

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

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

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FILED BY  
MUFEEED HAMED AND HISHAM HAMED**

Counterclaim defendants Mufeed Hamed (“Mafi”) and Hisham Hamed (“Shawn”) file this Memorandum of Law in support of their Motion to Dismiss First Amended Counterclaim (the “Motion”). In support of the Motion, pursuant to LRCi 7.1, Mafi and Shawn state as follows:

**I. FACTUAL BACKGROUND**

The First Amended Counterclaim filed in the above-captioned civil action (this “Action”) makes very limited claims about Mafi and Shawn. First, it correctly alleges in ¶ 8 that they are both the sons of Mohammad Hamed. However, the only other place *they*

*are even mentioned* is in Count V and Count VI, which assert claims for relief against Mafi and Shawn as follows:

#### COUNT V RESTITUTION

154. Paragraphs 1 through 153 of this Counterclaim are realleged.

155. 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.**

156. Defendants are, therefore, entitled to restitution in the form of a constructive trust over any assets purchased with those funds; an equitable lien over such assets; and disgorgement of any profits made from the use of the Plaza Extra Stores' funds or assets purchased with the use of such funds. (Emphasis added.)

#### COUNT VI UNJUST ENRICHMENT AND IMPOSITION OF A CONSTRUCTIVE TRUST

157. Paragraphs 1 through 156 of this Counterclaim are realleged.

158. 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 the 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.**

159. Defendants are entitled to the imposition of constructive trusts, equitable liens, and disgorgement of all profits in order to prevent Hamed and the Hamed Sons from being unjustly enriched by money ill-gotten from the Plaza Extra Stores. (Emphasis added.)

In short, as can be seen from these pleadings, these are the only time Shawn or Mafi are ever mentioned in this voluminous counterclaim after being identified as Mohammad Hamed's sons, *as no specific facts are alleged in any of the factual pleadings being "realleged" by reference in*

***¶ 154 or ¶ 157 of these two counts.***

## **II. LEGAL DISCUSSION**

In Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) the U.S. Supreme Court stated that “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.” Twombly, 550 U.S. at 558. This rule is not novel nor is it unknown to the counterclaim plaintiffs, who chose to simply ignore its requirements in trying to throw the kitchen sink at the Hamed family.

Indeed, the Twombly court went on to quote and adopt the holding of Asahi Glass Co. v. Pentech Pharmaceuticals, Inc., 289 F. Supp. 2d 986, 995 (ND Ill. 2003) (Posner, J., sitting by designation) that some threshold must be crossed at the outset “before a [. . .] case should be permitted to go into its inevitably costly and protracted discovery phase.” *Id.* (emphasis added); see also Associated General Contractors v. Cal. State Council of Carpenters, 459 U.S. 519, 528 (1983) (“a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.”)

Two years later, in Iqbal, the Supreme Court reaffirmed that the mere filing of a complaint “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” Iqbal, 129 S. Ct. at 1950 (emphasis added). Here, those “discovery” doors should be shut based on the failure of the counterclaim plaintiffs to abide by the Iqbal / Twombly minimum standards in this belatedly filed counterclaim.

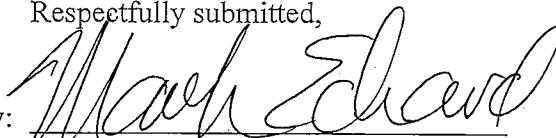
### III. CONCLUSION

The First Amended Counterclaim bears no mention whatsoever of Mafi or Shawn other than to note that they are the sons of Mohammed Hamed and to baldly state a legal conclusion in the two counts seeking relief from them. The First Amended Counterclaim must be dismissed as to Mafi and Shawn pursuant to Fed.R.Civ.P. 12(b)(6), as made applicable by Super. Ct. R. 7 in accordance with the pleading requirements of Twombly and Iqbal.

Respectfully submitted,

Dated: February 21, 2014

By:



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### CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of February, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

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