South Africa—a  
3 location that Plaintiffs previously suggested and Defendants declined, and which  
4 was previously discussed in filings with the Court. In any event, based upon  
5 counsel for Plaintiffs' representation that there are likely no other locations within  
6 3,000 miles of Washington D.C. where Plaintiff Salim can attend his deposition  
7 and examinations, *see* Motion at ¶ 8, Defendants have agreed to conduct Plaintiff  
8 Salim's: (1) medical examinations in South Africa on March 10-13; and (2)  
9 deposition in South Africa over a two-day period between March 13 and 15.  
10 Paszamant Decl. ¶ 5.

12 **B. The Depositions of Messrs. Rodriguez and Rizzo**

13 Plaintiffs suggest that Defendants acted inappropriately and were not  
14 responsive with respect to the scheduling of Messrs. Rodriguez and Rizzo's  
15 depositions as well as the time allocation to be employed during such depositions.  
16 Neither is the case.

17 Messrs. Rizzo's and Rodriguez's depositions were initially scheduled to  
18 occur on January 23 and 24, respectively, because Defendants were advised by Mr.  
19 Bennett that his clients were available on those dates and not before. *Id.* ¶ 6.  
20 When counsel for Plaintiffs advised Defendants of their unavailability on those  
21

22 \_\_\_\_\_  
23 <sup>1</sup> As Defendants' experts cannot conduct their examinations of Plaintiff Salim  
24 remotely, or by videoconference, and counsel will be required to travel in  
25 connection with the examinations, any potential benefits from videoconference  
26 depositions are largely, if not entirely, lost.

1 dates, counsel for Defendants commenced communications with Mr. Bennett  
 2 concerning alternate dates. *Id.* ¶¶ 7, 8. During those communications, Mr. Bennett  
 3 advised that he and/or his clients were unavailable for deposition until the week of  
 4 January 23, and proposed that such depositions be conducted on January 26 and  
 5 27. *Id.* ¶ 9. Counsel for Defendants provided these potential dates to counsel for  
 6 Plaintiffs and the depositions were scheduled. *Id.* ¶ 10. Thus, it was Messrs.  
 7 Bennett, Rodriguez and Rizzo's availability, not the availability of Defendants'  
 8 counsel, which necessitated the scheduling of these depositions during the week of  
 9 January 23.<sup>2</sup> As to time allocation within Messrs. Rodriguez and Rizzo's  
 10 previously-scheduled depositions, counsel for Defendants had numerous  
 11 discussions with counsel for Plaintiffs wherein Defendants agreed that counsel for  
 12 Plaintiffs would be afforded 2-2½ hours of each deposition for questioning. *Id.* ¶  
 13 11.  
 14

15 Additionally, the Motion incorrectly implies that Defendants delayed in  
 16 advising Plaintiffs that Messrs. Rodriguez and Rizzo's depositions would be  
 17

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18  
 19 <sup>2</sup> Plaintiffs' counsel are familiar with the challenges associated with scheduling  
 20 Messrs. Rodriguez and Rizzo's depositions, having been provided March 7 and 9  
 21 as the earliest potential dates. Moreover, to the extent that Plaintiffs complain that  
 22 Messrs. Rodriguez and Rizzo's depositions were initially noticed without their  
 23 input, noting depositions subject to the opposing party's availability is not  
 24 uncommon. In fact, Plaintiffs subpoenaed Messrs. Rodriguez and Rizzo for  
 25 deposition on February 6 and 9, respectively, without first consulting Defendants.  
 26 *Id.* ¶ 15.

