

**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.**,

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**MOTION TO COMPEL DEFENDANTS' ATTENDANCE AT DEPOSITION
RE COUNTERCLAIM**

Pursuant to Rule 37, Plaintiff/Counterclaim Defendants hereby move to compel the attendance of the Defendants at a deposition to answer questions limited to the counterclaim filed in this case. The basis for the motion is more fully set forth in the memorandum being submitted in support of said motion, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted. A proposed order is also being submitted with this motion.

Dated: June 16, 2014



Joel H. Holt, Esq., VI BAR No. 6
Counsel for Plaintiff
2132 Company Street,
Christiansted, VI 00820
Tele: (340) 773-8709
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holtvi@aol.com

Carl J. Hartmann III, Esq.
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5000 Estate Coakley Bay, L-6
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(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

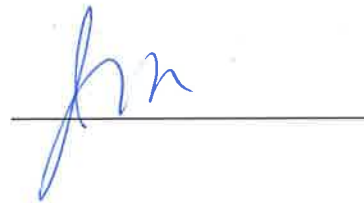
I hereby certify that on this 11 day of June, 2014, I served a copy of the foregoing in compliance with the parties consent, pursuant to Fed. R. Civ. P. 5(b)(2)(E), to electronic service of all documents in this action on the following persons:

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

Gregory H. Hodges
VI Bar No. 174
Law House, 10000 Frederiksberg Gade
P.O. Box 756
ST. Thomas, VI 00802
ghodges@dtflaw.com

Mark Eckard, Esq.
Eckard, PC
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
Counsel for Plessen Enterprises, Inc.
C.R.T. Building
1132 King Street,
Christiansted, VI 00820
email: jeffreymlaw@yahoo.com



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

MOHAMMAD HAMED , by his authorized agent WALEED HAMED ,)	
)	
<i>Plaintiff/Counterclaim Defendant,</i>)	CIVIL NO. SX-12-CV-370
)	
vs.)	ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF
)	
FATHI YUSUF and UNITED CORPORATION ,)	
)	
<i>Defendants/Counterclaimants,</i>)	
)	
vs.)	JURY TRIAL DEMANDED
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
<i>Counterclaim Defendants.</i>)	
)	

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
DEFENDANTS' ATTENDANCE AT DEPOSITION RE COUNTERCLAIM**

Pursuant to Rule 37, Plaintiff/Counterclaim Defendants hereby move to compel the attendance of the Defendants at a deposition to answer questions limited to the counterclaim filed in this case. In this regard, the Depositions of the Defendants were noticed for the week of March 31, 2014. Just prior to the depositions, Defendants filed a motion to preclude questioning about the new counterclaim defendants. See **Exhibit 1**. Indeed, several "emergency motions" regarding the depositions set for the week in question were also filed at this time, as the Court will recall.

To minimize the need for the Court to be involved with this motion on such short notice, Plaintiff and the Counterclaim Defendants did not go forward with any questions about the counterclaims, mooted this motion, which Plaintiff notified the Court about,

stating that this motion was moot so the Court would not have to address it. See **Exhibit 2**. As such, no questions were asked at these depositions regarding the counterclaims.

These depositions were then re-noticed for June 3rd and 4th, limited to the counterclaim issues. However, Defendants did not show up. See **Exhibits 3 and 4**. Recognizing that no good deed goes unpunished, Plaintiff realizes he should have just proceeded with the full depositions as noticed during the week of March 31st as opposed to being reasonable and waiting to do these depositions when the Defendants were ready to do them.

In any event, Plaintiff/Counterclaim Defendants seek an order directing the Defendants to appear at a deposition (at a future date to be mutually agreed upon) regarding the counterclaims filed in this case. There is ample time do these depositions under the new scheduling order requested by Defendants and granted by this Court. Moreover, Plaintiff/Counterclaim Defendants are certainly entitled to the information related to the counterclaims filed against them.

Finally, a "meet and confer" letter was sent to obviate the need for this motion, which did not resolve this issue, so it is requested that this Court grant the relief sought and direct the defendants to be deposed on the counterclaim issues.

