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

SULEIMAN ABDULLAH SALIM,
MOHAMED AHMED BEN SOUD,
OBAID ULLAH (as personal
representative of GUL RAHMAN),

Plaintiffs,

vs.

JAMES ELMER MITCHELL and
JOHN "BRUCE" JESSEN,

Defendants.

NO. CV-15-0286-JLQ

**JOINT MOTION TO EXTEND
DEADLINES**

APRIL 13, 2017
WITHOUT ORAL ARGUMENT
EXPEDITED HEARING REQUESTED

1 Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud and Obaid
2 Ullah and Defendants James E. Mitchell and John Jessen (collectively with
3 Plaintiffs, the “Parties”) respectfully move for entry of the attached Order
4 extending the deadlines in the Court’s July 8, 2016 Scheduling Order, ECF No. 59
5 (“Scheduling Order”). To date, the Scheduling Order has been modified as
6 follows:

7 • The deadline for the completion of expert witness depositions was
8 extended to March 17, 2017, ECF No. 133;

9 • The deadline for Defendants’ experts to provide reports based on their
10 medical examinations of Plaintiff Salim was extended to be fourteen (14) days
11 after completion of their examination, ECF No. 112;

12 • The deadline for Plaintiffs’ medical experts to serve rebuttal report(s)
13 was extended to be fourteen (14) days after service of a report from Defendants’
14 experts, ECF No. 112;

15 • The deadline for Defendants’ expert Dr. Roger Pitman to produce his
16 report concerning Plaintiff Soud was extended to be concurrent with his report
17 concerning Plaintiff Salim, or no later than March 24, 2017, ECF No. 145; and

18 • The deadline for the completion of the depositions of Jose A.
19 Rodriguez, Jr. and John A. Rizzo was extended to March 20, 2017, ECF No. 142.

20 In addition, although no formal modification of the Scheduling Order has
21 been entered, Defendants’ Motions to Compel, which address both document
22 production and the depositions of James Cotsana, Gina Haspel, and John/Jane Doe,
23 remain pending before the Court.
24

1 Good cause exists for the granting the relief sought by this Motion: As the
2 Court has directed, the Parties have commenced settlement negotiations and more
3 time is required to determine whether those negotiations may result in a consensual
4 resolution of this matter. *See* ECF No. 145 at 7-8 (“If the parties' informal
5 discussions result in a desire to pursue alternative dispute resolution (ADR), such
6 as mediation, the court would consider a motion to continue the pretrial and trial
7 dates so the parties could avoid further litigation costs while pursuing ADR”).

8 In addition, Defendants assert that, without such an extension, manifest
9 injustice will be imposed upon them. Despite the Parties' best efforts, unforeseen
10 impediments have already required some adjustment of the discovery deadlines in
11 this case and have prevented the completion of discovery within the existing
12 deadlines set by this Court. Some of those unforeseen circumstances include the
13 Government's delay in producing documents and asserting potentially applicable
14 privileges and Plaintiff Salim's inability, despite all his best efforts, to attend his
15 scheduled deposition and medical examinations in Dominica and the need to
16 reschedule that deposition in South Africa.

17 The Parties file this Motion upon consent to adjust the schedule in this
18 matter as set forth below, given the Court's recognition that pretrial and trial
19 deadlines may be continued to avoid incurring further litigation costs as the Parties
20 pursue settlement negotiations and those efforts associated with the Court's prior
21 extensions of the discovery deadlines. In addition, Defendants assert that the
22 timing of the Government's assertion of privileges necessitates the extension of
23 discovery and subsequent deadlines. For the reasons set forth above and as further
24
25

1 detailed below, the Parties believe it prudent to extend the aforementioned
2 deadlines.

3 In support of this Motion, the Parties aver as follows:

4 1. The Parties met in-person in Newark, New Jersey on February 17,
5 2017, to begin a settlement dialogue as directed by the Court. Plaintiffs have since
6 conveyed their initial settlement demand and the Parties continue this dialogue.
7 The Parties believe it prudent to curtail expenses to the extent possible during the
8 pendency of these discussions.

9 2. At the February 17, 2017 meeting, the Parties also met and conferred
10 concerning the remaining deadlines applicable to this action. The Parties agreed
11 that a limited extension of relevant deadlines is necessary and appropriate to
12 account for the unforeseen circumstances that have arisen in this action and to
13 explore whether further litigation costs may be avoided as settlement negotiations
14 proceed. Accordingly, the Parties agreed to a proposed extension of deadlines as
15 set forth below.

16 3. The deposition of Plaintiff Salim is scheduled to be conducted on
17 March 14-15, 2017 in Johannesburg, South Africa. Plaintiff Salim's medical
18 examinations will be completed by March 13, 2017.

19 4. The current deadline for the completion of expert witness depositions
20 is March 17, 2017. This date is before Defendants' experts are obligated to
21 produce reports for Plaintiff Salim and before Plaintiffs' experts are obligated to
22 produce any rebuttal medical reports. *See* ECF No. 142 at 2 (ordering extension of
23 discovery until March 20 for completing the medical examination and deposition
24 of Plaintiff Salim).

