

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.,)
)
 Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370
 ACTION FOR DAMAGES,
 INJUNCTIVE RELIEF
 AND DECLARATORY RELIEF
 JURY TRIAL DEMANDED

SUPERIOR COURT
 THE VIRGIN ISLANDS
 ST. CROIX, VI

14 APR -7 P5:00

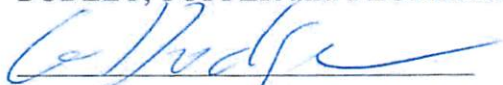
NOTICE OF FILING
DEFENDANTS/COUNTERCLAIMANTS' OPPOSITION TO MOTION TO DISMISS FIRST
AMENDED COUNTERCLAIM AS TO MUFEED HAMED AND HISHAM HAMED

COMES NOW Defendants by and through their undersigned Counsels, Dudley, Topper and Feuerzeig, LLP, by Gregory H. Hodges, Esq. and The DeWood Law Firm, by Nizar A. DeWood, Esq., and respectfully gives notice of filing the attached **Defendants/Counterclaimants' Opposition To Motion To Dismiss First Amended Counterclaim As To Mufeed Hamed and Hisham Hamed.**

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: April 7, 2014

By:



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CERTIFICATE OF SERVICE

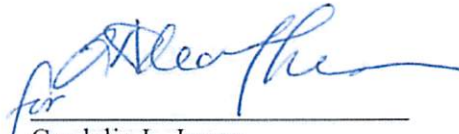
IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing *Notice of Filing Defendants/Counterclaimants' Motion to Dismiss First Amended Counterclaim as to Mufeed Hamed and Hisham Hamed* was serve on the 7th day of April 2014, as specified below:

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Certified Paralegal, C.L.A.

14 APR -7 P5:30

SUPERIOR COURT
THE VIRGIN ISLANDS
ST. CROIX, VI

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

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

Plaintiff/Counterclaim Defendant,

vs.
FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

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

Additional Counterclaim Defendants.

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**DEFENDANTS/COUNTERCLAIMANTS' OPPOSITION TO
MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
AS TO MUFEED HAMED AND HISHAM HAMED**

Defendants/counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants"), through their undersigned counsel, respectfully submit this Opposition To Motion To Dismiss First Amended Counterclaim As To Mufeed Hamed ("Mufeed") and Hisham Hamed ("Hisham")¹:

¹ Waleed Hamed ("Waleed") and Waheed Hamed ("Waheed") have filed concurrent Motions to Dismiss on the grounds that other pending claims brought against them as employees of United are duplicative of the claims in this case. Mufeed and Hisham have filed their Motion on the grounds that the claims asserted against them consist of only limited references insufficient to constitute a claim for which relief can be granted. This Opposition addresses the specific issues raised by Mufeed and Hisham. However, Yusuf and United incorporate by reference, as if fully set forth herein verbatim, their Oppositions to Waleed and Waheed's Motions to Dismiss as further support of their Opposition herein.

I. Sufficient Facts Have Been Alleged to State Claims for Relief Against Mufeed and Hisham.

Mufeed and Hisham contend that they are only mentioned in Counts V and VI of the First Amended Counterclaim ("FAC") and that these references do not set forth sufficient factual allegations to support the claims against them. Mufeed and Hisham are mistaken for two reasons: 1) they are implicated in more counts than Counts V and VI, and 2) the claims made against them contain sufficient factual allegations (as opposed to mere legal conclusions) to withstand and overcome their Motion to Dismiss.

A. Mufeed and Hisham Are Implicated in Numerous Counts.

In response to Hamed and Waleed's contentions that Hamed was an alleged partner in the operation of the three Plaza Extra Stores on St. Croix and St. Thomas (the "Plaza Extra Stores") and that despite Hamed's retirement and relocation to Jordan in 1996, that he delegated his partnership responsibilities to his sons² to act as his agents, Yusuf and United filed their Counterclaim and then FAC pleading, in the alternative, that the Hamed Sons, acting as agents for Hamed were liable for various infractions, civil conspiracy, conversion and breaches of fiduciary duties and seeking various forms of relief. In particular, Yusuf and United made allegations against the Hamed Sons, to wit:

1. Yusuf contended that "Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies" and "the Hamed Sons participated and aided and abetted in this conduct by accepting funds from the Plaza Extra

² (Waleed, Waheed, Mufeed and Hisham are referred to collectively as the "Hamed Sons").

Stores and, among other things, using them to purchase and improve properties for their own benefits.” See FAC at ¶ 155.

