

PROCEDURAL BACKGROUND

Defendants submit that the Memorandum is intentionally opaque¹ regarding the factual background for the Motion to Compel because a careful examination of the record facts will show that Hamed has had a full and fair opportunity to depose Defendants. In order to provide the Court with a clearer picture of the facts underlying the Motion to Compel, the Defendants respectfully represent:

1. On March 4, 2014, Hamed filed and served his Third Amended Notice of Taking Videotaped Deposition of Yusuf. A copy of that notice is attached as **Exhibit 1**.
2. On March 4, 2014, Hamed filed and served his Third Amended Notice of Taking Rule 30(b)(6) Videotaped Deposition of United. A copy of that notice is attached as **Exhibit 2**.²
3. On March 4, 2014, Hamed filed and served his Second Amended Notice of Taking Videotaped Depositions of a number of individuals including Maher “Mike” Yusuf. A copy of that Notice of Deposition is attached as **Exhibit 3**.
4. On March 24, 2014, Carl J. Hartmann, III, co-counsel for Hamed and counsel for additional counterclaim defendant Waheed Hamed (“Waheed”), provided electronic notice of a self-described “me too” Notice of Deposition. A copy of the email and related Notice of Deposition is attached as **Exhibit 4**.
5. On March 28, 2014, Defendants filed their Emergency Motion for Protective Order Cancelling Depositions (the “Emergency Motion”) because the then governing Amended Scheduling Order exposed Defendants and third-party witnesses to multiple depositions and provided an unfair advantage to the additional counterclaim defendants who sought to “have

¹ Any effort by Hamed to embellish his Motion to Compel with additional evidence or exhibits in his Reply to this Opposition should not be countenanced by this Court.

² Pursuant to Fed. R. Civ. P. 30(b)(6), the notice identified the “topics for deposition” in an attachment. Included in these topics were 10 matters concerning Defendants’ counterclaim. See attachment A to Exhibit 2 at ¶ 31, 42-50.

their cake and eat it too” by deposing Defendants and other third-party witnesses but refusing to allow themselves to be deposed.³ A copy of Defendants’ Emergency Motion is attached to the Memorandum as Exhibit 1 and is attached to this Opposition for the convenience of this Court as **Exhibit 5.**

6. On March 31, 2014, Attorney Hartmann filed and served the “Withdrawal of Notice of Depositions” attached as **Exhibit 6.**

7. On March 31, 2014, Hamed filed his Opposition to the Emergency Motion in which he argued that because “no such ‘me too’ deposition notices were needed, as any party’s counsel can attend and ask questions, . . . the ‘me too’ notices were hereby withdrawn . . . mooted the motion for protective order.” See Exhibit 2 to the Memorandum at p. 2.

8. On April 1, 2014, this Court emailed the parties a Second Amended Scheduling Order, which, among other things, extended all fact discovery until April 30, 2014. In the covering email from the Court, counsel for the parties were instructed to confer to attempt to resolve discovery scheduling and related issues within the confines of the Second Amended Scheduling Order.

9. On April 2, 2014, Yusuf was deposed for more than 5 hours by lead counsel for Hamed, Joel H. Holt, who stated at the conclusion of the deposition: “That’s all the questions I have . . . That ends my questioning.” See Exhibit 7 at p. 228. Attorney Hartmann, counsel for Waheed, affirmatively stated that “I have no questions,” and counsel for the remaining additional counterclaim defendants, Mark Eckard, also chose not to ask any questions. See Exhibit 7 at p. 229.

³ In the Memorandum, Hamed misrepresents that the purpose of the Emergency Motion was “to preclude questioning about the new counterclaim defendants.” See Memorandum at p.1. Even a cursory reading of the Emergency Motion reflects that no such relief was sought.