Dated: June 1, 2014



Joel H. Holt, Esq., VI BAR No. 6
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holtvi@aol.com
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Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
Counsel for Waheed Hamed
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carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of June, 2014, 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:

Nizar A. DeWood
The DeWood Law Firm
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Christiansted, VI 00820
dewoodlaw@gmail.com

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Jeffrey B.C. Moorhead, Esq.
Counsel for Plessen Enterprises, Inc.
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1132 King Street,
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EXHIBIT 1

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

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

2014 MAR 28 PM 4:57
SUPERIOR COURT
OF THE VIRGIN ISLANDS

EMERGENCY MOTION FOR PROTECTIVE ORDER CANCELLING DEPOSITIONS

Defendants/counterclaimants Fathi Yusuf and United Corporation (collectively, the "Defendants"), through their undersigned counsel, pursuant to Super. Ct. R. 39(a) and Fed. R. Civ. P. 26(d), made applicable to proceedings in this Court by Super. Ct. R. 7, respectfully move this Court to enter a protective order cancelling six (6) depositions noticed for April 2, 2014 through April 4, 2014.

FACTUAL BACKGROUND

1. On December 5, 2013, this Court entered an Amended Scheduling Order directing that "[a]ll fact discovery, including written discovery and fact witness depositions, shall be completed by **March 15, 2014**" (emphasis in original).
2. On February 19, 2014, Defendants filed a Motion To Further Extend Scheduling Order Deadlines ("Motion to Extend"). Plaintiff/counterclaim defendant Mohammed Hamed ("Plaintiff") filed his Opposition to the motion on February 25, 2014 and Defendants filed their

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Blumberg No. 5208

EXHIBIT

1

Reply on March 5, 2014. Accordingly, the Motion To Extend is fully briefed and awaiting this Court's disposition.

3. Four newly added counterclaim defendants "appeared" for the first time in this case on February 18, 2014 and February 21, 2014 by filing answers and motions to dismiss. One of the newly added counterclaim defendants, Plessen Enterprises, Inc. ("Plessen"), has yet to enter an appearance and is now in default despite Plaintiff's motion to dismiss Plessen as a counterclaim defendant filed on March 3, 2014.

3. Pursuant to four notices of deposition dated February 25, 2014, Plaintiff noticed the depositions of Defendants Mahar Yusuf, Nejeah Yusuf, Yusuf Yusuf, and John Gaffney, United's comptroller (the "Six Deponents") for March 12-14, 2014.

4. On February 27, 2014, counsel for Plaintiff and Defendants met in St. Croix to discuss settlement proposals.

5. On February 28, 2014, counsel for Plaintiff and Defendants agreed that the depositions of the Six Deponents would be rescheduled to the week of March 31, 2014 to devote attention to the settlement process.

6. On March 4, 2014, Plaintiff renoticed the depositions of the Six Deponents for April 2-4, 2014.

7. On March 24, 2014, counsel for additional counterclaim defendant Waheed Hamed ("Waheed"), who also is co-counsel for Plaintiff, provided electronic notice of his self-described "Me Too" Notice of Deposition. A copy of the email and attached Notice of Deposition is attached as **Exhibit A**.

8. On March 27, 2014, counsel for Defendants sent the email attached as **Exhibit B** in an effort to resolve the discovery dispute. Despite a telephone conference between counsel

this morning, no resolution could be reached because counsel for Waheed would not agree that Defendants could seek discovery from his client outside the existing deadline.¹

ARGUMENT

A. GIVEN THE PENDENCY OF THE MOTION TO EXTEND AND THE PROVISIONS OF FED. R. CIV. P. 26(d)(1), THIS COURT SHOULD CANCEL AND REQUIRE RESCHEDULING OF THE DEPOSITIONS OF THE SIX DEONENTS.

As argued in the Motion To Extend and the Reply to Plaintiff's Opposition to that motion, it makes no sense that a discovery schedule establishing a March 15, 2014 fact discovery deadline would apply to the five newly added parties, four of whom appeared in the case less than one month before the deadline and one which has yet to appear. Moreover, Fed. R. Civ. P. 26(d)(1) provides that a "party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosures under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order" (emphasis added). The undersigned respectfully represents as an officer of this Court that Defendants have not conferred with the five newly added counterclaim defendants, as required by Fed. R. Civ. P. 26(1). Accordingly, since none of the exceptions set forth in Rule 26(d)(1) apply under the circumstances of this case, Waheed "may not seek discovery from" Defendants or any other source.

