

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

**MOHAMMAD HAMED**, by his  
authorized agent **WALEED HAMED**,

*Plaintiff/ Counterclaim Defendant*

v.

**FATHI YUSUF** and  
**UNITED CORPORATION**

*Defendants/ Counterclaimants,*

v.

**WALEED HAMED, WAHEED  
HAMED, MUFEED HAMED,  
HISHAM HAMED,  
and PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants.*

**Case No.: SX 2012-CV- 370**

**ACTION FOR DAMAGES**

**JURY TRIAL DEMANDED**

**REPLY RE PLAINTIFF'S TO MOTION TO COMPEL COMPLIANCE WITH PI**

Defendants make it clear that they disagree with parts of the Court's orders. They also make it clear that they take the position they are still in charge of Plaza Extra Supermarkets, repeatedly stating what they have "decided" and what that they have "allowed" to happen. For example, they admit that they have *intentionally* denied Wally Hamed access to the live accounting system (despite this Court's Orders) because they consider him untrustworthy, **yet they then complain when he has to use a backup system offsite because he cannot access the live system in the stores.**<sup>1</sup>

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<sup>1</sup> Indeed, Wally Hamed works as much as any Yusuf manager (if not harder) and far harder than Fathi Yusuf—does the Court really intend to get into this level of detail (without appointing a receiver) or was the intent of the PI to avoid these petty disputes?

In any event, Plaintiff will briefly address each of Defendants' specific points in opposing the Plaintiff's motion to compel. Each issue will be discussed in the order raised in Plaintiff's initial motion.

Before doing so, one preliminary comment is in order. Defendants contend that the Court should apply an onerous "contempt" standard. However, contempt would be the next step, as this motion simply requests the Court to direct Defendants to comply with the clear language of the Orders in an effort to avoid a contempt motion.

### **I. The annual bonuses and vacation pay**

Defendants do not dispute that Plaza has been routinely paying year-end bonuses and vacation pay in the past. They also do not dispute that their comptroller *included such bonuses and vacation pay in the calculations the Defendants submitted as **what was expected to be paid to the Hameds this year as part of their regular salary*** (not just some 'arbitrary' bonus) in arguing what the bond should be posted in this case. Indeed, this representation was made to the Court after the PI was entered by this Court and was utilized by this Court in setting the bond.<sup>2</sup>

The only explanation advanced by Defendants for this change is that Wally Hamed did not allegedly earn his bonus in their estimation – this is precisely the type of unilateral change prohibited by this Court's PI Order, which stated in part as follows:

**ORDERED** that the operations of the three Plaza Extra Supermarket stores **shall continue as they have throughout the years prior to this commencement of this litigation, . . . without unilateral action** by either party, or representative(s), affecting the **management, employees, methods**, procedures and operations. It is further. . . (Emphasis added).

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<sup>2</sup> United used these annual bonuses and vacation pay as part of the managers' salaries to justify a higher bond, which has been posted, but do not want to then pay the very amounts *they* argued to the Court **would in fact be paid in 2012**.

Thus, it is requested that the Court order these payments to be promptly made, as paid historically and expected to be paid in 2013 as per the Comptroller's sworn declaration.

## **II. The "live" Sage50/Peachtree accounting "password"**

The Court's May 31<sup>st</sup> Order clarified equal access to the accounting systems:

**ORDERED** that only **mutual access of all sensitive financial data, records and financial statements** shall be permitted according to a process to be determined by the Parties. (Emphasis added).

Defendants do not contest that they have intentionally prevented this -- purportedly because the Hameds are all scoundrels who might damage the system. They suggest that Fathi Yusuf also lacks such "live" access, but this is just semantics, as Mr. Gaffney was hired by and responds to the Yusufs, not the Hameds.

However, the Hamed managers need the passwords that have been repeatedly promised, as noted in the previously submitted emails. Otherwise, the Hameds cannot access the live accounting systems for the three stores, nor can they participate in the actual day-to-day store management, as the information they do receive is limited to what Defendants want to release **a month out of date**, which is not current and could have been changed prior to its belated release.

Equally important, being able to ask for information, as suggested by Gaffney, is not sufficient, as Hamed needs unfettered access to the full accounting system in order to track the transactions and accounting as it is taking place daily. Indeed, the Hamed store managers do not even know what to ask for if they do not have access to the accounting as it takes place. For example, Hamed cannot figure what has happened to the quarterly tax payments. See **Exhibit 1**. Access to the current accounting data will allow the Hamed managers to understand what has happened as the data is processed

(like taxes) without having to rely on a hostile accounting employee (who still has not provided this tax information requested days ago). The "live" passwords are used and needed for real time management of the daily operations of the three stores.