10. On April 3, 2014, United, through its designee, Maher Yusuf, was deposed for more than 3 hours by Attorney Hartmann. At the conclusion of the deposition, Attorney Hartmann stated: "Plaintiff has no further questions of the witness." See Exhibit 8 at p. 148. Again, Attorney Eckard chose not to ask any questions. Immediately following the conclusion of this deposition, counsel for Hamed advised that given his testimony as United's designee, there would be no need for Maher Yusuf to appear for his individually noticed deposition the following day.

11. On May 5, 2014, counsel for Hamed filed and served Notices of Deposition unilaterally scheduling the deposition of Yusuf on June 3, 2014 and United on June 4, 2014. See notices attached as **Exhibit 9** and **Exhibit 10**.⁴ On May 12, 2014, counsel for Defendants emailed counsel for Hamed explaining that these notices were invalid pursuant to Fed. R. Civ. P. 30(a)(2)(A)(ii) and that Defendants could be re-deposed only if this Court granted leave to do so. Counsel for Defendants received no response other than a statement that if Defendants did not show up for their depositions as noticed, a contempt motion would be filed.

ARGUMENT

In his Memorandum, Hamed would have this Court believe that in his misguided effort to save this Court from having to address the Emergency Motion, he chose to ask no questions at the Defendants' depositions regarding their counterclaims. See Memorandum at p. 1-2 citing generally to the Opposition to the Emergency Motion. That Opposition does not even contain the slightest suggestion that the Emergency Motion is somehow mooted by Hamed's decision not to ask questions regarding the counterclaim. In fact, the Opposition does not even mention the prospect of not asking questions about the counterclaim. Rather, the Opposition argued

⁴ All of the "topics for deposition" in this Rule 30(b)(6) notice were culled from the previous notice. Compare attachment A to Exhibit 10 with attachment A to Exhibit 2.

(incorrectly) that the Emergency Motion was mooted by the withdrawal of the so-called “me too” notices since these notices were unnecessary and because “any party’s counsel can attend [the depositions] and ask questions[.]” See Exhibit 2 of the Memorandum at p. 2. Incredibly, Hamed suggests that his entirely undisclosed decision to not ask questions regarding Defendants’ counterclaim somehow represents a “good deed” motivated by his desire to “be[] reasonable and wait[] to do these depositions when the Defendants were ready to do them.” Id. This makes absolutely no sense. Defendants were ready to and obviously did submit to depositions on April 2 and 3, 2014 and expected that all questions relevant to the claims, counterclaims and defenses in this matter would be addressed at those depositions. Hamed has provided no evidence whatsoever of any discussion, much less an agreement, to limit these depositions to only the issues raised by Hamed’s amended complaint. Both the Motion to Compel and the Memorandum are simply devoid of any information that would justify counsel for Hamed’s undisclosed intention to bifurcate Defendants’ depositions into two rounds, one dealing with the claims raised in the amended complaint and the other dealing with the claims raised in the amended counterclaim. Hamed does not even bother to attempt to explain why it was reasonable to believe that Defendants should be required to appear at another round of depositions to be examined regarding their counterclaim.

A. The Court should not even consider the Motion to Compel due to Hamed’s failure to comply with LRCi 37.2.

Pursuant to LRCi 37.2(a):

If counsel are unable to resolve all of their differences, they shall formulate and sign a written stipulation to that effect, expressly certifying their compliance with LRCi 37.1. This stipulation shall include the moving party’s letter requesting a pre-filing conference of counsel and shall be filed and served with the motion.

No such stipulation was filed and served with the Motion to Compel. Hamed's failure to file the required stipulation prevents this Court from even considering the Motion to Compel. See LRCi 37.2(c) ("The Court will not consider any discovery motion in the absence of (1) the signed stipulation and certification required by LRCi 37.2(a)").

