# IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS <br> DIVISION OF ST. CROIX 

| MOHAMMAD HAMED by His Authorized Agent WALEED HAMED, |  |
| :---: | :---: |
|  |  |
|  | CIVIL NO. SX-12-CV-370 |
| Plaintiff, ) |  |
| v. ) | ACTION FOR DAMAGES |
| ) | INJUNCTIVE AND |
| FATHI YUSUF and UNITED CORPORATION, | DECLARATORY RELIEF |
| ) |  |
| Defendants. ) | JURY TRIAL DEMANDED |

## PLAINTIFF HAMED'S OPPOSITION TO DEFENDANTS' "EMERGENCY MOTION" RE BOND

Plaintiff Hamed, by and through its undersigned counsel, opposes the "Emergency Motion" filed by Defendants on December 16, 2013. Interestingly, Defendants chose to file this "emergency motion" without first responding to Plaintiff's pending motion to partially reconsider/clarify the Bond Order. ${ }^{1}$ In any event, for the reasons set forth herein, Plaintiff respectfully submits that this "emergency motion" be denied until this Court can address the December $16^{\text {th }}$ motion for reconsideration.
I. A Request to Post Non-Cash Security Is Normal, Allowed in this Jurisdiction and not a Refusal to Post Bond

The posting of a non-cash bond consisting of property is common in this jurisdiction, as has been noted very recently by the Supreme Court of the Virgin Islands, the Appellate Division of the District Court and the District Court itself. Most importantly, in First Am. Dev. Group v. WESTLB, et al., 2012 WL 1526100 at *5 (D.V.I. April 30,

[^0]2012), the Supreme Court of the Virgin Islands approved the filing of real property as security for a bond (in a case where Defendants' counsel was counsel in that case as well), holding in part:

Consequently, if First American wishes to effectuate the stay of the execution of the Superior Court's August 24, 2011 Judgment, it must post a bond countersigned by a qualified surety or secured by unencumbered property of a value equal to or greater than the bond with the Superior Court . . . . (Emphasis added).

See also, Milligan v. Khodra, 46 VI 305, 2004 WL 3383654 at *10 (D.V.I. App. Div. 2004)("bond can be cash, property or surety bond"); Marrero v. United Indus., Serv. Transp., Prof'l \& Gov't Workers of N. Am., 2012 WL 2865970 at *1 (D.V.I. July 12, 2012). ("Courts in this jurisdiction have permitted the posting of property bonds in lieu of a cash bond"). ${ }^{2}$

Indeed, in remanding this case, the Supreme Court did not criticize this Court's use of other security in the form of escrowed profits, it simply held that these profits could not be used because of the encumbrance created by the TRO in the criminal case.

[^1]Thus, the request to clarify this Court's Bond Order is not novel or without merit. Moreover, in Frank C. Pollara Grp., LLC v. Ocean View Inv. Holding, 9-60, 2013 WL 5135690 (D.V.I. Sept. 13, 2013), the District Court, after noting it has discretion in the posting of security, just this year allowed real property to be posted as a bond, using the amount of the tax assessment of the property as its value, as proposed by Plaintiff here.

In short, there has been no refusal to post a bond as suggested by Defendants, simply clarification so the bond can be posted using unencumbered property.

## II. The Amount of the Bond

Aside from the fact that Plaintiff has also requested a reduction in the bond of $\$ 100,000$ because Defendants have conceded they are no longer considering amending the Plea in the criminal case (upon which this $\$ 100,000$ figure was based), two additional points need to be noted.

