

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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

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**DEFENDANTS' OPPOSITION TO MOTION TO SHOW CAUSE**  
**DATED OCTOBER 15, 2014**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits this Opposition to the latest Motion to Show Cause ("Motion") filed by plaintiff/counterclaim defendant Mohammad Hamed ("Hamed") on October 15, 2014.

On September 25, 2014, Hamed filed a similar, two page Motion to Show Cause (the "Previous Motion") arguing that Yusuf should be held in contempt for purportedly violating the April 25, 2015 preliminary injunction by taking action to prevent supermarket operating funds from being used to pay Waleed Hamed's salary without Yusuf's consent. Like the Motion, the Previous Motion was not supported by any declaration or admissible evidence of record. In response to the Previous Motion, on October 1, 2014, Yusuf filed his Opposition And Cross-Motion For Similar Relief, which was supported by Yusuf's detailed declaration. Instead of timely filing a reply/response to the Opposition And Cross-Motion, Hamed chose to file the

Motion, which consisted of only four sentences and was "supported" by an unintelligible, unauthenticated email from Wadda Charriez.<sup>1</sup>

The Motion alleges that "Yusuf has had United's Controller, John Gaffney, go into the Sage50 (formerly Peachtree) accounting system and alter it to permanently remove Wally Hamed from the payroll." See Motion at p. 1. This assertion is purportedly supported by the attached email from Wadda Charriez that does not mention John Gaffney or Yusuf,<sup>2</sup> and does not state that Waleed Hamed was "permanently remove[d] . . . from the payroll."

For the following reasons, the Motion should be summarily denied:

1. The Motion does not have the "affidavits and other pertinent [supporting] documents" required by LRCi 7.1(b) nor is it "accompanied by a brief which shall contain a concise statement of reasons and citation of authorities," as required by LRCi. 7.1(c), which applies to proceedings in this Court pursuant to Super. Ct. R. 7.
2. Yusuf neither removed nor instructed anyone to remove Waleed Hamed from the Sage50 system as alleged in the Motion. See Declaration of John Gaffney at ¶6, attached as **Exhibit A**.
3. John Gaffney removed Waleed Hamed from the transaction list only to allow checks to be disbursed to all employees of Plaza Extra - East. Because Waleed Hamed was receiving checks directly from Mufeed Hamed, Mr. Gaffney assumed that Waleed Hamed would be paid, and did not want a duplicate payroll check going to Waleed Hamed, especially in light of the ongoing dispute between Yusuf and Hamed regarding the payment of Waleed Hamed's salary in light of his absence from work for more than 15 months. See Exhibit A at ¶3. See also, Declaration of Fathi Yusuf filed in support of Opposition And Cross-Motion.
4. At no point did Yusuf or any of the Yusuf managers order the removal of Waleed Hamed from payroll. As a matter of fact, when Wadda Charriez noticed that Waleed Hamed's name was not included in the transaction list, she immediately placed Waleed Hamed's name back into the system before Mr. Gaffney was able to correct the removal. Nevertheless, the Motion conveniently omits this critical fact. Worse, at the time the Motion was filed, Waleed Hamed's name was already back on the payroll list. See Exhibit A at ¶¶ 5-6. Given Ms. Charriez' s clear allegiance to Hamed, he had to know this before the Motion was filed.

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<sup>1</sup> Wadda Charriez is a defendant in United Corporation v. Charriez, Civil No. SX-13-CV-152, in which she is charged with falsifying her hours of work to receive payroll checks to which she was not entitled.

<sup>2</sup> The "Yusuf" mentioned in the email appears to be referring to Yusuf's son.

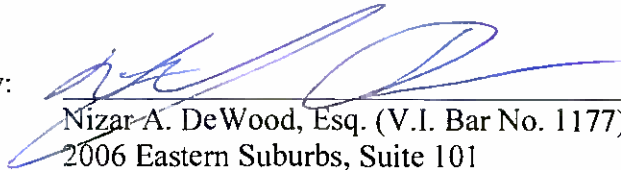
5. Hamed's reliance on an unauthenticated email from Wadda Charriez, without informing the Court that she was able to place Waleed Hamed back on the payroll list without incident is disingenuous, at best.
6. It is well established that one of the elements of a *prima facie* case for civil contempt is a showing that respondent has performed an act or failed to perform an act in violation of the Court's order. In this case, no action whatsoever was taken by Yusuf or any of his sons in violation of the preliminary injunction. On the contrary, as explained in Yusuf's Opposition And Cross-Motion, all of these payroll problems are created by Hamed's apparent insistence that his son continue to be paid without appearing for or performing any work in clear violation of the terms of the preliminary injunction proscribing that "no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s))." Hamed v. Yusuf, 58 V.I. 117, 138 (Super. Ct. April 25, 2013). As Yusuf has made crystal clear, he does not consent to Waleed Hamed's continued receipt of unearned payroll checks.
7. At most, John Gaffney's temporary removal of Waleed Hamed's transaction from last week's payroll was to avoid duplicate payments, and not to permanently remove Waleed Hamed as an employee. The actual request to remove Waleed Hamed from the payroll is in fact before the Court in the form of Yusuf's unopposed Cross-Motion.
8. Given the timing of and complete lack of support for the Motion, it is a transparent attempt to malign Yusuf and dissuade the Court from appointing Yusuf the Liquidating Partner, as contemplated in the Court's proposed plan.

For all the foregoing reasons, Yusuf respectfully requests this Court to summarily deny the Motion to Show Cause and provide Yusuf such further relief as is just and proper.

Respectfully submitted,  
**THE DEWOOD LAW FIRM**

Dated: October 21, 2014

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Attorneys for Fathi Yusuf and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of October, 2014, I caused the foregoing **Defendants' Opposition To Motion To Show Cause Dated October 15, 2014** to be served upon the following via e-mail:

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4. On Wed, October 15<sup>th</sup>, I got a call from Yusuf Yusuf who inquired whether Waleed Hamed's name was removed from the payroll list. I answered "yes" and clarified that his name had not been removed, but that only the transaction had been removed. After discussing the matter with Maher Yusuf and explaining the simplicity of entering the transaction again, he then advised me that Waleed's transaction should have remained in the payroll system, notwithstanding the dispute Mr. Yusuf was having with Waleed Hamed due to his failure to report to work.
5. When I went to re-input Waleed Hamed's transaction in the system, I noticed it was already re-entered exactly as it was previously and I naturally assumed that Wadda Charriez restored the transaction. The time was 3:00 p.m. on Wednesday and I reprinted the payroll register that included Waleed's payroll transaction. Again, the initial deletion was merely to get a clean payroll check list and prevent duplicate entry, and Waleed Hamed was in no way permanently removed from the payroll system.
6. None of the Yusufs ever instructed me to remove Waleed Hamed from the payroll, nor did I remove Waleed Hamed from the payroll system. A simple transaction was deleted to prevent the possibility of duplicate entry knowing that it could be easily restored if needed.

Date: October 20, 2014

  
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JOHN GAFFNEY