If this Court does not enter an appropriate protective order, the Six Deponents will be exposed to multiple depositions by Plaintiff as well as the newly added parties, which clearly are not subject to the existing scheduling order. While the proposal set forth in Exhibit B was rejected by counsel for Waheed, even if he had agreed that his client could be deposed at a

¹ Oddly, counsel for Waheed did indicate he would agree to his client being deposed in the immediate future, namely, next week.

reasonable, later date, that would not have protected the Six Deponents from being deposed by another newly added party. In this case, Waheed simply wants to "have his cake and eat it too." He wants to obtain fact discovery outside the currently established deadline, but be able to avoid providing any discovery because the deadline has passed. This is patently unfair.

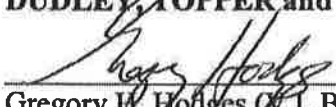
CONCLUSION

The foregoing circumstances clearly show why this Court should extend the discovery deadline as requested in the Motion To Extend. Here, Plaintiff's and Defendants' good faith efforts to accommodate settlement by extending limited depositions beyond the current deadline creates unfair advantage for a newly added party seeking discovery beyond the deadline but refusing to provide discovery beyond the deadline. For these reasons, Defendants respectfully request this Court to enter an order cancelling the depositions of the Six Deponents and granting such further relief as is just and proper.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: March 28, 2014

By:


Gregory M. Hodges (V.I. Bar No. 174)
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St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
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St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)
The DeWood Law Firm
2006 Eastern Suburbs, Suite 101
Christiansted, VI 00830
Telephone: (340) 773-3444
Telefax: (888) 398-8428
Email: info@dewood-law.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2014, I caused the foregoing to be served upon the following via e-mail:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi@aol.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
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Michelle Barker

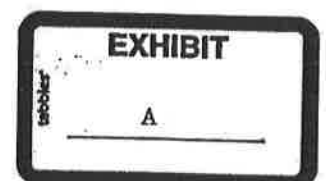
Gregory H. Hodges

From: Carl Hartmann <carl@carlhartmann.com>
Sent: Monday, March 24, 2014 3:57 PM
To: kye@thewalkerlegalgroup.com; mark@markeckard.com; holtvi@aol.com; Gregory H. Hodges; Nizar DeWood
Cc: Japinga, KiM; Cordelia Jones
Subject: Me Too notice for scheduled depositions
Attachments: 2014-03-24 Notice of Depositions.pdf

All:

Please see the "me too" depo notice for the depositions set for Wed. – Fri. of next week.

Carl Hartmann



**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.,**

Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

NOTICE

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure and Rule 11 of the V.I. Superior Court Rules, counterclaim defendant Waheed Hamed, through his counsel, will take the videotape deposition of:

a. **FATHI YUSUF** on **WEDNESDAY, APRIL 2, 2014** at 9:00 a.m. at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709); continuing from the deposition then noticed by Mohammad Hamed until completed or an aggregate time with other aligned parties reaches the maximum time allowed.

b. Similarly, **UNITED CORPORATION** on the same subjects set forth in the deposition notice of Mohammad Hamed, on **THURSDAY, APRIL 3, 2014** at 9:00 a.m. by video at the office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix 00820, (340) 773-8709.

c. Similarly, JOHN GAFFNEY on THURSDAY, APRIL 3, 2014 at 1 :00 p.m. at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709).

d. Similarly, on FRIDAY, APRIL 4, 2014 at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709):

Nejeh Yusuf 9:00 a.m.
Yusuf Yusuf 10:00 a.m.
Bakir Hussein 11:00 a.m.
Mahar "Mike" Yusuf 1:00 p.m.