First, in calculating the bond, this Court relied on the salaries of the managers as being $\$ 347,000$, which included $\$ 61,000$ in the annual bonus and vacation pay of each manager, which figures were submitted by Defendants. See $\ddagger 3$ of Gaffney declaration attached as Exhibit 1 to Defendants' May $9^{\text {th }}$ motion to amend bond. Using this figure, this Court found that half of this salary was the cost that would be needed to replace the four current Hamed managers. However, Defendants have now stated in writing that they will not pay this $\$ 61,000$ payment this year, which they have refused to rescind despite being told that this unilateral change violates the terms of the preliminary injunction. See Exhibit $\mathbf{A}$. Thus, unless these bonuses and vacation pay are paid, the bond also needs be reduced accordingly since Defendants represented to this Court
that this amount was part of each manager's current salary, which this Court then used to calculate the bond. ${ }^{3}$

Second, the bond includes $\$ 695,000$ to cover one-half of the four Hamed salaries going forward. At the very least, Plaintiff should be given the option of having his four sons forego this portion of their salaries if this Court choses not to accept a property bond, as no bond is needed to secure this amount $(\$ 695,000)$ if this portion of their salaries is not actually being paid going forward.

It is respectfully submitted that this Court should dutifully consider all of these issues-the posting of property, the reduction in the amount required where appropriate and the alternatives that exist regarding the amount of the bond-before granting the drastic remedy of dissolving an injunction that has been in place for almost eight months without incident. Indeed, Defendants did not even address the bond issue for over six weeks after the Supreme Court's September $30^{\text {th }}$ ruling, confirming this is not as much of an urgent issue as a tactical one to try to change the status quo without regard to the merits of the case.

[^2]
## Plaintiff's Opposition to Emergency Motion

Page 5

## III. Conclusion

Clearly the "emergency motion" is designed to prevent this Court from being able to carefully consider the motion to reconsider/clarify the Bond Order, including alternative solutions that will secure Defendants as required by Rule 65(c), while allowing the status quo to continue while the case proceeds on the merits. Indeed, $\$ 795,000$ of the required $\$ 1,200,000$ (the $\$ 100,000$ no longer needed in the criminal case and the $\$ 695,000$ in future salaries) has still not been incurred. As such, it is respectfully submitted that Defendants' emergency motion should be denied, as the motion to reconsider/clarify will result in an adequate bond being timely posted.

Dated: December 23, 2013


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Coursel for Plaintiff
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Tele: (340) 719-8941

## CERTIFICATE OF SERVICE

I hereby certify that on this $23^{\text {rd }}$ day of December, 2013, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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The DeWood Law Firm
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ST. Thomas, VI 00802
ghodges@dtflaw.com


## IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS DIVISION OF ST. CROIX <br> MOHAMMAD HAMED, <br> Plaintiff, <br> v. <br> FATHI YUSUF and UNITED CORPORATION, ) <br> Defendants.

## declaration of Joel h. holt

I, Joel H. Holt, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am counsel of record for the Plaintiff and have personal knowledge of the foregoing facts.
2. Fathi Yusuf sent a memo, a copy of which is attached, stating that no vacation pay or bonuses will be paid this year.
3. Plaintiff believes this decision violates the April $25^{\text {th }}$ Preliminary Injunction Order, which provides that no unilateral action may be taken that affects the operations of the three Plaza Extra Supermarket stores as they have been operated prior to this commencement of this litigation. In this regard, these bonuses and vacation pay have been considered part of the regular salary of the seven Yusuf and Hamed managers, as noted in T3 of Gaffney's declaration submitted to this Court by Defendants in support of their May $9^{\text {th }}$ motion to amend the bond.
4. However, when asked to reconsider this directive that no bonuses or vacation be paid, Defendants' counsel, Nizar DeWood, stated that these bonuses and vacation pay would not be paid.

I declare under penalty of perjury that the foregoing is true and correct.


## PLAZ EXTRA EAST

## PLAZA EXTRA (EAST) BONU\$ 2010

WADDA E. CHARRIEZ
MARY S. GONZALEZ
LAVEINA BARTLETTE JACEIVER BARTLETTE ALBERTO MALDONADO MICHAELINA HENRY
FATHI HANNUN CHRITUS THEOPHILUS
CLARIS JOSEPH
RAYMOND WILLIAMS
FUAD MAHMOUD
JUAN CONCEPCION
JOAQUIN ORTIZ
MANUELA LIMA
WALLY HAMED
MUFEED HAMED
YUSUF YUSUF
MONICA LLOYD
GERRY SEERAM
NEALYSA ARMSTRONG
REUEL SALTERS