1 cancelled. As explained in the January 24 letter from counsel for Defendants to  
2 Mr. Bennett withdrawing the subpoenas and cancelling the depositions, the  
3 depositions were canceled because Messrs. Rodriguez and Rizzo had provided  
4 declarations. *Id.* ¶¶ 12, 13, **Ex. A**. There was nothing to advise Plaintiffs until  
5 Defendants knew that declarations would be provided. Defendants fully intended  
6 to proceed with the depositions as scheduled had declarations not been provided.  
7 *Id.* ¶ 14. Notice of the withdrawal of the subpoenas and of the declarations was  
8 provided promptly upon receipt of the declarations. *Id.* ¶¶ 12, 13.  
9

10 **II. CONCLUSION**

11 Given the circumstances, Defendants agree that an extension until March 31,  
12 2017, to conduct the depositions of Messrs. Rodriguez and Rizzo and Plaintiff  
13 Salim, and the examinations of Plaintiff Salim, is required

14 DATED this 2nd day of February, 2017.

15  
16 **BLANK ROME LLP**

17 By s/ Brian S. Paszamant  
18 James T. Smith, admitted *pro hac vice*  
[smith-jt@blankrome.com](mailto:smith-jt@blankrome.com)  
19 Brian S. Paszamant, admitted *pro hac vice*  
[paszamant@blankrome.com](mailto:paszamant@blankrome.com)

20 Blank Rome LLP  
21 130 N 18th Street  
22 Philadelphia, PA 19103

1 Henry F. Schuelke III, admitted *pro hac vice*  
2 [hschuelke@blankrome.com](mailto:hschuelke@blankrome.com)

3 Blank Rome LLP  
4 600 New Hampshire Ave NW  
5 Washington, DC 20037

6 Christopher W. Tompkins, WSBA #11686  
7 [ctompkins@bpmlaw.com](mailto:ctompkins@bpmlaw.com)

8 Betts, Patterson & Mines, P.S.  
9 701 Pike St, Suite 1400  
10 Seattle, WA 98101

11 Attorneys for Defendants Mitchell and Jessen  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of February, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

<p>Emily Chiang  <a href="mailto:echiang@aclu-wa.org">echiang@aclu-wa.org</a>          ACLU of Washington Foundation          901 Fifth Ave, Suite 630          Seattle, WA 98164</p>	<p>Paul Hoffman  <a href="mailto:hoffpaul@aol.com">hoffpaul@aol.com</a>          Schonbrun Seplow Harris &amp; Hoffman, LLP          723 Ocean Front Walk, Suite 100          Venice, CA 90291</p>
<p>Andrew I. Warden  <a href="mailto:Andrew.Warden@usdoj.gov">Andrew.Warden@usdoj.gov</a>          Senior Trial Counsel          Timothy A. Johnson  <a href="mailto:Timothy.Johnson4@usdoj.gov">Timothy.Johnson4@usdoj.gov</a>          Trial Attorney          United States Department of Justice          Civil Division, Federal Programs Branch          20 Massachusetts Ave NW          Washington, DC 20530</p>	<p>Steven M. Watt, admitted <i>pro hac vice</i>  <a href="mailto:swatt@aclu.org">swatt@aclu.org</a>          Dror Ladin, admitted <i>pro hac vice</i>  <a href="mailto:dladin@aclu.org">dladin@aclu.org</a>          Hina Shamsi, admitted <i>pro hac vice</i>  <a href="mailto:hshamsi@aclu.org">hshamsi@aclu.org</a>          ACLU Foundation          125 Broad Street, 18th Floor          New York, NY 10007</p>
<p>Avram D. Frey, admitted <i>pro hac vice</i>  <a href="mailto:afrey@gibbonslaw.com">afrey@gibbonslaw.com</a>          Daniel J. McGrady, admitted <i>pro hac vice</i>  <a href="mailto:dmcgrady@gibbonslaw.com">dmcgrady@gibbonslaw.com</a>          Kate E. Janukowicz, admitted <i>pro hac vice</i>  <a href="mailto:kjanukowicz@gibbonslaw.com">kjanukowicz@gibbonslaw.com</a>          Lawrence S. Lustberg, admitted <i>pro hac vice</i>  <a href="mailto:llustberg@gibbonslaw.com">llustberg@gibbonslaw.com</a>          Gibbons PC          One Gateway Center          Newark, NJ 07102</p>	

By s/ Shane Kangas  
Shane Kangas  
[skangas@bpmlaw.com](mailto:skangas@bpmlaw.com)  
Betts, Patterson & Mines, P.S.

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