Dated: March 24, 2014



Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay,
Unit L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2014, I served a copy of the foregoing by email in compliance with the parties consent to electronic service of all documents in this action on the following persons:

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

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

Notice
Page 3

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

Mark W. Eckard
Eckard, P.C.
#1 Company Street
P.O. Box 24849
Christiansted VI 00824

Kye Walker
The Walker Legal Group
16AB Church Street 2d Floor
Christiansted, St. Croix, V.I. 00820


Carl J. Harbman

Gregory H. Hodges

From: Gregory H. Hodges
Sent: Friday, March 28, 2014 5:32 AM
To: Joel Holt
Cc: Carl Hartmann; mark@markeckard.com; Nizar DeWood; Japinga, KiM; Cordelia Jones; Charlotte Perrell
Subject: Re: Me Too notice for scheduled depos

Are you and Carl available this morning to discuss these issues before I file an emergency motion for protective order re all the depositions you both have noticed?

Sent from my iPhone

> On Mar 27, 2014, at 7:43 PM, "Joel Holt" <holtvi@aol.com> wrote:

>

> Greg-depositions are open for all parties to ask questions. Not only did you and I not agree to limit them as you suggest, we could not bind other parties to the case.

>

> Sent from my iPhone

>

>> On Mar 27, 2014, at 4:48 PM, "Gregory H. Hodges" <ghodges@dtflaw.com> wrote:

>>

>> Carl,

>> I will object to and seek an appropriate protective order for any such "me too" notices from any of the additional counterclaim defendants unless they agree that the current scheduling order does not in any way preclude my ability to depose them in the future. The accommodation that Joel and I made that allows for the depositions to proceed next week only applied to plaintiff and defendants. It would not be fair for your client(s) to be able to depose mine outside the scheduling order and then claim that the scheduling order precludes future fact depositions. Please advise asap whether you will so agree.

>>

>>

>> Gregory H. Hodges

>> Dudley, Topper and Feuerzeig, LLP

>> Law House, 1000 Frederiksberg Gade

>> St. Thomas, VI 00802

>> Direct: (340) 715-4405

>> Fax: (340) 715-4400

>> Web: www.DTFLaw.com

>>

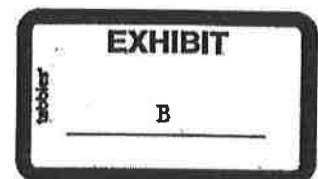
>> THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, forwarding or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone and delete the original message immediately. Thank you.

>>

>>

>>

>> -----Original Message-----



>> From: Carl Hartmann [mailto:carl@carlhartmann.com]

>> Sent: Monday, March 24, 2014 3:57 PM

>> To: kye@thewalkerlegalgroup.com; mark@markeckard.com; holtvi@aol.com; Gregory H. Hodges; Nizar DeWood

>> Cc: Japinga, KIM; Cordella Jones

>> Subject: Me Too notice for scheduled depositions

>>

>> All:

>>

>>

>>

>> Please see the "me too" depo notice for the depositions set for Wed. - Fri. of next week.

>>

>>

>>

>> Carl Hartmann

>>

EXHIBIT 2

**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,
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Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

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

JURY TRIAL DEMANDED

**PLAINTIFF HAMED'S OPPOSITION
TO DEFENDANTS' EMERGENCY MOTION
FOR PROTECTIVE ORDER TO CANCEL DEPOSITIONS**

On Friday, March 28, 2014 at 5:13 p.m., Defendants filed a motion seeking to have this Court issue a protective order to cancel previously scheduled depositions-- to which Defendants had in fact stipulated.¹ Defendants will be taking the deposition of Mohammad Hamed and Wally Hamed on Monday and Tuesday, but it now seek to cancel the long scheduled depositions of the Defendant and other parties set to follow in the three days thereafter.


¹ By agreement, the deposition of Defendants Fathi Yusuf and United Corporation and 5 others will be done on Wednesday through Friday, April 2-4, 2014 -- following the depositions of Mohammad Hamed and Wally Hamed on March 31 and April 1.



The putative reason for Defendants' motion is the "late" filing of a "me too" deposition notice by a new co-defendant, Waleed Hamed, for the same already agreed upon times and places. However, it is clear no such "me too" deposition notices were needed, as any party's counsel can attend and ask questions, mooted the need for these "me too" notices.