| OFFICE MANAGER | $\$ 4,500.00$ |
| :--- | :---: |
| ACCOUNTS PAYABLE | $\$ 3,000.00$ |
| ASST. ACCOUNT PAYABLES | $\$ 1,000.00$ |
| RECEIVABLE | $\$ 500.00$ |
| GROCERY MANAGER | $\$ 2,000.00$ |
| FLOOR MANAGER | $\$ 4,500.00$ |
| PRODUCE MANAGER | $\$ 2,000.00$ |
| WAREHOUSE | $\$ 2,500.00$ |
| RECEIVING | $\$ 1,000.00$ |
| DAIRY MANAGER | $\$ 3,500.00$ |
| SECURITY | $\$ 3,000.00$ |
| SECURITY | $\$ 7,000.00$ |
| MEAT MANAGER | $\$ 9,000.00$ |
| MEAT CLERK | $\$ 1,000.00$ |
| GENERAL MANAGER | $\$ 50,000.00$ |
| MANAGER | $\$ 50,000.00$ |
| MANAGER | $\$ 50,000.00$ |
| DELI-BAK MANAGER | $\$ 250.00$ |
| PRODUCE ASST. | $\$ 2,000.00$ |
| COMPUTER ROOM | $\$ 500.00$ |
| FROZEN MANAGER | $\$ 2,000.00$ |

TOTAL \$199,250.00

| PLAZA EXTRA (EAST) BONLS2011) |  |  |
| :--- | :--- | ---: |
|  |  |  |
|  | OFFICE MANAGER | 4500.00 |
| WADDA E. CHARRIEZ | OFFICE ASST. | 1000.00 |
| LAVEINA BARTLETTE | ACCOUNTS PAYABLE | $3,000.00$ |
| MARY S. GONZALEZ | RECEIVABLE | 750.00 |
| JACEIVER BARTLETTE | GROCERY MANAGER | $2,000.00$ |
| ALBERTO MALDONADO | FLOOR MANAGER | $4,500.00$ |
| MICHAELINA HENRY | WAREHOUSE MANAGER | $2,000.00$ |
| FATHI HANNUN | WAREHOUSE | $2,500.00$ |
| CHRISTUS THEOPHILUS | RECEIVING | $1,000.00$ |
| CLARIS JOSEPH | DAIRY MANAGER | $3,500.00$ |
| RAYMOND WILLIAMS | SECURITY | $3,000.00$ |
| FUAD MAHMOUD | SECURITY | $7,000.00$ |
| JUAN CONCEPCION | MEATMANAGER | $9,000.00$ |
| JOAQUN ORTIZ | GENERAL MANAGER | $50,000.006$ |
| WALLY HAMED | MANAGER | $50,000.00$ |
| MUFEED HAMED | MANAGER | $50,000.00$ |
| YUSUF YUSUF | 500.00 |  |
| MONICA LLOYD | DELI-BAK MANAGER | $2,000.00$ |
| GERRY SEERAM | PRODUCE ASST. | 500.00 |
| NEALYSA ARMSTRONG | COMPUTER ROOM | $2,000.00$ |
| REUEL SALTERS | FROZEN MANAGER | 1000.00 |

[^3]
## PLAZA EXTRA (EAST) BONUS 2012

WADDA E. CHARRIEZ
LAVEINA BARTLETTE MARY S. GONZALEZ
SABRINA MOTILAL
ALBERTO MALDONADO MICHAELINA HENRY
FATHI HANNUN
CHRISTUS THEOPHILUS
CLARIS JOSEPH
RAYMOND WILLIAMS
FUAD MAHMOUD
JUAN CONCEPCION
JOAQUIN ORTIZ
WALLY HAMED
MUFEED HAMED
YUSUF YUSUF
MONICA LLOYD
GERRY SEERAM
REUEL SALTERS
TROY WILLIAMS
KIZMA PETERSEN
KATISHA KING

