

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

MOHAMMAD HAMED , by his)	
authorized agent WALEED HAMED ,)	
)	CIVIL NO. SX-12-CV-370
<i>Plaintiff/Counterclaim Defendant</i> ,)	
)	
vs.)	ACTION FOR DAMAGES,
)	INJUNCTIVE RELIEF AND
FATHI YUSUF and)	DECLARATORY RELIEF
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>)	
)	

**REPLY TO DEFENDANTS' OPPOSITION TO
THE APPOINTMENT OF DAVID RIDGWAY AS MASTER**

Defendants oppose this motion because (1) Ridgway is not an accountant and (2) Defendants have nominated an accountant, Joyce Bailey. While the appointment of the Master should not be an adversarial issue, two brief comments are in order.

First, there is absolutely no need for the Master to be an accountant, as Plaza Extra has a full accounting staff that can take care of all accounting needs during dissolution. In this regard, the Master's role as contained in Plaintiff's dissolution plan is to assist the Court in making sure the dissolution process proceeds smoothly so the Court need not micro-manage it. This is essentially the separation of three businesses with a combined gross income of \$100 million. The task needs someone with experience who can work full time on it. Ridgway is certainly qualified for this task.

Second, Bailey cannot serve as the Master due to a conflict, as noted in Plaintiff's opposition memorandum to her appointment, which is being submitted at the same time as this reply, and is incorporated herein by reference.

One final comment is in order. Defendants seem to think the damage claims in this case should be submitted for determination to a Master pursuant to Rule 53 of the Federal Rules of Civil Procedure. This is a misunderstanding of the law and procedure. In this case, there is a jury demand, which by itself removes the possibility of appointing a master to decide contested fact pursuant to Rule 53 (A)(1)(B). Indeed the case Defendants cite, *Alvarez v City of Chicago*, 605 F.3d 445, 449 (7th Cir. 2010) is a **non-jury** case, involving a wage claim by paramedics under the FSLA, which included computations for fitness pay, uniform pay, driving pay and related wage claims. As the Court noted:

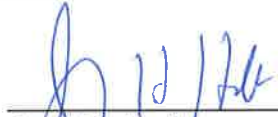
If the paramedics in this litigation ultimately recover, their recovery will be determined by the application of mathematical formulae common to all class members, although the specific variables (number of hours worked, hourly wage, etc.) will vary from individual to individual. **However, the individualized facts will likely come in the form of undisputed payroll and time records.** *Id.* at 449 n1.

Even if this case were not a jury trial, the damage claims involve allegations of breach of fiduciary duty, conversion, equitable trusts and related legal issues (as well as a claim for punitive damages), none of which will come from a computation based on something as easy as payroll records. Instead it will involve the need to weigh the credibility of the witnesses and make fact findings after applying the relevant legal principles, none of which are proper subjects for a Master under Rule 53. *See, e.g., Bennerson v. Joseph*, 583 F.2d 633, 642 (3rd Cir. 1978)(even in a non-jury case, Master should not decide factual questions or have to apply legal principles to those facts).

In short, Defendants' concept of this Court just sending the damage claims to an

accountant to "resolve," as opposed to a jury as demanded in this case, is contrary to the law and *far* beyond the scope of Rule 53. However, having someone of Ridgway's qualifications assist the Court in dealing with the many business sub-issues as suggested in Plaintiff's plan is certainly appropriate.

Dated: June 23, 2014



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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2014, I served a copy of the foregoing by email, as agreed by the parties, on:

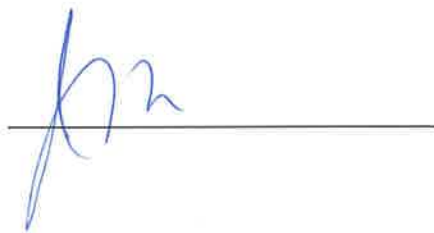
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Reply Re Ridgway as Master
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A handwritten signature in blue ink is positioned above a solid horizontal black line. The signature is stylized and appears to be the initials 'JM'.