B. Even if the Motion to Compel is treated as a motion under Fed. R. Civ. P. 30(a)(2)(A)(ii), it should be denied.

Rather than filing his Motion To Compel, Hamed should be required to do exactly what the applicable rule requires – file a motion for leave to re-depose the Defendants supported by a declaration or other evidence establishing good cause for a second round of depositions. On May 12, 2014, counsel for Hamed was cited to the provisions of Fed. R. Civ. P. 30(a)(2)(A)(ii), which expressly require a party to obtain leave of court to depose a deponent who has already been deposed in the case. "Courts generally disfavor second depositions, and absent a showing of need or good reason, a court generally will not require a deponent to appear for a second deposition." 7 James WM. Moore, Moore's Federal Practice, § 30.05[1][c] at p. 30-34 (3d ed. 2013).

In refusing to allow an additional deposition of a party, the district court in State Farm Mutual Automobile Insurance Co. v New Horizont, Inc., 254 F.R.D. 227 (E.D. PA. 2008) made the following observations, which are equally applicable to this case:

The policy against permitting a second deposition of an already-deposed deponent is equally applicable to depositions of individuals and organizations. Taking serial depositions of a single corporation may be as costly and burdensome, if not more so, as serial depositions of an individual. In both cases, each new deposition requires the deponent to spend time preparing for the deposition, traveling to the deposition and providing testimony. In addition, allowing for serial depositions whether of an individual or organization, provides the deposing party with an unfair strategic advantage, offering multiple bites at the apple, each time with better information than the last.

Id. at 235.

Here, despite being put on notice of the provisions of Fed. R. Civ. P. 30(a)(2)(A)(ii) more than one month before the Motion to Compel was filed, Hamed has not bothered to seek leave from this Court to take a second round of depositions. Nor has Hamed provided this Court with any good reason for failing to ask questions about a counterclaim that was filed long before Defendants were deposed. Counsel for Hamed's unexplained, undisclosed decision not to ask questions regarding the counterclaim is no different from the strategic decision that the court in State Farm found insufficient. In that case, when asked why the deponent had not been examined at the previous deposition regarding certain claims in its complaint, the rationale provided by deposing counsel boiled down to: "We just simply decided to proceed in that manner." The State Farm court concluded:

The justification provided is insufficient. Defense counsel provides *no* reason, let alone a good reason, why the questions relating to State Farm's non-fraud claims were not noticed at the previous two Rule 30(b)(6) depositions; Defendants simply chose to proceed in such a manner. Id. (emphasis in original).

Just as the court concluded in State Farm, it is respectfully submitted that this Court should conclude that even if Hamed's Motion to Compel is treated as a motion seeking leave to conduct additional depositions of Defendants, such relief should be denied because Hamed had ample opportunity to obtain the information at the depositions in April and he has provided no good reason for failing to do so.

For all of the foregoing reasons, Defendants respectfully request this Court to deny the Motion to Compel and provide Defendants with such further relief as is just and proper under the circumstances.

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: July 2, 2014

By:


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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July 2014, I caused the foregoing **OPPOSITION TO MOTION TO COMPEL DEFENDANTS' ATTENDANCE AT DEPOSITION RE COUNTERCLAIM** to be served upon the following via e-mail:

Joel H. Holt, Esq.
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

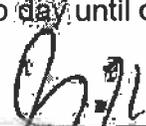
MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR DAMAGES
FATHI YUSUF and UNITED CORPORATION,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
Defendants.)	
	)	JURY TRIAL DEMANDED

THIRDDAMENDED 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 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).

Said deposition 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: March 4, 2014



Joel H. Holt, Esq.
Counsel for Plaintiff
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2132 Company Street,
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Email: holtvi@aol.com
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Fax: (340) 773-8677



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

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 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

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.	)	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 **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.

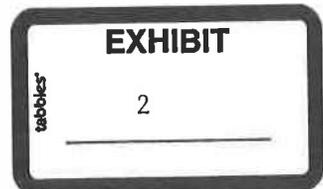
DEFINITIONS AND INSTRUCTIONS.