Hence, the "me too" notices were hereby withdrawn by a simultaneous "Notice of Withdrawal of Deposition Notice" with this response, mooted the motion for a protective order. As such, the motion for a protective order can be denied as moot.

Dated: March 31, 2014



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

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2014, I served a copy of the foregoing by email in compliance with the parties consent to electronic service of all documents in this action on the following persons:

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

Gregory H. Hodges
DTF Law Firm
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P.O. Box 756
ST. Thomas, VI 00802
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Carl J. Hartmann III, Esq.

Counsel for the Waheed Hamed
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(340) 719-8941
carl@carlhartmann.com

Mark W. Eckard
Eckard, P.C.
#1 Company Street
P.O. Box 24849
Christiansted VI 00820

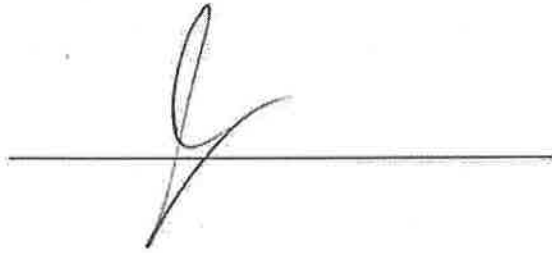
A handwritten signature in black ink is written over a solid horizontal line. The signature is stylized and appears to be the initials 'MWE'.

EXHIBIT 3

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
)
FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants/)
Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, AND)
PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)

STATEMENT FOR THE RECORD

was taken on the 3rd day of June, 2014, at the Office of
Caribbean Scribes, Inc., 2132 Company Street, Suite 3,
Christiansted, St. Croix, U.S. Virgin Islands, at 9:52 a.m.
pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Angela L. Klein
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161



ORIGINAL

APPEARANCES

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A-P-P-E-A-R-A-N-C-E-S

For Plaintiff/Counterclaim Defendant:

Law Offices of
Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Joel H. Holt

STATEMENT FOR THE RECORD

1 MR. HOLT: For the record, my name is Joel
2 Holt. I represent the Plaintiff, Mohammed Hamed. Attached
3 hereto as Exhibit 1 is the Notice of Taking Deposition of
4 Fathi Yusuf scheduled for today, June 3rd, at 9:00 a.m.

5 It is now almost 10:00, 9:52, to be precise,
6 and no one has shown up. Therefore an appropriate motion
7 will be filed.

8 I should note this deposition specifically
9 was noticed to address the counterclaim issues not covered
10 in the initial deposition and was served on all counsel on
11 May 5th, 2014, which notice has not been withdrawn. Thank
12 you.

13 (Deposition Exhibit No. 1 was
14 marked for identification.)

CERTIFICATE

C-E-R-T-I-F-I-C-A-T-E

1
2
3
4
5 I, Angela L. Klein, Register Professional Reporter,
6 Christiansted, St. Croix, U.S. Virgin Islands, do
7 hereby certify that I did report the foregoing proceedings
8 in Stenotype on June 3, 2014.

9 That the foregoing 3 pages of transcript constitutes
10 a true and accurate transcription of my Stenotype notes;

11 That I am not counsel to, nor related to any of the
12 parties involved herein; nor am I otherwise interested in
13 the outcome of this proceeding.

14 IN WITNESS WHEREOF I have affixed my signature hereto
15 this 4th day of June, 2014.

16
17 

18 ANGELA L. KLEIN, RPR

19 NP-063-11

20 Expiration July 28, 2015
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**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.,)
)
Counterclaim Defendants.)
_____)

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED



NOTICE OF TAKING VIDEO TAPED DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, JOEL H. HOLT, ESQ. will take the videotaped examination **FATHI YUSUF** on **TUESDAY, JUNE 3, 2014 at 9:00 a.m. at the Office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix, VI 00804 (340-773-8709).**

Said deposition will address the counterclaim issues not covered by the initial deposition and will be taken before a Notary Public commissioned by the Territory of the Virgin Islands or other person qualified to administer the oath and take depositions. Said deposition is being taken for use as evidence and for purposes of discovery of evidence and may be continued from day to day until completed.