Finally, the Hamed managers had access to this information well before the PI Order, as evidenced by Gaffney's declaration regarding Willie Hamed's involvement with this system. While Gaffney mischaracterized what happened in 2012 regarding the system's crash, the point is the same—the Hamed's had access to this critical information prior to the PI and still need it now to do their jobs as store managers.

In short, as this Court's May 31<sup>st</sup> Order is clear, it is respectfully requested that the Court order Defendants to make sure these "live" passwords are promptly provided.

### **III. Access to bank accounts and records**

Defendants state that Plaintiff has access to bank accounts, but the documents attached to Plaintiff's motion make it clear that this is not true. While joint signatures are necessary on some accounts, the Yusufs have installed themselves as "account managers" to control the accounts and otherwise obtained sole delivery of off- and online bank statements. Again, Plaintiff asks that the Court simply instruct that appropriate banking resolutions be executed so all Plaza Extra accounts can be equally controlled, statements can be provided to the Hameds simultaneously and online control and access can be the same. Indeed, even after trying to convince the Court this has been done, **bank counsel has again indicated yesterday** that it has still not been done. See **Exhibit 2** (containing the **full** exchange of recent emails on this subject).

Again, as per this Court's May 31<sup>st</sup> Order, it is requested that the Court order Defendants to take the necessary steps so Plaintiff has equal, unrestricted bank access.

#### IV. The Charriez lawsuit and bonus

Defendants admit they unilaterally filed a suit against a Plaza Extra employee (and witness) after the Court's PI Order was filed. They agree this suit concerning Plaza Extra funds was filed without Hamed's input. They try to justify this improper conduct by arguing that they filed a motion to permit such a suit AFTER they violated the Court's order, but this Court never granted that motion. Indeed, under Defendants' view, it should be able to decide to fire the four Hamed managers as well—does that mean Plaintiff can terminate the three Yusuf sons (or Gaffney) simply because he believes (as he does) that they are acting contrary to the interests of Plaza Extra?

The whole purpose of the PI was to preserve the *status quo*, without endless quarrels -- including allowing Wadda Charriez to do her critical accounting job as usual without the harassment of being sued and denied her regular Christmas bonus (that all other employees received). In fact, Defendants concede that Wadda Charriez has continued to provide her valuable accounting services, as Defendants concede the stores are running as usual without any problems.<sup>3</sup>

Again, Defendants repeatedly contend that THEY can unilaterally (and arbitrarily) decide to file suits if they want. However, such unilateral action is barred by this Court's PI Order. As such, it is requested that this Court direct Defendants to withdraw the suit, **or stay it for now to preserve any claims Defendants may wish to pursue later**, as well as pay Charriez her bonus as she has been routinely paid in the past.

#### V. Conclusion

In summary, Defendants failed to cure any of the deficiencies despite receiving

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<sup>3</sup> Indeed, why wasn't her bonus paid since there was no problem with her work?

the motion to compel on January 22<sup>nd</sup>, over two weeks ago. Thus, an order is needed to enforce the most basic requirements of the April 25<sup>th</sup> and May 31<sup>st</sup> Orders as follows:

- Directing payment of the managers' annual bonuses and vacation pay;
- Directing Hamed be given the password to access the live accounting system;
- Directing United's officers to sign the necessary documents to give Hamed access and authority on all Plaza Extra related bank records; and
- Directing United to dismiss or stay the lawsuit against Wadda Charriez and paying Charriez's \$4500 Christmas bonus.

**Dated:** February 11, 2014

  
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**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
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Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
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**Carl J. Hartmann III, Esq.**  
*Counsel for the Waheed Hamed*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
(340) 719-8941  
carl@carlhartmann.com

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of February, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

**Nizar A. DeWood**  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST. Thomas, VI 00802  
ghodges@dtflaw.com

  
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# JOEL H. HOLT, ESQ. P.C.

2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tele. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [holtvi@aol.com](mailto:holtvi@aol.com)

February 3, 2014

Nizar A. DeWood  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

Gregory H. Hodges  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST. Thomas, VI 00802

By Email and Mail

**Re: *Hamed v. Yusuf and United Corporation***

Dear Counsel:

It has been more than a week since I sent you my letter of January 23rd, asking for a solution to or meeting about unilateral decisions with regard to third-parties; such as vendors, advertisers, and contractors -- and your clients telling these third parties that business transactions have to be done with them and not the Hameds.