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: March 4, 2014



Joel H. Holt, Esq.
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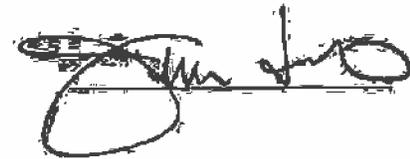
Carl J. Hartmann III, Esq.
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Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 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
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A handwritten signature in black ink, appearing to read "Gregory H. Hodges", written over a horizontal line.

ATTACHMENT A TOPICS FOR DEPOSITION

1. Facts related to statements United made in a complaint recently filed in this Court -- *United v. Waleed Hamed*, STX Civ. No. 2013/3, alleging (PEx 4, ¶¶ 11, 14):

Sometime in 1986, **Plaintiff United, through its shareholder and then President, Fathi Yusuf, entered into an oral agreement**, whereby Plaintiff United and Defendant Hamed's father, Mohammed Hamed, agreed to operate a grocery store business. . . . In 1986, the joint venture resulted in the first supermarket store being opened. United began using the trade name "Plaza Extra" and the first supermarket in this joint venture was named Plaza Extra Supermarket. Since 1986, two additional stores opened in the U.S. Virgin Islands; the second in Tutu Park, St. Thomas; the third in Grove Place, St. Croix. (Emphasis added.)

2. Facts related to Defendants filing in this case that Hamed and Yusuf entered into an oral agreement in 1986 to split the net profits of the Plaza Extra supermarkets 50/50. (Preliminary Injunction Hearing, PEx 2, p 3):

In 1986, due to financial constraints, **Defendant Yusuf and Plaintiff Hamed entered into an oral joint venture agreement**. The agreement called for Plaintiff Hamed to receive fifty percent (50%) of the net profits of the operations of the Plaza Extra supermarkets...Plaintiff Hamed received 50% of the net profits thereafter. (Emphasis added).

3. Facts related to Defendants filing in this case that (*id.* at PEx 3, p 11):

There is no disagreement that Mr. Hamed is entitled to fifty percent (50%) of the profits of the operation of Plaza Extra Store.

4. The Feb. 2, 2000, deposition in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997 ("Idheileh Case"), which is of record in this case.

5. Statements made by defendants in documents filed by them in *Idheileh v United and Yusuf*, STT Superior Court No. 156/1997, which are of record in this case.

6. 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.

7. 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.

8. The present financials of United, including but not limited to, Funds removed from Plaza Extra Supermarket Operating Accounts by Fahti or Mike Yusuf without agreement

of Hamed in 2012 and 2013, such as the \$2.7 million identified by the Court in its PI decision, funds paid to lawyers, other funds removed -- as well as the ultimate items, entities or interests purchased with those funds.

9. The present financials of Plaza Extra Supermarkets kept on Sage50 or otherwise, including, but not limited to, Funds removed from Plaza Extra Supermarket Operating Accounts by defendants without agreement of Hamed after April 25, 2013 that do not appear on the Sage50 backups provided to plaintiff by Mr. Gaffney.

10. The means and transactions for the removal of funds from Plaza Extra Supermarkets and subsequent purchase of real property presently held in corporations or other entities owned or controlled by members of the Hamed and Yusuf families.

11. Efforts by United to claim full ownership of Plaza Extra Supermarkets.

12. Access provided to Hamed and his agents under the PI order and subsequent clarifying orders of the Court in this case: including, but not limited to, joint access to passwords for the accounting system, joint instruction of financial employees, access to bank and other accounts and amount of rewards and rebates from credit card purchases.

13. Capitalization of the Plaza Extra Supermarkets by United.

14. Loans obtained by United for the benefit of Plaza Extra Supermarkets.

15. Losses or additional contributions after 1986 by United to Plaza Extra Supermarkets. Losses or additional contributions occasioned by Fathi Yusuf or any other person from 1987 to the present as a result of the operation of the Plaza Extra Supermarkets.

