

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

<b>MOHAMMAD HAMED</b> , by his ) authorized agent <b>WALEED HAMED</b> , ) ) Plaintiff/Counterclaim Defendant, ) ) vs. ) ) <b>FATHI YUSUF and UNITED CORPORATION</b> , ) ) Defendants/Counterclaimants, ) ) vs. ) ) <b>WALEED HAMED, WAHEED HAMED,</b> ) <b>MUFEEED HAMED, HISHAM HAMED, and</b> ) <b>PLESSEN ENTERPRISES,</b> ) ) Additional Counterclaim Defendants. ) ) )	CIVIL NO. SX-12-CV-370  ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF           <b>JURY TRIAL DEMANDED</b>
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**OPPOSITION TO PLAINTIFF'S MOTION  
FOR A REDUCTION OF PI BOND**

Defendants/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United") (collectively, the "Defendants"), through their undersigned attorneys, respectfully submit this Opposition to "Plaintiff's Motion for a Reduction of PI Bond" (the "Motion"), which represents at least Plaintiff's third attempt to reduce the bond. For the reasons set forth below, this Court should reject Plaintiff's most recent effort to avoid liability if the injunction is ultimately determined to be improvidently granted, just as it has rejected Plaintiff's previous efforts.

**I. There is No Basis To Reduce the Bond.**

In its December 5, 2013 Order Re-Setting Injunction Bond, this Court explained:

Federal Rule of Civil Procedure 65(c) provides that a court can issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The purpose of the injunction bond is to provide "a fund to use to compensate incorrectly enjoined defendants." *Sprint*

*Commc'ns Co. L.P. v. CAT Commc'ns Int'l, Inc.* 335 F.3d 235, 240 (3d Cir.2003); quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989).

See, Order Re-Setting Injunction Bond, p. 2. The Court further noted that Yusuf and United “contend that the preliminary injunction has prevented Defendants from terminating Plaintiff’s four sons, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed [the “Hamed Sons],” which “will cost Defendants a total of \$1,388,000 per year (as each Hamed son earns \$347,000 per year as a manager of the Plaza Extra supermarkets).” *Id.* at p. 3-4. The Court then held that it “is persuaded that the annual salaries paid to Plaintiff’s sons do not necessarily reflect the value of their contributions to the businesses.” *Id.* at p. 4. In determining the amount, the Court explained “[f]or purposes of setting the injunction bond, seeking to provide the enjoined party with sufficient relief in the event that the injunction were determined to have been entered in error, the Court will set the amount of one-half of the salaries of these four individuals as an expense that could constitute financial loss to Defendants.” *Id.*

Since this Court’s Order Re-Setting Injunction Bond, nothing has changed which would impact the need for the bond at the same level set by this Court. The injunction prohibited both Yusuf and United from terminating the Hamed Sons. The Court recognized that the salaries paid to the Hamed Sons were inflated and exceeded the value they contributed to the business. Hence, the injunction prohibited Yusuf and United from cutting or eliminating the inflated salaries thereby requiring unnecessary costs to be incurred. These costs harmed either United (if it was considered the owner of the three supermarket stores (the “Plaza Extra Stores”) or Yusuf, if the Plaza Extra Stores were considered owned by the partnership comprised of Hamed and Yusuf. The bond was required by the Court to provide a source of compensation for the costs and damages incurred as a direct result of the injunction. While Yusuf has elected to concede

that the Plaza Extra Stores are owned by the partnership for the purposes of resolving the dispute, he remains enjoined from terminating the Hamed Sons, which he would have done but for the injunction. Termination of the Hamed Sons would have saved the partnership unnecessary costs and, thus, Yusuf's inability to terminate them has harmed him.

Yusuf's concession that the partnership owns the Plaza Extra Stores does not impact the need for the bond, which represents the only source of payment in the event it is later determined that the injunction was entered in error. See 13 James Wm. Moore et al., Moore's Federal Practice ¶ 65.50[2] ("The sum posted in a bond is determinative of the limit that may be recovered by a wrongfully restrained party[.]"). Yusuf has always been the partner in charge of everybody including the right to hire, fire, and determine salaries. Mr. Hamed has admitted repeatedly that Yusuf has made all of the business decisions relating to the Plaza Extra Stores from their inception. Hamed testified at the preliminary injunction hearing that "Mr. Yusuf be in charge of everybody...[in] all the three stores." See Jan. 25, 2013 Hrg. Tr. 201:4; 210:22-23. Mr. Hamed confirmed that Yusuf was the partner who possessed the ultimate decision making authority with respect to the Plaza Extra Stores at his deposition on April 1, 2014, with the authority to hire, fire, and set salaries. See, April 1, 2014 transcript of deposition of Mohammed Hamed, Volume II, p. 26 and 29, attached as **Exhibit A**. Further, Mr. Hamed has not been in the Plaza Extra Stores in his capacity as a partner since his retirement in 1996 and has not been involved in the daily operations in over eighteen (18) years. Hence, but for the injunction, the Hamed Sons would not be immune from termination, even with Yusuf's concession that the Plaza Extra Stores are owned by the partnership.<sup>1</sup>

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<sup>1</sup> Hamed may argue that his sons cannot be terminated because they are his agents. This Court has already found that there are questions of fact as to whether the Hamed Sons were employed as agents of Hamed or whether they were employed in such positions simply because they were nephews of Yusuf's wife. Specifically, this Court questioned: "did [Hamed's] sons become Plaza Extra Store managers, as agents of their father, pursuant to his

As Yusuf was always the partner “in charge of everybody,” he always has had the authority to terminate employees. Hamed specifically sought the injunction to prohibit Yusuf from terminating employees. The injunction still prohibits Yusuf from such actions and the harm or loss to the partnership (and to Yusuf as one half owner) remains, for which the bond must stay in place to provide potential compensation. While United may not be incurring the loss as it is not required to pay the unnecessary expense, the partnership is incurring the expense and, therefore, the same basis for the bond at its current amount remains. The fact that Yusuf has conceded that a partnership exists so it can be dissolved and wound up does not impact or otherwise change the need for the bond. Therefore, no basis exists to reduce the bond.