As I have not received any communication in response, I'm writing to see if any response will be forthcoming. If I do not hear from you by the end of day tomorrow, I will assume that your client does not wish to address my client's concerns.

In addition, I would like to add two very serious matters to the list of items.

First, my client understands that one or more of the Yusufs is opening a grocery business on the East End. I attach a Tropical Shipping contract that was described in my earlier letter -- and note that it seeks to leverage this new operation's shipping with the benefits of Plaza Extra's contract. (This was a Plaza Extra contract changing the *status quo* to which my client did not agree, and seems to be for the benefit of a personal business.) Please confirm that this will be corrected.

Second, we cannot find payments for quarterly income taxes for the second through fourth quarters of 2013 (almost all of which is on Plaza Extra income) that have always



Letter dated February 3, 2014  
Page 2

been made from Plaza Extra funds. Please inform me if these have not been paid -- or if they have: from what account and under whose signatures. (Also, if they were paid out of a non-Plaza, United account, how the funds got from Plaza into that account.)

Please respond to this letter as well as my January 23<sup>rd</sup> letter as soon as you can so we can wrap up these issues.

Yours,

A handwritten signature in black ink, appearing to read "Joel H. Holt". The signature is written in a cursive style with a large initial "J".

Joel H. Holt

cc: Carl J. Hartmann III



**From:** Sam Grey <sgrey@nndlaw.com>  
**To:** Nizar DeWood, Esq. <dewoodlaw@gmail.com>  
**Cc:** 'Joel Holt' <holtvi@aol.com>  
**Subject:** RE: Banco Popular Authorizations  
**Date:** Tue, Feb 11, 2014 8:10 am

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If you notice the Scotia letter indicates that one person from each side must always sign. I don't know if that is consistent with a resolution that they have on file. I haven't looked at this issue for Scotia so I can't comment as to that Bank.

I believe that BP has been requiring one person from each side to sign in order to access the accounts. However the resolution on file needs to be revised. The easiest way to solve this problem is to execute the release that was circulated. That way there is no confusion.

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**From:** Nizar DeWood, Esq. [<mailto:dewoodlaw@gmail.com>]  
**Sent:** Monday, February 10, 2014 5:09 PM  
**To:** Sam Grey  
**Cc:** 'Joel Holt'  
**Subject:** FW: Banco Popular Authorizations

Sorry Sam, I mentioned your name and did not CC you.

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**From:** Nizar DeWood, Esq. [<mailto:dewoodlaw@gmail.com>]  
**Sent:** Monday, February 10, 2014 5:02 PM  
**To:** 'Joel Holt'  
**Cc:** 'Charlotte Perrell'; 'Gregory H. Hodges'  
**Subject:** RE: Banco Popular Authorizations

No semantics Joel. That's just your opinion, but here's what happened:

We asked Scotia for confirmation about joint access and they gave us this nice attached letter. Simple and to the point (outstanding customer service).

Then we asked Banco (and consistent with their garbage customer service), we got an oral confirmation that the Hameds and Yusufs all have access\*, but with one catch: to get that confirmation in writing we needed to go to Attorney Sam Grey. From there the rest is history.

Sorry, but I don't get what was difficult about a simple question: Do all parties have joint access to Plaza Extra operating accounts or not? If No, because a resolution is required, then a signed resolution will be provided.



\* Access means access to statements, joint signatures on checks, online access, etc.

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Monday, February 10, 2014 3:51 PM  
**To:** [sgrey@nndlaw.com](mailto:sgrey@nndlaw.com); [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)  
**Cc:** [cperrell@dtflaw.com](mailto:cperrell@dtflaw.com); [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
**Subject:** Re: Banco Popular Authorizations

Not sure what the semantics are over "access" -- the court's order is clear-my client is to have equal access, equal authority and equal ability to receive statements, so if something needs to be signed to make this official for the bank, then it needs to be signed (and done now)

Joel H. Holt, Esq.