16. United's tax returns.

17. United's shareholders, including consideration paid by those shareholders or means of transfer of that stock to those shareholders, as well as distributions by United to shareholders.

18. The history and present status of ownership of United stock. This shall include, but not be limited to, the representation made to the Court that Yusuf recently diluted his ownership in United down to just 7.5%, on page 11 of the defendants Rule 12 opposition memorandum (PEX 2, p 11) as follows:

Even if the Amended Complaint sufficiently alleges that a "Hamed & Yusuf partnership" exists, the only relief Mohammad Hamed would be entitled to is a fifty percent (50%) share of **Defendant Yusuf's 7.5% ownership of Defendant United's outstanding stocks.** (Emphasis added.)

19. The conversion of United to an "S" corporation.

20. Source of funds and status of "profits" account at Banco Popular Securities.

21. Letters to Hamed regarding rent due from Plaza Extra Supermarkets to United in 2012-2013.
22. Defendants' statement in its Reply to the Opposition regarding the motion to dismiss (at p. 8) that "Plaintiff Hamed has always been employed as a warehouse clerk, and never had any supervisory managerial responsibilities."
23. Defendants' statement in its Reply to the Opposition regarding the motion to dismiss (at p. 11) that: "There is no disagreement that Mr. Hamed is entitled to percent (50%) of the profits of the operations of Plaza Extra Store. This what Plaintiff Hamed, through his agent, has represented to everyone for the last 26 years."
24. The notice regarding termination of partnership sent to Hamed.
25. Attempts to terminate Hamed, Wally Hamed, Mafi Hamed, Shawn Hamed, Willie Hamed and others from Plaza Extra Supermarket operations.
26. Representations to third persons or entities regarding the termination of partnership.
27. Transfer of Remainder Plot No. 51 Estate Hannah's Rest, United Corporation, Inc. by General Warranty Deed from Fredrik Side, Inc. dated June 21, 2012, recorded July 6, 2012 at PC 1311, page 128, Doc. No. 2012002549. Certificate of Value: \$500,000.00
28. Transfer of Remainder Matr. Plot No. 9 Estate Grange Road Plot No. 70 Estate Grange, United Corporation by Warranty Deed from Robert L. Merwin, Co- Trustee of the M.K. Armstrong Trust u/d/t dated May 12, 1969 as amended by First Amendment dated December 30, 1972; dated May 18, 2012, recorded May 25, 2012 at PC 1308, page 87, Doc. No. 2012002041.
29. The running of the business operations and office of the grocery store business, including but not limited to:
 - a. How and by whom accountants were hired.
 - b. How and by whom tax preparation was done.
 - c. How and by whom the securing of licenses and trade names was done.
30. Prior statements by Maher Yusuf made under oath at the Preliminary Injunction hearing in this matter.
31. Claims, counterclaims and third party claims you assert or may assert with regard to this action.
32. Defenses or offsets you assert or may assert with regard to this action.
33. Financial transactions and contacts with Manal Mohamad Yousef.
34. Payments to Ahmad Yusef or other persons to purchase their interests in United or other financial ventures from the proceeds of the Plaza Extra supermarkets.

35. The location and contents of United's financial and accounting records for the years prior to 2012.

36. The location and contents of Plaza Extra supermarkets' financial and accounting records for the years prior to 2012.

37. All real property and interests in entities which are owned by United, or held by any other entity for United's benefit, in the Virgin Islands.

38. All real property and interests in entities which are owned by United, or held by any other entity for United's benefit, outside of the Virgin Islands (US and all foreign countries).

39. All documents produced by you or sent to you in discovery in this case.

40. All interrogatory responses submitted by you in this case.

41. All filings served on you and/or submitted by you in response to the Plaintiff's motion for partial summary judgment.