Dated: May 5, 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.
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2014, 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:

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

Mark Eckard, Esq.
Eckard, PC
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Gregory H. Hodges
VI Bar No. 174
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Jeffrey B.C. Moorhead, Esq.
Counsel for Plessen Enterprises, Inc.
C.R.T. Building
1132 King Street,
Christiansted, VI 00820
email: jeffreymlaw@yahoo.com



EXHIBIT 4

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

FATHI YUSUF and UNITED)
CORPORATION,)

Defendants/)
Counterclaimants,)

vs.)

WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, AND)
PLESSEN ENTERPRISES, INC.,)

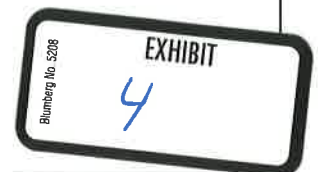
Counterclaim Defendants.)

STATEMENT FOR THE RECORD

was taken on the 4th day of June, 2014, at the Law Offices
of Joel H. Holt, 2132 Company Street, Suite 2,
Christiansted, St. Croix, U.S. Virgin Islands, at 9:55 a.m.
pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Angela L. Klein
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161



ORIGINAL

APPEARANCES

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A-P-P-E-A-R-A-N-C-E-S

For Plaintiff/Counterclaim Defendant:

Law Offices of
Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820

By: Joel H. Holt

STATEMENT FOR THE RECORD

1 MR. HOLT: We are going on the record at
2 9:55. It should be noted that the Third Amended Notice Of
3 Taking The 30(b)(6) Deposition of United Corporation set
4 this matter for 9:00 a.m. on today's date, Wednesday,
5 June 4th. It has not been withdrawn. As of this time, no
6 one has appeared, and therefore, we will mark this notice as
7 an exhibit, and we'll ask the court reporter to attach it
8 and prepare a transcript since there was no appearance by
9 the Defendant, United Corporation, in this case.

10 (Deposition Exhibit No. 1 was
11 marked for identification.)
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CERTIFICATE

C-E-R-T-I-F-I-C-A-T-E

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5 I, Angela L. Klein, Register Professional Reporter,
6 Christiansted, St. Croix, U.S. Virgin Islands, do
7 hereby certify that I did report the foregoing proceedings
8 in Stenotype on June 4, 2014.

9 That the foregoing 3 pages of transcript constitutes
10 a true and accurate transcription of my Stenotype notes;

11 That I am not counsel to, nor related to any of the
12 parties involved herein; nor am I otherwise interested in
13 the outcome of this proceeding.

14 IN WITNESS WHEREOF I have affixed my signature hereto
15 this 4th day of June, 2014.

16
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18 ANGELA L. KLEIN, RPR

19 NP-063-11

20 Expiration July 28, 2015

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

MOHAMMAD HAMED, by his)
authorized agent WALEED HAMED,)
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 Plaintiff/Counterclaim Defendant,)
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 vs.)
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 UNITED CORPORATION,)
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 WALEED HAMED, WAHEED)
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 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



**THIRD AMENDED
NOTICE OF TAKING RULE 30(b)(6) VIDEO-TAPED DEPOSITION**

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, JOEL H. HOLT, ESQ. will take the oral examination of **UNITED CORPORATION** on **WEDNESDAY, JUNE 4, 2014 at 9:00 a.m.** by video at the office of Joel H. Holt, 2132 Company Street, Christiansted, St. Croix 00820, (340) 773-8709.

DEFINITIONS AND INSTRUCTIONS

Unless otherwise specified, the Notice shall be governed by the following definitions and instructions:

A. "Documents" mean any written, printed, typed or graphic matter of any kind or nature however produced or reproduced, whether sent or received or neither, including all drafts and copies bearing notations, marks or matter not found on the original; it includes but is not limited to, all contracts, agreements, representations, warranties, opinions, amendments or modifications thereof; all letters or other forms of correspondence or communications, including but not limited to e-mails, notes, messages and reports studies, analyses, evaluations and all photographs.

B. "You" means **UNITED CORPORATION**

The deponent specified should be the person or persons most knowledgeable about the Issues set forth on **Attachment "A"**. The deponent is requested to bring to the deposition any and all documents, relevant to any of the areas set forth above, and all other items relevant to the items listed above under your control not previously produced by you.

