

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

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

Plaintiff/Counterclaim Defendant,)

vs.)

CIVIL NO. SX-12-CV-370

FATHI YUSUF and)
UNITED CORPORATION,)

Defendants/Counterclaimants,)

vs.)

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

WALEED HAMED, WAHEED)
HAMED, MUFEEED HAMED,)
HISHAM HAMED,)
and **PLESSEN ENTERPRISES, INC.**,)

Counterclaim Defendants.)

**PLAINTIFF'S MOTION AND MEMORANDUM TO STRIKE NEW ARGUMENT RE
MOTION TO EXTEND SCHEDULING ORDER**

In Defendants' March 5th reply memorandum to its motion to further extend the scheduling deadlines, it submitted a new declaration of its former counsel of record in this case, Attorney DiRuzzo, not submitted with its initial motion. Thus, Plaintiff hereby moves to strike this new declaration or, alternatively, seeks leave to file a sur-reply.

It is clear that courts disfavor considering arguments raised for the first time in a reply memorandum. *Embroidery Worker's Pension Fund v. Ryan, Beck & Co.*, 869 F. Supp. 278, 281 n.1 (D.N.J. 1994); *see also, McLendon v. Continental Can Co.*, 908 F.2d 1171, 1183 (3rd Cir. 1990). The general policy consideration behind such a rule is fairness. As the reply memorandum is the final written word a party has, it would be

unfair to permit the moving party to interject an issue to which the non-movant could not respond. *McLendon*, 908 F.2d at 1183.

Thus, Plaintiff respectfully submits the declaration of Attorney DiRuzzo should be stricken. Alternatively, if this Court decides to consider it, it is requested that Plaintiff be given leave to respond to its (hearsay) contents, which contain inaccurate statements. A proposed Order is attached.

Dated: March 11, 2014



Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8677

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 11th day of March, 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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HAMED, **MUFEED HAMED**,)
HISHAM HAMED,)
and **PLESSEN ENTERPRISES, INC.**,)
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Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

ORDER

This matter is before the Court on the Plaintiff's Motion to Strike New Arguments or Alternatively File a Sur Reply. Upon consideration of the matters before the Court, it is hereby

ORDERED that the motion is **GRANTED**. The Declaration of Attorney DiRuzzo submitted on March 5, 2013, is hereby Stricken.

Dated: _____
HON .DOUGLAS A. BRADY
Judge, Superior Court

ATTEST: ESTRELLA GEORGE, Acting
Clerk of Court

By: _____
Deputy Clerk

Dist: Joel H. Holt, Gregory Hodges, Nizar DeWood, Marc Eckard, Carl Hartmann