42. In paragraph 42 of the First Amended Counterclaim, the statement that: "Hamed has enjoyed an incredibly lucrative oral arrangement with Yusuf, his brother-in-law. . . .That arrangement provided Hamed with not only repayment of the monies he loaned on a non-recourse basis, but also repaid him on a periodic basis with 50% of the net profits of the Plaza Extra Stores, which amounts varied depending upon the profitability of the business.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

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

MOHAMMAD HAMED by His Authorized Agent WALEED HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR DAMAGES INJUNCTIVE AND DECLARATORY RELIEF
FATHI YUSUF and UNITED CORPORATION,)	
)	
Defendants.	)	JURY TRIAL DEMANDED
)	

SECOND AMENDED NOTICE OF TAKING VIDEO TAPED DEPOSITIONS

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 of the following persons 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.

Said deposition 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: March 4, 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.
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 4th day of March, 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



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 depos
Attachments: 2014-03-24 Notice of Depositions.pdf

All:

Please see the "me too" depo notice for the depos 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
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dewoodlaw@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. Hardman

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

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



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 W. Hodges (V.I. Bar No. 174)
1000 Frederiksberg Gade - P.O. Box 756
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
P.O. Box 756

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
Email: mark@markeckard.com



DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksborg Gate

P.O. Box 756

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

(340) 774-4422

R:\DOCS\6254\INDR\FTPLDGM\500436.DOC

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 depos
Attachments: 2014-03-24 Notice of Depositions.pdf

All:

Please see the "me too" depo notice for the depos 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, MUFEEED 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

>>

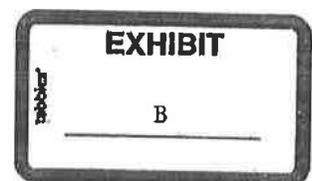
>> THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified 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; Cordelia Jones
>> Subject: Me Too notice for scheduled depositions
>>
>> All:
>>
>>
>>
>> Please see the "me too" deposition notice for the depositions set for Wednesday - Friday 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,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES,)
)
Additional Counterclaim Defendants.)
)
)

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

JURY TRIAL DEMANDED

ORDER

Upon consideration of Defendants' emergency motion for protective order and for good cause shown, it is accordingly,

ORDERED that the six depositions noticed in this matter on April 2-4, 2014 be, and the same hereby are, **Cancelled**.

Entered this _____ day of March, 2014.

Douglas A. Brady
Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: _____
Deputy Clerk

cc: Nizar A. DeWood, Esq.
Mark W. Eckard, Esq.
Carl J. Hartmann III, Esq.
Gregory H. Hodges, Esq.
Joel H. Holt, Esq.

SUPERIOR COURT
OF THE VIRGIN ISLANDS
2014 MAR 28 PM 4:56

**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

WITHDRAWAL OF NOTICE OF DEPOSITIONS

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, withdraws his notice to take the videotape depositions of:

- a. **FATHI YUSUF** on **WEDNESDAY, APRIL 2, 2014** at 9:00 a.m.
- b. **UNITED CORPORATION**, **THURSDAY, APRIL 3, 2014** at 9:00 a.m.
- c. **JOHN GAFFNEY** on **THURSDAY, APRIL 3, 2014** at 1:00 p.m.
- d. On **FRIDAY, APRIL 4, 2014**: 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 31, 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 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:

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
dewoodlaw@gmail.com

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

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

Withdrawal of Notice
Page 3

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

Carl J. Hardman

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

MOHAMMED 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.

Case No. SX-12-CV-370

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd 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
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

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

EXHIBIT

7

tabbles

FATHI YUSUF -- DIRECT

1 **A.** Yes.

2 **MR. HOLT:** That's all the questions I have. ✓

3 **THE WITNESS:** Excuse me, sir?

4 **MR. HOLT:** That is all the questions I have,
5 unless you have something else that you would like to add.

6 **THE WITNESS:** No, I don't have. You the
7 lawyer, I'm the plaintiff or defendant, I don't know.