2. Count VI of the FAC alleges that “Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores’ monies...and the Hamed Sons participated and aided and abetted in the conduct by accepting funds from the Plaza Extra Stores and, among other things, using them to purchase and improve properties for their own personal benefit.” Id. at ¶ 158. Count VI also seeks to impose a constructive trust, equitable liens and disgorgement of all profits to prevent Hamed and the Hamed Sons from being unjustly enriched. Id. at ¶ 159.
3. Count XIII of the FAC for Civil Conspiracy alleges “Hamed and the Hamed Sons agreed to perform the wrongful acts and accomplish wrongful ends alleged in this Counterclaim, and they aided and abetted each other and acted on that agreement.” Id. at ¶186.
4. The relief sought is for “a full accounting of all funds taken by Hamed or his agents from the Plaza Extra Stores” without authorization. Id. at ¶ 191(ii).
5. In addition, a judgment was sought “declaring that Hamed and the Hamed Sons hold any assets purchased with funds improperly taken from the Plaza Extra Stores as constructive trustees” and “imposing a constructive trust or equitable lien...over all funds taken without authorization by Hamed or his agents...” Id. at ¶ 191(iii).

These claims incorporate by reference over 100 paragraphs of factual allegations relating to the specific circumstances giving rise to such claims.

B. The Facts Alleged Are More Than Sufficient To State Claims Upon Which Relief Can Be Granted.

Pursuant to Fed. R. Civ. Pro. 8(a)(2), made applicable to the Virgin Islands Superior Court through Super. Ct. R. 7, a party is required to plead “a short and plain statement of the claim showing that the pleader is entitled to relief.” Under Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.” Further, “[I]n considering a motion to dismiss under Rule 12(b)(6), the Court must accept as true the well-pleaded allegations in the complaint...[T]he plaintiff is required to set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist...Finally, when evaluating a 12(b)(6) motion the court must be mindful of the liberal pleading practice permitted by Rule 8(a)...”. Gov’t Guarantee Fund v. Hyatt Corp., 166 F.R.D. 321, 325-26 (D.V.I. 1996) *aff’d sub nom.* Gov’t Guarantee Fund Republic of Finland v. Hyatt Corp., 95 F.3d 291 (3d Cir. 1996).

Here, the claims against Mufeed and Hisham relate to their actions as agents of Hamed. The detailed factual allegations set forth in the FAC describe specific instances of breaches and misappropriation of funds as well as the concerted efforts of the Hamed Sons to assist each other in such efforts giving rise to the civil conspiracy claims. Hence, these factual allegations, (each incorporated into the various counts) more than satisfy the minimum requirements of Iqbal and are sufficient to withstand dismissal.

C. If the Allegations Are Deemed Insufficient, Yusuf and United Should Be Afforded the Opportunity to Amend.

While Yusuf and United contend that they have sufficiently set forth factual allegations to state a claim upon which relief can be granted against Mufeed and Hisham, if the Court deems their allegations to be lacking, then Yusuf and United respectfully request an opportunity to amend their FAC to cure any alleged deficiencies. It has been “held that even when a plaintiff does not seek leave to amend, if a complaint is vulnerable to 12(b)(6) dismissal, a [...] Court must permit a curative amendment, unless an amendment would be inequitable or futile.” Alston v. Parker, 363 F.3d 229, 235-236 (3d Cir. N.J. 2004). In Shane v. Fauver, 213 F.3d 113, 116 (3d Cir. 2000), the Court explained, “[W]e suggest that...judges expressly state, where appropriate, that the plaintiff has leave to amend within a specified period of time, and that application for dismissal of the action may be made if a timely amendment is not forthcoming within that time. If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate. Id. at 116, *citing* Borelli v. City of Reading, 532 F.2d 950, 951 n.1 (3d Cir. 1976). These principles apply equally to *pro se* plaintiffs and those represented by experienced counsel. Shane, 213 F.3d at 116, *citing* District Council 47 v. Bradley, 795 F.2d 310, 316 (3d Cir. 1986). Dismissal without leave to amend is justified only on the grounds of bad faith, undue delay, prejudice, or futility. Id. at 115, *citing* In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997).

Hence, although Yusuf and United contend their FAC is sufficient, they respectfully request the opportunity for leave to amend should the Court deem their allegations lacking and in need of amendment so as to cure any such deficiencies.

II. Conclusion

Yusuf and United have set forth sufficient factual allegations against Mufeed and Hisham, as agents for Hamed to state claims upon which relief can be granted precluding dismissal. However, if there are any deficiencies in their pleadings, Mufeed and Hisham respectfully request the opportunity to amend their FAC.

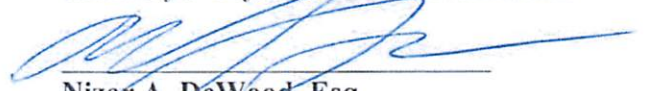
Dated: April __, 2014

Respectfully Submitted,



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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing DEFENDANT/COUNTERCLAIMANTS' OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM AS TO MUFEED HAMED AND HISHAM HAMED was served via U.S. Mail, postage prepaid, fax, electronic mail or hand delivery on this the ___th day of April, 2014 to wit:

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