This Court’s original holding - “seeking to provide the enjoined party with sufficient relief in the event that the injunction were determined to have been entered in error, the Court will set the amount of one half of the salaries of these four individuals as an expense that could constitute financial loss” - still applies. Forcing the partnership to continue to pay employees an inflated salary in excess of their benefit to the business is a financial loss to Yusuf. Requiring Hamed to post half of the value of these salaries so as to keep his children employed with handsome, albeit undeserved, salaries, inures to Hamed’s benefit but is not in the best interests of the partnership and Yusuf. Further, prohibiting and enjoining Yusuf from eliminating this cost, directly harms his interest in the partnership and, therefore, the bond, which seeks to provide compensation for a wrongful injunction, remains proper and should not be reduced.

## **II. Hamed Has Already Received Concessions As To the Bond.**

The Court has already provided significant concessions to Hamed regarding the bond, allowing him to post it in a delayed and piecemeal manner. No further concessions should be

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assertion of his partnership rights of joint control, or were they hired as managerial employees because they were nephews of ... Yusuf’s wife.” See December 5, 2013 Order Denying Motion for Partial Summary Judgment, p. 6.

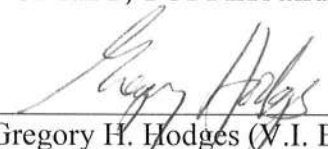
made with regard to the bond. Indeed, Hamed should be required to immediately post cash or other unencumbered property to replace Plot 100 Eliza's Retreat, St. Croix, for all the reasons set forth in Defendants' Reply To Hamed's Opposition To Motion To Reconsider Order of Encumbrance, filed on March 12, 2014.

If Hamed wants the injunction to remain in place, he must be required to leave the bond in place. For all the foregoing reasons, Defendants respectfully request this Court to deny the Motion and provide such further relief as is just and proper.

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: May 9, 2014

By:

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of May, 2014, I caused the foregoing Opposition to Plaintiff's Motion for a Reduction of PI Bond of to be served upon the following via e-mail:

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. ) Case No. SX-12-CV-370  
 ) Volume 2  
FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )  
 )  
WALEED HAMED, WAHEED HAMED, MUFEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )  
 )  
Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF MOHAMMAD HAMED**

was taken on the 1st day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
9:12 a.m. and 5:13 p.m. pursuant to Notice and Federal Rules  
of Civil Procedure.

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Reported by:

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**EXHIBIT**

A

tabbles

MOHAMMAD HAMED -- DIRECT

1                   **THE INTERPRETER:** Repeat your question,  
2 please.

3           **Q. (Mr. Hodges)** I believe you testified that  
4 Mr. Yusuf was in charge for everybody in the business.

5           **A.** Yeah, mon. He's fire and hire. He's in charge.

6           **MR. HARTMANN:** In Arabic.

7           **THE INTERPRETER:** Arabic.

8                   No. His responsibility was to receive. He  
9 was responsible to hire and fire. He was responsible for  
10 the front of the store.

11          **A.** And the buying. (Speaking in Arabic.)

12          **THE INTERPRETER:** Purchases.

13          **Q. (Mr. Hodges)** Okay. Do you recall testifying at  
14 the preliminary injunction hearing on January 25 that  
15 Mr. Yusuf is in charge for everybody?

16          **A.** I can't remember.

17          **THE INTERPRETER:** He says he can't remember.  
18 I can't remember.

19          **Q. (Mr. Hodges)** But you don't disagree with that, do  
20 you?

21          **MR. HARTMANN:** Object. Asked and answered.

22          **THE INTERPRETER:** He does not disagree.

23                   From day one, I worked with -- with Mr. Yusuf  
24 as partners together hand-in-hand. And, you know, our  
25 success was, you know, he was in charge, and -- and -- and



MOHAMMAD HAMED -- DIRECT

1 The time is 9:58.

2 Q. (Mr. Hodges) Mr. Hamed, Mr. Yusuf being in charge  
3 of everybody applied to all three stores, isn't that right?

4 THE INTERPRETER: Yes.

5 Q. (Mr. Hodges) Okay. And that has been the case up  
6 until the time the Court entered a preliminary injunction in  
7 this case, isn't that right?

8 A. Yes.

9 THE INTERPRETER: Yes.

10 Q. (Mr. Hodges) Now, we -- we talked about all three  
11 stores. If you would, I think we've -- you would agree with  
12 me that the Plaza Extra East store began business in 1986,  
13 right?

14 A. (Speaking in Arabic). I can't remember. I  
15 couldn't exactly 100 percent. (Speaking in Arabic.

16 THE INTERPRETER: He can't be sure. He does  
17 not remember a hundred percent.

18 Q. (Mr. Hodges) Do you remember -- do you remember  
19 when the St. Thomas store opened?

20 A. No.

21 THE INTERPRETER: No, he does not remember --  
22 I don't remember.

23 Q. (Mr. Hodges) If I told you that the Plaza East  
24 store opened in April of 1986, would you disagree with me?

25 THE INTERPRETER: It's possible.