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(340) 773-8709

-----Original Message-----

**From:** Sam Grey <[sgrey@nndlaw.com](mailto:sgrey@nndlaw.com)>  
**To:** Nizar DeWood, Esq. <[dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)>  
**Cc:** 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>; 'Charlotte Perrell' <[cperrell@dtflaw.com](mailto:cperrell@dtflaw.com)>; 'Gregory H. Hodges' <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
**Sent:** Mon, Feb 10, 2014 2:32 pm  
**Subject:** RE: Banco Popular Authorizations

I don't know which accounts you are referring to. I think you were a party to the multitude of emails that starting circulating last summer. I have no idea who has access to what. I do know that some accounts were seized by the federal government. There was also some confusion on the part of the Bank as a result of the litigation as to who could access certain accounts. There were instances when one party or the other attempted to access accounts unilaterally. To eliminate any confusion, it was suggested that the parties execute a new resolution. A copy is attached.

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**From:** Nizar DeWood, Esq. [<mailto:dewoodlaw@gmail.com>]  
**Sent:** Monday, February 10, 2014 2:23 PM  
**To:** Sam Grey  
**Cc:** 'Joel Holt'; 'Charlotte Perrell'; 'Gregory H. Hodges'  
**Subject:** RE: Banco Popular Authorizations

Hello Sam,

I think you misunderstood me.

All I want to know from you is whether the Hameds have access to the Banco accounts. Banco said yes. So now, I am confused.

When I asked them to put it in writing, they referred us to you (I am guessing they want everything to go through you because of the ongoing litigation).

So, is there joint access or not? If not, and the resolution is required, then will have to submit it. That's what I am trying to figure out.

Thank you for your patience.

(Joel, I forgot to CC you on the previous emails with Sam. Please excuse the oversight)

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**From:** Sam Grey [mailto:sgrey@nnldlaw.com]  
**Sent:** Monday, February 10, 2014 2:13 PM  
**To:** Nizar DeWood, Esq.  
**Subject:** RE: Banco Popular Authorizations

Not sure I need it. This is really an issue you need to work out with Joel.

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**From:** Nizar DeWood, Esq. [mailto:dewoodlaw@gmail.com]  
**Sent:** Monday, February 10, 2014 2:14 PM  
**To:** Sam Grey  
**Subject:** RE: Banco Popular Authorizations

Will get you the name shortly.

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**From:** Sam Grey [mailto:sgrey@nnldlaw.com]  
**Sent:** Monday, February 10, 2014 2:09 PM  
**To:** Nizar DeWood, Esq.  
**Subject:** RE: Banco Popular Authorizations

I'm not sure who you spoke with at Banco. There is a resolution in place. However there seemed to be constant issues with access to the account. As a result I suggested that a new resolution be done to eliminate this confusion. In essence I think the new resolution would require one person form each faction to authorize transactions. Have you discussed this with Joel?

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**From:** Nizar DeWood, Esq. [mailto:dewoodlaw@gmail.com]  
**Sent:** Monday, February 10, 2014 2:06 PM  
**To:** Sam Grey  
**Subject:** RE: Banco Popular Authorizations

The resolution was for what purpose?

We checked with Banco Popular and we were advised that the Hameds are signatories on the operating accounts. Banco asked us to contact you to confirm in writing that the Hameds are signatories. Can you please confirm. Thanks Sam.

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**From:** Sam Grey [mailto:sgrey@nnldlaw.com]  
**Sent:** Monday, February 10, 2014 1:52 PM  
**To:** Nizar DeWood, Esq.  
**Subject:** RE: Banco Popular Authorizations

Hi Nizar. Sorry for the delayed response.

As far as I know, there was an issue with regard to the accounts that were frozen by the Feds. As a result there was some confusion over who could authorize transactions to the account. There were several email communications about this last summer. As a result, we suggested that the parties submit a new corporate resolution naming the authorized parties. To my knowledge this resolution has never been fully executed.

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**From:** Nizar DeWood, Esq. [<mailto:dewoodlaw@gmail.com>]  
**Sent:** Wednesday, January 29, 2014 1:43 PM  
**To:** Sam Grey  
**Cc:** 'Joel Holt'; 'Gregory H. Hodges'; 'Charlotte Perrell'  
**Subject:** Banco Popular Authorizations

Sam,

Atty Holt filed a Motion in court where he alleged that the Hameds have no access to the Banco Popular (BP) accounts because our clients failed to sign the necessary documents.

My clients checked with BP, and BP said that in fact all the Hameds are signatories, and have access to the accounts.

BP then referred me to your office for further details. Can you please clarify the Hamed's access authority to Plaza Extra's operating accounts?

Thank you.

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