| OFFICE MANAGER | 4500.00 |
| :--- | :---: |
| OFFICE ASST. | 1000.00 |
| ACCOUNTS PAYABLE | $3,000.00$ |
| RECEIVABLE | 500.00 |
| GROCERY MANAGER | $2,000.00$ |
| FLOOR MANAGER | $4,500.00$ |
| WAREHOUSE MANAGER | $2,000.00$ |
| WAREHOUSE | $2,500.00$ |
| RECEIVING | $1,000.00$ |
| DAIRY MANAGER | $3,500.00$ |
| SECURITY | $3,000.00$ |
| SECURITY | $7,000.00$ |
| MEAT MANAGER | $9,000.00$ |
| GENERAL MANAGER | $50,000.00$ |
| MANAGER | $50,000.00$ |
| MANAGER | $50,000.00$ |
| DELI-BAK MANAGER | 500.00 |
| PRODUCE ASST. | $2,000.00$ |
| FROZEN MANAGER | $2,000.00$ |
| VALUE PACK | 1000.00 |
| FRONT END | 500.00 |
| ASST. FLOOR/FRONT | 500.00 |

TOTAL 200,000.00

## PLAZ EXTRA WEST

## Plaza Extra West

Bonus 2010

| Name | Position | Amount |
| :---: | :---: | :---: |
| Khalii Ahmiad | Warehoușe Manager | \$6,000.00 |
| Myra Senhouse | Office Clerk | \$3,500.00 |
| Veronica Cruz | Office Clerk | \$600.00 |
| Clara Modeste | Office Clerk | \$2,000:00 |
| Lissatte Lima | Office Clerk | \$3,500,00. |
| Salomon Laurencin | Meat Manager | \$8,000,00 |
| Juan Ledesma | Asst. Meal Manager | \$3,500;00 |
| Orlando Garcia | Frozen | \$1,500.00 |
| Patricia Martin | Meal Clerk | \$800:00 |
| Iris Osario | Meat Clerk | \$750.00 |
| Karen Quinn | Computer Room Manager | \$3,000,00 |
| Virgilio Henriquez | Produce Manager | \$2,000,00 |
| Abdelkrem Boucenna | Grocery Manager | \$20,000,00 |
| Victor Petersen | Grocery | \$1,500.00 |
| Trevor Sablon | Floor Manager | \$3,000.00 |
| Marva Samson | Dell Manager | \$750.00 |
| Kenia Walcott | Asst. Deli Manager | \$500.00 |
| Maher Yusuf | General Manager | \$50,000.00 2 |
| Hisham Hamed | Asst. General Manager | \$50,000:00 |
| Marian James | Grocery Clerk | \$1,500.00 |
| Mary Jribapliste | Grocery Clerk | \$800.00 |
| Raymond Davis | Dairy Manager | \$2,000,00 |
|  | Total | \$165,200.00 |

## Plaza Extra West

## Bonus 2011

| Name | Position | Amount |
| :---: | :---: | :---: |
| Khali Ahmed | Warehouse Manager | \$6.000.00 |
| Myra Senhouse | Office Clerk | \$3,500,00 |
| Veronica:Cruz | Office Clerk | \$600:00 |
| Cliara Modesto | Office Clerk | \$2,000.00 |
| Lisserte Limia | Office Clerk | \$3.500.00 |
| Salomon Laurencin | Meat Manager | \$8,000.00 |
| Juan Ledesma | Asst. Meat Manager | \$3,500.00 |
| Orlando Garcta | Frozen | \$1,500.00 |
| Iris Osorio | Meat Clerk | \$750:00 |
| Karen Quimn | Computer Room Manager | \$3,000,00 |
| Abdelkrem Brucenna | Grocery Menager | \$24,000.00 |
| Trevor Sablon | Floor Manager | \$3,000:00 |
| Marva Samson | Deli Manager | \$750.00 |
| Maher Yusuf | General Manager | \$ \$50,000.00 |
| Hisham Hamed | Asste General Manager | \$80,000.00 E |
| Mariari James | Grocery Clerk | \$1,500.00 |
| Mary JnBaptiste | Grocery Clerk | \$800:00 |
| Jess leale | Warehouse Asststant | \$1,000.00 |
|  | Total | \$163,400.00 |