1 5. The Parties understood that this extension as to Plaintiff Salim’s
2 medical examination would extend the time period for expert discovery related to
3 his medical examinations in accordance with the Court’s previous orders on
4 medical exams and expert discovery. *See* ECF No. 112 at 2 (ordering that
5 “Defendants shall have until 14 days after a medical examination or deposition of
6 Plaintiff(s) is completed within which to produce a Fed. R. Civ. P. 26(a)(2)(B)
7 report from each expert who conducts a medical exam,” and that “Plaintiffs shall
8 have until two-weeks after service of a report from Defendants to serve a rebuttal
9 expert report”); ECF No. 133 (order extending expert witness deposition deadline
10 until March 17, 2017, to allow for two-week period for depositions of medical
11 experts in accordance with the Parties’ attempt to secure medical examinations in
12 Dominica during the week of January 30).

13 6. In accordance with the above orders governing scheduling for medical
14 expert reports and depositions, the Parties understood that expert depositions
15 related to Plaintiffs Salim and Ben Soud would be completed by April 24.

16 7. The Parties have identified a combined eleven (11) experts in this
17 matter, and are currently conferring to determine which of these experts will be
18 deposed and the scheduling of expert depositions. Plaintiffs have proposed that the
19 Parties should not take the deposition of every identified expert witness, because
20 not all of the depositions are necessary or proportional, including but not limited to
21 the depositions of legal experts whose reports opine with regard to customary
22 international law. Defendants have agreed to consider Plaintiffs’ proposal and are
23 doing so. The Parties’ discussions about scheduling expert witness depositions are
24 without prejudice to Plaintiffs’ right to object to certain of those depositions as
25

1 unnecessary and disproportionate, under Federal Rule of Civil Procedure 26(b)(1),
2 or Defendants' right to move to compel such depositions.

3 8. John A. Rizzo's deposition was scheduled to be conducted on March
4 9, 2017. However, the Parties were recently advised that Mr. Rizzo's deposition
5 must be rescheduled due to a medical situation involving his wife. Consequently,
6 Mr. Rizzo's deposition has been re-scheduled for March 20, 2017, the first date on
7 which he was available.

8 9. The Government filed its brief asserting privileges, including the state
9 secrets privilege, on March 8, 2017. [16-mc-00036-JLQ ECF No. 75].
10 Defendants' response is due on March 22, 2017, and Plaintiffs' brief as well as the
11 Government's reply are due on March 27, 2017.

12 10. Due to the March 2017 dates for the deposition and medical
13 examinations of Plaintiff Salim and the deposition of Mr. Rizzo and the briefing
14 concerning the Government's anticipated privilege assertions, and in light of their
15 ongoing settlement negotiations, the Parties request additional time to complete
16 presentation of dispositive motions.

17 11. Currently, dispositive motions must be filed by March 31, 2017. This
18 date is four days after Defendants' expert reports concerning Plaintiffs Salim and
19 Ben Soud are due and almost two weeks before the deadline for Plaintiffs' experts
20 to produce rebuttal reports for these Plaintiffs. It is also before many of the experts
21 in this case will have been deposed and only four days after the completion of
22 briefing on the Government's state secret privilege assertions.

23 12. Thus, without an extension of the deadline to file dispositive motions,
24 the Parties will be forced to file motions that will not reflect the full factual record
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1 developed through expert depositions and through the disclosure of any additional
2 information that may be released following the Government's privilege assertions.

3 13. The proposed extension reflects an approximately 70 day extension of
4 the deadlines contained in the Scheduling Order, which the Parties believe will
5 allow the Parties sufficient time to both explore settlement and complete the tasks
6 necessary to prepare this case for trial.

7 WHEREFORE, the Parties respectfully request that the Court enter an Order
8 in the form submitted with this Motion modifying the Scheduling Order as follows:

9 1. Expert witness depositions shall be completed on or before **May 1,**
10 **2017;**

11 2. All dispositive motions shall be filed and served on or before **June 9,**
12 **2017;**

13 3. Exhibit lists shall be filed and served and exhibits made available for
14 inspection on or before **July 11, 2017;**

15 4. Objections to exhibits shall be filed and served on or before **August 1,**
16 **2017;**

17 5. Designation of substantive deposition testimony of witnesses who will
18 be unavailable to give live testimony at trial, shall be served on or before **July 11,**
19 **2017.** Cross-designations shall be served on or before **July 25, 2017.** Objections to
20 any designated deposition testimony shall be filed and served on or before **August**
21 **1, 2017;**

22 6. All motions *in limine* shall be served and filed not later than **July 11,**
23 **2017,** and shall be heard and resolved at the pretrial conference;

1 7. Trial briefs, requested jury instructions, and requested jury voir dire
2 shall be filed and served on or before **August 1, 2017**;

3 8. The pretrial conference will be held in Spokane, Washington on
4 **August 21, 2017** at 10:00 a.m.; and

5 9. The jury trial shall commence at 9:00 a.m., on **September 5, 2017**, in
6 Spokane, Washington.

7 DATED this 14th day of March, 2017.

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 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:

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