

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

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

**COUNTERCLAIM DEFENDANTS' OPPOSITION
TO DEFENDANTS' MOTION TO COMPEL**

Waleed, Mufeed and Hisham Hamed ("Counterclaim Defendants"), by and through their undersigned counsel, file this Opposition to Defendants' Motion to Compel and state as follows:

Defendants have moved to compel responses to their May 23rd Rule 34 document request as to three (of the five) Counterclaim Defendants, Waleed Hamed, Mufeed Hamed and Hisham Hamed, who hereby oppose this motion. For the reasons set forth herein, it is respectfully requested the motion be denied.

At the outset, it must be noted that these three Counterclaim Defendants all promptly filed a motion for a protective order regarding this May 23rd discovery on May 27, 2014, arguing that the new Fourth Scheduling Order inadvertently re-opened written discovery. The three Counterclaim Defendants then filed responses to these Rule 34 document requests on June 26, 2014, solely to

preserve all objections in the event the initial motion for a protective order was denied, which responses noted the pendency of the motion for the protective order. When this Court then entered the Fifth Scheduling Order on August 19, 2014, counsel recognized that the pending motion for a protective order was now moot, as the Court stated written discovery was still open. Thus, Counterclaim Defendants' May 27th motion for a protective order was withdrawn on August 26th.

Thus, it was not until the Fifth Amended Scheduling Order was entered that it became clear that the three Counterclaim Defendants had to provide substantive responses to the May 26th discovery served on them. Simultaneously with this response, the three Counterclaim Defendants are also providing substantive responses to the May 26th discovery, mooted the instant August 25th motion to compel.

As such, Defendants' instant motion to compel can be summarily denied as the responses have now been served. As for Defendants' request for sanctions, as noted above, there was certainly a genuine belief on the part of Counterclaim Defendants that the discovery did not have to be answered, as explained in the motion for a protective order. Indeed, the Counterclaim Defendants promptly filed that motion, which demonstrates their good faith belief in their position taken at that time. They also withdrew the motion (even though the Court had not ruled on it) once the Fifth Scheduling Order was entered, as that Order clarified the issue. In short, sanctions are not appropriate where a party acts in good faith in full compliance with all Court rules.

Several final comments are in order. First, the Counterclaim Defendants have served their initial disclosures pursuant to Rule 26 Disclosure.¹ See Exhibit A. Second, while Yusuf asserts that “boilerplate” objections are improper, the objections filed are those permitted by the rules, which Yusuf himself has also filed in response to the Rule 34 discovery sent to him. See Exhibit B. Finally,

¹ In fact, it is the Defendants who have failed to file a Rule 26 initial disclosure as to the counterclaims against the new, different Counterclaim Defendants raising different claims than the initial action.

while there may be old law that suggests a party has to sign Rule 34 responses under oath, Rule 34 has no such requirement now.

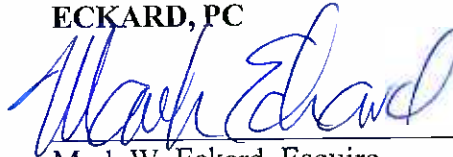
With the foregoing comments in mind, it is respectfully submitted that the Defendants' August 25th motion to compel be denied.

Respectfully submitted,

ECKARD, PC

Dated: September 9, 2014

By:



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Counsel to Waleed, Mufeed and Hisham Hamed

-- and --



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Counsel to Waheed Hamed

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September 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: Nizar A. DeWood, Esquire (dewoodlaw@gmail.com); Gregory H. Hodges, Esquire (ghodges@dtflaw.com); Joel H. Holt, Esquire (holtvi@aol.com); and Jeffrey B.C. Moorhead, Esquire (jeffreymlaw@yahoo.com).



EXHIBIT A

**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

**COUNTERCLAIM DEFENDANTS WALEED, WAHEED,
MUFEED, AND HISHAM HAMEDS' JOINT RULE 26 INITIAL DISCLOSURES**

Waleed, Waheed, Mufeed and Hisham Hamed, by and through their undersigned counsel,
pursuant to Fed.R.Civ.P. 26(a)(1), collectively serve their Initial Disclosures as follows:

WITNESSES:

1. Mohammed Hamed, Plaintiff - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
2. Waleed Hamed, Counterclaim Defendant - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
3. Waheed Hamed, Counterclaim Defendant - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
4. Mufeed Hamed, Counterclaim Defendant - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
5. Hisham Hamed, Counterclaim Defendant - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.

6. Fathi Yusuf has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
7. Mahar Yusuf has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
8. Yusuf Yusuf has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
9. Nejeff Yusuf - has knowledge of all of the facts related to the allegations in the complaint, including those giving rise to this case.
10. Ayman Al- Khaled, c/o Seaside Market and Deli - has knowledge of the accounting records of the three Plaza Extra Stores.
11. John Gaffney, c/o Plaza Extra West - has knowledge of the accounting records of the three Plaza Extra Stores.
12. Wadda Charriez, works at Plaza Extra at Sion Farm, St. Croix.
13. Kareema Dorsette, works at Plaza Extra at Tutu Mall, St. Thomas.
14. Tamarah Parson-Small- c/o VI Bureau of Internal Revenue - has knowledge of tax filings and tax payments.
15. Marcella Somersall - c/o VI Bureau of Internal Revenue - has knowledge of tax filings and tax payments.
16. Nisha Aubain- do Tropical Shipping & Construction Co., Ltd. - has knowledge of contract between Plaza Extra and Tropical Shipping.