Said deposition will be taken and recorded by **VIDEOTAPE** before a Notary Public commissioned by the Territory of the Virgin Islands or other person qualified to administer the oath and take depositions. Said deposition is being taken for use as evidence and for purposes of discovery of evidence and may be continued from day to day until completed.

Dated: May 5, 2014



Joel H. Holt, Esq.
Counsel for Plaintiff
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Tele: (340) 773-8709
Fax: (340) 773-8677

Carl J. Hartmann III, Esq.
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
(340) 719-8941
carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2014, 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:

Nizar A. DeWood
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Jeffrey B.C. Moorhead, Esq.
Counsel for Plessen Enterprises, Inc.
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Christiansted, VI 00820
email: jeffreymlaw@yahoo.com

A handwritten signature in black ink, appearing to be 'JBM', is written over a horizontal line.

ATTACHMENT A TOPICS FOR DEPOSITION

1. Methods and actions in the recordation and accounting of amounts taken by members of the Hamed and Yusuf families from Plaza Extra Supermarket funds in 1986 to 2003.
2. The 1999 actions by Maher "Mike" Yusuf and Mafi Hamed to reconcile recordation and accounting of amounts taken by members of the Hamed and Yusuf families from Plaza Extra supermarket funds in 1986 to 1999.
3. All damages you claim based on the counterclaims and third party claims you assert or may assert with regard to this action.
4. All documents produced by you or sent to you in discovery in this case regarding the counterclaims asserted by you.
5. All interrogatory responses submitted by you in this case regarding the counterclaims asserted by you.
6. In paragraphs 54-55 of the First Amended Counterclaim, the statements that:

"After the additional funds from Yusuf's brother were exhausted, a further \$300,000 was needed to complete the construction. At this point, in mid-1983, Yusuf borrowed \$225,000.00 from his brother-in-law, Hamed. The loan was made on a non-recourse basis to assist Yusuf by providing funds to United so it could open Plaza Extra – East, just as Yusuf's brother had done earlier with the over \$1.5 million. In recognition of Hamed's loan/investment, and other advances subsequently made by Hamed of approximately \$175,000.00, Yusuf agreed that Hamed would receive a percentage of the net profits. Ultimately, it was agreed that Hamed was to receive 50% of the net profits of Plaza Extra-East as a return on this investment and repayment of the loan.

Hamed was to be repaid periodically and receive his return on his investment from the net profits of Plaza Extra – East on a set percentage basis. However, recovery of the return on the investment occurred upon a specific request. If Hamed sought to recover funds from his investment, he would coordinate with Yusuf and those funds would be given in cash and a notation would be made as to the amount given so as to insure an equal amount was paid to Yusuf from these net profits.

7. In paragraphs 102-105 of the First Amended Counterclaim, the statements that:

[102] In September of 2010, Yusuf received a partial copy of the FBI file, records, and documents, electronically reproduced and stored on a hard drive. The hard drive contained thousands of documents including bank statements, and copies of cancelled checks. The documents were organized under the names of various individuals in the Hamed and Yusuf families. In

other words, whatever the FBI found for any specific person, they would scan and organize the documents under that person's name.

[103] Upon review of these documents, Defendants discovered defalcation and conversion of substantial assets including cash from United by Hamed and Waleed.

[104] During a search of the documents and files delivered by the U.S. Government, United reviewed documents comprising tax returns for Waleed. An examination of Waleed's tax returns revealed the following significant assets:

a. Tax Year 1992 (Stocks & Investments) \$ 408,572.00

b. Tax Year 1993 (Stocks & Investments) \$7,587,483.00

[105] The detailed stock acquisitions, which were listed meticulously by date of acquisition, price and number of shares purchased, could only have been acquired by Waleed through either a) his unlawful access to monies and other properties belonging to United since Waleed never held any other employment since 1986, other than his employment with United, or, b) his misappropriation of monies which were "partnership" funds for which Waleed may be individually liable, or for which Hamed may be liable in the event that Waleed was acting as Hamed's authorized agent when removing such funds.