| Plaza Extra West Bonus 2012 |  |  |
| :---: | :---: | :---: |
| Name | Position | Amount |
| Khalil Ahmad | Warehouse Manager | \$6,000.00 |
| Myra Senhouse | Ofice Clerk | \$3,500,00 |
| Veronica Cruz | Office Clerk | \$600.00 |
| Clara Modeste | Office Clerk | \$2.000.00 |
| Lissefte Lima | Office Clerk | \$3,500.00 |
| Satomon Laurencin | Meat Manager | \$8,000.00 |
| Juan Ledesma | Asst. Meal Manager | \$3,500.00 |
| Orlando Garcia | Frozen | \$1,500.00 |
| Iris Osorio | Meat Clerk | \$750.00 |
| Karen Quinn | Computer Room Manager | \$3,000.00 |
| Abdelkrem Boucenna | Grocary Manager | \$24,000.00 |
| Trevor Sablon | Floor Manager | \$3,000.00 |
| Marva Samson | Dell Manager | \$750.00 |
| Maher Yusuf | General Manager | \$50,000.00 |
| Hisham Hamed | Asst. General Manager | \$50,000.00 E |
| Marian James | Grocery Clerk | \$1,500,00 |
| Mary JnBapliste | Grocery Clerk | \$800.00 |
| Jess Isaie | Warehouse Absisiant | \$1,000.00 |
| Alfredo Nieves' | Produce Manager | \$2,000,00 |
|  | Total | \$165,400.00 |

# PLAZA EXTRA ST. THOMAS 



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| Employee ID Employee Masked SS No Reference Date | Pay Type | $\text { Pay } \mathrm{Hr}$ | Pay Amt | Amount | Gross <br> Medicallns Garnishment PreTxAFLAC FUTA_ER | Fed_Income EmplLoan MASA PreTxCIGNA SUI_ER | Soc_Sec ChildCare CashDrawer Soc_Sec_ER Medicallns_ | Medicare HigherEduc AFLAC Medicare_ER |  |
| $\begin{aligned} & 580067334 \\ & \text { JOSEPH BLYDEN, CH } \\ & \text { XXX-XX-7334 } \\ & 151102 \\ & 12 / 30 / 11 \end{aligned}$ | Regular | ! 菏 | 250.00 | 235.87 | 250.00 |  | -10.50 -15.50 | $\begin{aligned} & -3.63 \\ & -3.63 \end{aligned}$ |  |
| $\begin{aligned} & 580068397 \\ & \text { ABRAHAM, DIANE C. } \\ & \text { XXX-XX-8397 } \\ & 151103 \\ & 12 / 30 / 11 \end{aligned}$ | Reguiar | - | 150.00 | 117.56 | 150.00 | -23.96 | -6.30 -9.30 | $\begin{aligned} & -2.18 \\ & -2.18 \end{aligned}$ |  |
| $\begin{aligned} & 580071889 \\ & \text { CASTRO, CARLOS } \\ & \text { XXX-XX-1889 } \\ & 151104 \\ & 12 / 30 / 11 \end{aligned}$ | Regular |  | 300.00 | 262.95 | 300.00 | -20.10 | -12.60 -18.60 | -4.35 -4.35 |  |
| 580083204 <br> BELL, ANTOINETTE E. XXX-XX-3204 <br> 151105 <br> 12/30/11 | Regular | - | 100.00 | 94.35 | 100.00 |  | $\begin{aligned} & -4.20 \\ & -6.20 \end{aligned}$ | $\begin{aligned} & -1.45 \\ & -1.45 \end{aligned}$ |  |
| $\begin{aligned} & 580083688 \\ & \text { RICHARDS, CHERYL } \\ & \text { XXX-XX-3688 } \\ & 151106 \\ & 12 / 30 / 11 \end{aligned}$ | Regular |  | 750.00 | 604.74 | 750.00 | -102.88 | -31.50 -46.50 | $\begin{aligned} & -10.88 \\ & -10.88 \end{aligned}$ |  |
| 580089201 <br> FREYLINGER, GERAR $\begin{aligned} & \text { XXX-XX-9201 } \\ & 151107 \\ & 12 / 30 / 11 \end{aligned}$ | Salary |  | 9,000.00 | 5,974.07 | 9,000.00 | $-2,517.43$ | $\begin{aligned} & -378.00 \\ & -558.00 \end{aligned}$ | $\begin{aligned} & -130.50 \\ & -130.50 \end{aligned}$ |  |
| $\begin{aligned} & 580091013 \\ & \text { YUSUF, FATHI } \\ & \text { XXX-XX-1013 } \\ & 151108 \\ & 12 / 30 / 11 \end{aligned}$ | Salary |  | 50,000.00 | 32,532.09 | 50,000.00 | -16,742.91 |  | -725.00 -725.00 |  |


