

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

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

**REPLY TO HAMED’S OPPOSITION TO MOTION FOR STAY OF PORTIONS OF  
JANUARY 7, 2015 ORDER PENDING APPEAL**

Fathi Yusuf (“Yusuf”) has requested this Court to stay three elements of this Court’s “Order Adopting Final Wind Up Plan” (the “Order”) and the final Wind Up Plan attached to the Order (the “Plan”), namely, (1) the provisions of the Plan relating to Plaza Extra-West, which give Mohammad Hamed (“Hamed”) the exclusive right to purchase the inventory and equipment of Plaza Extra-West and then assume full ownership and control of that store, (2) the provisions requiring the continued payment of the Hamed Sons<sup>1</sup> and Yusuf Sons for 120 days following the Effective Date, and (3) the provisions requiring the purchaser of the Plaza Extra-Tutu Park store to reimburse the nonpurchasing partner for one half of all legal fees incurred to date in the Tutu Park Litigation. In his opposition, Hamed states that the latter “two items (the

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

<sup>1</sup> As in Yusuf’s brief in support of his motion for stay, capitalized terms not otherwise defined in this reply shall be defined as provided in the Plan.

manager salaries and St. Thomas legal fees) [will be] discussed in section VIII [sic] (the Conclusion).” See Opposition at p. 2. The only “discussion” contained in Hamed’s “conclusion” consists of one sentence at p. 11, where Hamed merely argues that these “issues only involve monetary issues that are easily quantifiable.” Because Hamed completely ignores the arguments in Yusuf’s brief that these “two items” were never agreed to by the partners, that they make no practical sense, and were imposed by the Court without explanation, Hamed has conceded these arguments. Moreover, he has conceded that if Yusuf is required to pay these salaries and legal costs<sup>2</sup>, he may never be able to recover the amounts paid if he is successful on appeal. Accordingly, Yusuf submits that Hamed has effectively conceded that the Plan provisions regarding continued payment of salaries and the reimbursement of the Tutu Park Litigation expenses should be stayed pending appeal. Yusuf will therefore focus the balance of his reply on the propriety of a stay pending appeal of the provisions of the Plan relating to Plaza Extra-West as well as the propriety of a nominal bond.

Hamed’s main argument against a stay of the disposition of the Plaza Extra-West store in the Court’s Order and Plan is a red herring. Hamed asserts repeatedly, with slight changes of wording, that “if the Supreme Court finds the lease not to be valid, the only result would be to close the Plaza-West store since the partnership has no leasehold interest to do anything else.” (Opposition, p. 4; *see also id.* at 5, 6, 7). In other words, Hamed is claiming that the Superior Court had to approve the lease between Plessen Enterprises, Inc. (“Plessen”) and KAC357, Inc. (the “Lease”) in order to prevent the West store from being shut down (and its employees laid

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<sup>2</sup> The Tutu Park Litigation is comprised of two cases dating back to 1997 and 2001. To date, Yusuf has only received a statement from one of the attorneys involved in the Tutu Park Litigation regarding some of the legal costs incurred to date in that case (the one commenced in 2001). If the purchasing partner is required to reimburse these costs as a part of his purchase of the assets associated with the Tutu Park store, obviously, he needs reliable information regarding the legal costs incurred in order to intelligently bid on those assets.

off) as part of any wind up of the Partnership. Based on this spurious assumption, Hamed then argues that since Hamed is required to buy the inventory and equipment of West under the Court's Plan, only he is exposed to any financial risk if the Lease is declared invalid and the Supreme Court enjoins implementation of the Lease and the related provisions of the Plan, because the store will close and his purchase of inventory and equipment will have been for nought.

Hamed is plainly wrong in his assertion that the invalidation of the Lease will result in closure of that store, and his contention cannot be a basis for affirming this Court's orders on appeal. What Hamed's reductionist argument overlooks completely, and what makes it so patently artificial, is that the land on which Plaza Extra-West is situated is owned by Plessen, whose shares are in turn owned 50-50 by Hamed and his family and by Yusuf and his family. The record below shows that Plessen is in a hopeless state of shareholder deadlock, and Yusuf's counterclaim in this case sought to have a receiver appointed and the assets of that corporation (including the land on which Plaza Extra-West is located) sold. Yusuf's final plan asked the Court to conduct a closed auction between Yusuf and Hamed, in which each would submit bids for the inventory, equipment, and the right to continue operating that store, and to acquire the 16 acres of Plessen land on which it is located. The fact that the Partnership "did not have a lease [with Plessen] on the Plaza West location" (Opposition, p. 5), does not in any way, manner or form foreclose a closed auction for the sale of this business, as Hamed repeatedly asserts in his Opposition. (*See id.* at 5). The closed auction sale of the Plaza Extra-West store is the only equitable way to dispose of that store, and is the only way to maximize partnership value as to that store on wind up of the Partnership. It also ensures continued operation of the store and hence continued employment for its St. Croix employees. The plan

which Hamed proposed and which the Court ordered simply hands the business to the Hameds upon payment for the inventory and equipment, without any payment of consideration to the Partnership, despite the fact that the building, improvements, and ongoing business were built with millions in Partnership monies.