DOCUMENTS:

All documents previously produced by Plaintiff, Defendant or Counterclaim Defendants in this case.

INSURANCE:

None

DAMAGES:

Counterclaim defendants seek no damages other than ancillary relief such as attorneys fees or costs that may be determined by the Court

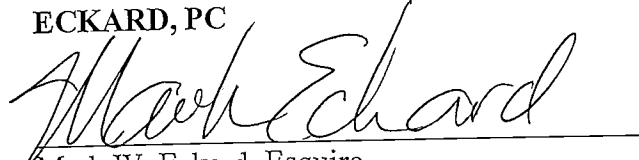
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Respectfully submitted,

ECKARD, PC

Dated: August 27, 2014

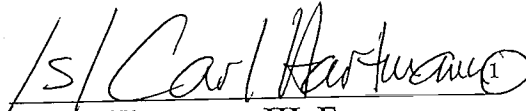
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Counsel to Waheed Hamed

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August 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, Esquire
Email: dewoodlaw@gmail.com

Joel H. Holt, Esquire
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holtvi@aol.com

Gregory H. Hodges, Esquire
Email: ghodges@dtflaw.com

Jeffrey B.C. Moorhead, Esquire
Counsel for Plessen Enterprises, Inc.
Email: jeffreymlaw@yahoo.com

¹ Signed by Mark W. Eckard, Esquire, with permission granted by Carl Hartmann, Esquire.

EXHIBIT B

**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
)	

**FATHI YUSUF'S OBJECTIONS AND RESPONSES TO
COUNTERCLAIM DEFENDANT WAHEED HAMED'S REQUESTS FOR THE
PRODUCTION OF DOCUMENTS**

Defendant Fathi Yusuf ("Yusuf"), through his undersigned counsel, subject to the objections set forth below, respectfully answers as follows to Counterclaim Defendant Waheed Hamed's Requests for the Production of Documents ("Requests").

PRELIMINARY STATEMENT

These answers and objections are made solely for the purpose of this action. Each answer is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility; and any and all objections and grounds that would require the exclusion of any statement contained in any response, if such request were asked of, or any statement contained therein were made by, a witness present and testifying in court, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

The following answers are based upon information presently available to Yusuf and, except for explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that Yusuf has answered or objected to any Request should not be taken as an admission that he accepts or admits the existence of any facts set forth or assumed by such

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AND FEUERZEIG, LLP**

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Request, or that such answer constitutes admissible evidence. The fact that Yusuf has answered part or all of any such Request is not intended and shall not be construed to be a waiver by Yusuf of all or any part of any objection to such Request.

GENERAL OBJECTIONS

Yusuf makes the following general objections to the Requests. Although these general objections apply to all of the Requests, for convenience, they are set forth herein and are not necessarily repeated after each objectionable request. The assertion of the same, similar, or additional objections in the individual objections to these Requests, or the failure to assert any additional objections to a request does not waive any of Yusuf's objections as set forth below:

1. The Requests were served on July 5, 2014. At that time, the parties were operating under the Fourth Amended Scheduling Order ("Fourth Scheduling Order") entered by the Court on May 15, 2014. The Fourth Scheduling Order provided that fact discovery, including written discovery was to be completed by July 11, 2014. Despite the parties' efforts to attempt to agree to an extension of the discovery deadlines, no agreement has been reached. Yusuf and United Corporation ("United") have filed an Emergency Motion To Further Extend Discovery Deadlines and are hopeful that the Court will extend the fact discovery given the various circumstances described in the Emergency Motion. However, since fact discovery is currently closed and the Requests were not served in sufficient time to allow Yusuf 30 days to respond within the established discovery period, no response is required by Yusuf.


As a result of the expiration of the period for fact discovery on July 11, 2014, Yusuf's response to the Requests is not due and there is no legal effect to be drawn from the absence of a

specific response to the Requests. Moreover, Yusuf sets forth the following additional objections:

2. Yusuf objects to each Request that seeks information that is not relevant to his or Waheed Hamed's claims or defenses.
3. Yusuf objects to each Request to the extent it seeks the disclosure or production of documents or information protected by the attorney-client, work product or other privileges.
4. Yusuf objects to each Request that seeks information that is irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.
5. The information sought by the Requests may be as much as twenty-seven (27) years old. Documents that may have contained information relevant to the Requests may no longer be in existence. Thus any information provided herein may not be, and should not be considered complete, and may be subject to supplementation if additional information becomes available.
6. Yusuf objects to defined terms and instruction to the extent that they vary from applicable law and/or impose different obligations than those set forth in the Federal Rules of Civil Procedure.

Dated: August 7, 2014

Respectfully Submitted,


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Hamed v. Yusuf, et al.
Civil No. SX-12-CV-370
Page 4

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT a true and exact copy of the foregoing FATHI YUSUF'S OBJECTIONS AND RESPONSES TO COUNTERCLAIM DEFENDANT WAHEED HAMED'S REQUESTS FOR THE PRODUCTION OF DOCUMENTS was served via U.S. Mail, postage prepaid, fax, electronic mail or hand delivery on this the 7th day of August, 2014 to wit:

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