| Pay Amt | Amount | Gross <br> Medicalins Garnistiment PreTxAFLAC FUTA_ER | Fed Income EmplLoan MASA PreTxClGNA SUI_ER | Soc Sec Childcare CashDrawer Soc_Sec_ER Medicallins | Medicare HigherEduc AFLAC Medicare_ER |
| :---: | :---: | :---: | :---: | :---: | :---: |
| 50,000.00 | 32,606.80 | 50,000.00 | -16,668.20 |  | -725.00 |
|  |  |  |  |  | -725.00 |
| 500.00 | 421.65 | 500.00 | -50.10 | -21.00 | -7.25 |
|  |  |  |  | -31.00 | -7.25 |
| 400.00 | 352.98 | 400.00 | -24.42 | -16.80 | $-5.80$ |
|  |  |  |  | -24.80 | -5.80 |
| 125.00 | 102,94 | 125.00 | -45.00 | -5.25 | -1.81 |
|  |  |  |  | -7.75 | -1.81 |
| 500.00 | 471.75 | 500.00 |  | -21.00 | -7.25 |
|  |  |  |  | -31.00 | $-7.25$ |
| 500.00 | 471.75 | 500.00 |  | -21.00 | -7.25 |
|  |  |  |  | -31.00 | -7.25 |
| 17,000.00 | 10,564.81 | 17,000.00 | -5,474.69 | -714.00 | -246.50 |
|  |  |  |  | -1,054.00 | -246.50 |

United Corporation*
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DORSET, KA
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GUMBS, WENTWORT
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1211
12/30/11




[^0]:    ${ }^{1}$ As noted in that motion, it was filed 3 days after the receipt of the Bond Order. See Exhibit 1 to Plaintiff's December $13^{\text {th }}$ motion. Hence, it can hardly be said that Plaintiff is not diligently paying attention to this Court's Bond Order. Indeed, since the filing of that motion, Plaintiff has been obtaining title reports to demonstrate that the real property being offered as collateral is free and clear of any liens.

[^1]:    ${ }^{2}$ While these cases deal with a supersedeas bond under Rule 62(c), both Rule 62(c) and Rule 65(c) use the term "security" so this distinction is moot. See e.g. Nichols v. Deutsche Bank Nat. Trust Co., CIV. 07CV2039-L NLS, 2007 WL 4181111 (S.D. Cal. Nov. 21, 2007):

    As security pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, the deed of trust shall remain on the Property as security for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

[^2]:    ${ }^{3}$ In its motion to reconsider/clarify the bond, Plaintiff proposed to use this sum--four times $\$ 61,000$ less taxes, or approximately $\$ 200,000-$-as part of the bond in this case, so a reduction of $\$ 200,000$ would be an appropriate reduction to deal with this issue. It would also moot the need to file a motion addressing this issue if the payment is not made, as these payments have been paid on a regular basis well before the injunction was entered, as noted in the attached summary documents. See Exhibit B. Indeed, that is why Gaffney listed this amount as part of the manager's regular salary.

[^3]:    TOTAL 199,750.00