8 **MR. HOLT:** Okay.

9 **THE WITNESS:** But you're the lawyer, how
10 could I ask you question? I'm not here to ask you question.

11 **MR. HOLT:** Okay.

12 **THE WITNESS:** I'm here to answer your
13 question.

14 **MR. HOLT:** So fair enough. That ends my ✓
15 questioning.

16 **THE WITNESS:** Thank you, sir. We're still
17 friends, remember.

18 **MR. HOLT:** Of course.

19 **THE WITNESS:** But the other day in
20 St. Thomas -- off record -- you look to tease me, and you
21 couldn't tease me.

22 **MR. MAHER YUSUF:** We off the record?

23 **THE VIDEOGRAPHER:** Not yet.

24 **MR. HODGES:** No, no.

25 **MR. MAHER YUSUF:** Wait, wait.

FATHI YUSUF -- DIRECT

1 **MR. HODGES:** Wait a minute.

2 Attorney Hartmann?

3 **THE WITNESS:** No, no, this is only as a
4 friend. Off record.

5 **MR. MAHER YUSUF:** It's on the record.

6 **MR. HARTMANN:** I have no questions. ✓

7 **MR. HODGES:** Attorney Hartmann.

8 **THE WITNESS:** I don't like to be teased by no
9 one.

10 **MR. HODGES:** Mark, no questions? ✓

11 **THE VIDEOGRAPHER:** We're off the record at
12 4:15.

13 **MR. HODGES:** Oh, wait a minute.

14 I would like to reserve the -- the right,
15 under Rule 30, for the witness to -- to receive and review
16 the transcript, please.

17 **THE VIDEOGRAPHER:** Okay. We're off the
18 record at 4:16.

19 (Whereupon the deposition concluded
20 at 4:16 p.m.)

21

22

23

24

25

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

MOHAMMED 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.)

Case No. SX-12-CV-370

THE VIDEOTAPED 30(b) (6) ORAL DEPOSITION OF UNITED CORPORATION through its representative, MAHER "MIKE" YUSUF, was taken on the 3rd 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 10:07 a.m. and 2:42 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

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

EXHIBIT

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30(B)(6) OF UNITED CORP. - MAHER "MIKE" YUSUF -- DIRECT

1 Do you want a read-back?

2 A. Yeah, please.

3 Q. Okay.

4 A. I lost you because your head was facing off.

5 Q. Do you know of any financial transactions
6 involving Plaza Extra funds that are not reflected in the
7 financial statements provided to us for the years 2012 and
8 2013 by Mr. Gaffney?

9 A. I can't answer that. I'm not an accountant.

10 Q. Do you know of any?

11 A. I don't.

12 Q. Okay. And the "you" here is United Corporation.
13 You do not -- United knows of no -- I'll just ask it in a
14 very simple way.

15 Does United Corporation know of any off-books
16 transactions?

17 A. No.

18 Q. Involving Plaza Extra funds --

19 A. No.

20 Q. -- in the last three years?

21 A. No.

22 MR. HARTMANN: Okay. Okay. Plaintiff has no
23 further questions of the witness.

24 THE WITNESS: Can I -- can I say some things?

25 (Discussion held off the record.)

**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



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Counsel for Plaintiff
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Carl J. Hartmann III, Esq.
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(340) 719-8941
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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:

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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.
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CERTIFICATE OF SERVICE

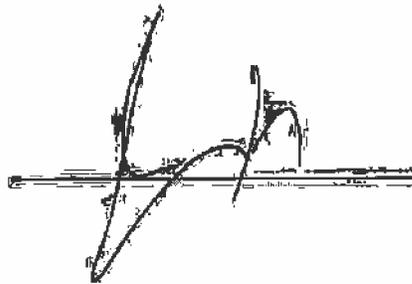
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ATTACHMENT A TOPICS FOR DEPOSITION

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.