8. In paragraphs 106-114 of the First Amended Counterclaim, the statements that:

Upon information and belief, Hamed knew of or directed Waleed's misconduct and personally benefited from his agent's defalcation and conversion of millions of dollars from United.

For example, Waleed and Hamed misappropriated funds, which Yusuf and Hamed had agreed to send to a charity in West Bank, Palestine. The money was designated for the building of a concrete batch plant (the "Plant") in an impoverished area to provide the poor with employment opportunities. In 1996, Waleed, as a managerial employee of United, was an authorized co-signatory with Yusuf on various bank accounts in St. Martin and custodian of an account in Waleed's name.

Yusuf authorized Waleed to send \$1 million to Hamed in the West Bank as a charitable donation on behalf of United. Hamed was required to disperse the money to two local managers that were hired to set up the Plant, which was eventually formed and employed about 38 of the poor in the community.

Eventually, Yusuf met in the West Bank with the two managers of the Plant, which was supposed to have been purchased with the \$1 million

that was sent to Hamed through his agent, Waleed.

Yusuf inquired of the managers regarding the operations of the Plant. Yusuf was advised that they were losing sales because they had no money to buy a pump.

Yusuf was ~~informed that they~~ did not receive \$1 million dollars, but had received only \$662,000.00 from Hamed.

In fact, bank records revealed that Hamed had actually received \$2 million dollars, instead of the \$1 million dollars authorized by Yusuf.

Upon review of the records received from the U.S. Government, it was revealed that Hamed or Waleed had pocketed \$1,338,000 of the \$2 million dollars transferred to Hamed by his son, Waleed, and only \$662,000 was actually distributed to the charitable project.

9. In paragraphs 126-128 of the First Amended Counterclaim, the statements that:

United consistently maintained that it is entitled to rent payments as an internal accounting expense to be utilized as an offset against income from Plaza Extra- East and which thereby reduces the net profits. At present, United has a motion pending to withdraw past due rents to which it is entitled. In the event that United is unable to recover the rent it seeks for internal accounting expense purposes and/or in the event that the Alleged Partnership is deemed to exist, then United seeks to recover the past due rent from the Alleged Partnership in accordance with the manner in which rent has been collected in the past.

Since 1986, United and the Alleged Partnership have always agreed that the value of any rent due to United for any retail space used by Plaza Extra – East would be withdrawn from the gross sales proceeds from Plaza Extra – East from time to time. Since 1986, the parties have customarily settled all rents due upon demand by United.

Historically, it was determined that United was entitled to rent for the premises occupied by Plaza Extra – East. From the beginning to December 31, 1993, United was paid in full for the rent.

10. In paragraphs 148-149 of the First Amended Counterclaim, the statements that:

Hamed and Waleed, acting individually and as agent for Hamed, have unlawfully defalcated and converted to their own benefit and gain substantial funds belonging to Defendants.

Defendants never authorized these funds to be appropriated to the personal use of Hamed or Waleed.

11. In paragraph 155 of the First Amended Counterclaim, the statements that:

Hamed and his agents have obtained in excess of \$7 million of the Plaza Extra Stores' monies under such circumstances that in equity and good conscience they ought not retain and the Hamed Sons participated and aided and abetted in this 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.

12. In paragraph 186 of the First Amended Counterclaim, the statement that:

Hamed and the Hamed Sons agreed to perform the wrongful acts and accomplish the wrongful ends alleged in this Counterclaim, and they aided and abetted each other and acted on that agreement.

13. In paragraphs 189-190 of the First Amended Counterclaim, the statements that:

To the extent that United has paid any taxes, interest and penalties with respect to the income of the Plaza Extra Stores that should have been paid by Hamed, United is entitled to full indemnification from Hamed for such payment including interest at the legal rate from the date of such payment. Further, to the extent that any accounting and legal fees and other costs are incurred relating to any tax returns or amendments that must be prepared and filed for taxes paid by United that should have been paid by Hamed, United is entitled to full indemnification from Hamed for such fees and costs.

In the event the Alleged Partnership is determined to exist, then Yusuf is entitled to full indemnification from Hamed for half of any debts or obligations of the Alleged Partnership, regardless of the form of the indebtedness or whether Hamed is or was a signatory or guarantor of any such obligation.