Hamed then brands as “absurd and irrelevant” Yusuf’s argument that the Court’s Plan contravenes the very purpose of the Partnership wind up – to effect a business divorce of these parties - by forcing the two parties to stay in business together for up to 30 years with respect to the West store. (Opposition, p. 5). Having a 50-50 owned landlord for a grocery store to be occupied by KAC357, Inc., which is wholly owned by three of Hamed’s sons, for the next 30 years is obviously a recipe for continued strife and litigation. The fact that Plessen also has a long-term lease with an unrelated third party in St. Thomas plainly does not keep these parties together in the supermarket business in the way that the Lease for the West stores does. At any rate, it should be abundantly clear to anybody who has followed this litigation and the war between these parties to know that the long-term lease in St. Thomas will also have to be sold as part of the business divorce of these implacably antagonistic parties. Other than owning vacant land, Hamed and Yusuf conduct no other business through Plessen.

From the above discussion, it is clear that Hamed’s assertion that the only monetary risk of invalidation of the Lease lies with him, not the Partnership (or Yusuf) is also erroneous. If the sale of the inventory and equipment of Plaza Extra-West is not stayed pending Yusuf’s appeal, in the event that the Supreme Court later invalidates the Lease and Hamed’s exclusive right to purchase that partnership property, the inventory and equipment may no longer be available for the ultimate purchaser of that store, among a host of other conditions that could occur during an unstayed appeal, such as store reconfiguration, changes in suppliers of goods

and services, and new personal injury lawsuits involving that store. Again, what Hamed completely ignores in his Opposition – just as this Court likewise ignored in the Order and Plan – is the option proposed by Yusuf to appoint a Receiver for Plessen who could then subdivide and sell the 16 acres of land on which Plaza Extra-West operates to one of the partners in a closed auction as part of the dissolution of Plessen. This is the only way to give both partners an equal opportunity to acquire the business of Plaza Extra-West and it is the method of disposition which maximizes values not only for the Partnership but for Plessen, a company equally owned by the Hameds and Yusufs.

Yusuf will now address Hamed's discussion of the four standards applicable for the issuance of a stay pending appeal.

#### **Reasonable Probability of Success on the Merits**

Hamed's argument is really nothing more than an endorsement of the correctness of this Court's decision. Hamed simply concludes:

[T]here is **no reasonable probability** that this Court's ruling will be overturned on appeal. To put it succinctly, the lease is intrinsically fair to Plessen (as well as its shareholders) and was approved at a Plessen board meeting held in full compliance with all of Plessen's governing corporate documents.

*See* Opposition at p. 5 (emphasis in original). Yusuf submits that this Court erred when it found that the self-dealing Lease was intrinsically fair to Plessen and the Yusuf shareholders because, among other things, no opportunity whatsoever was given to the Yusufs or any one else to compete for better lease terms. These terms include rent, the fact that the Lease does not require the principals of KAC357, Inc. to guarantee the Lease, the absence of any requirement for hurricane insurance, the fact that the Lease is freely assignable and Plessen has no right to reject a proposed assignee because it is not sufficiently creditworthy, as well as

other infirmities addressed in the Motion to Nullify and Yusuf's supporting declaration attached as Exhibit K. Although the Court acknowledged that Hamed has the burden of establishing that the Lease is intrinsically fair to both Plessen and the Yusuf shareholders, it specifically found that any consideration of advantage to the Hamed shareholders at the expense of the Yusuf shareholder was irrelevant. *See Hamed v. Yusuf*, 2014 V.I. LEXIS 52, \*13- \*15. Had the Court considered the harm to the Yusuf shareholders, it would have had to conclude that the Lease was intrinsically unfair to them. Indeed, Hamed never even attempted to argue that the Lease was intrinsically fair to the Yusuf shareholders, i.e., that it did not benefit the Hamed shareholders at the expense of the Yusuf shareholders. He simply could not muster an argument that a lease acknowledged to be the lynchpin of his plan and that effectively gives him control of Plaza Extra-West does not unfairly disadvantage Yusuf. It must be not be forgotten that it is undisputed that the meeting of directors held on April 30, 2014 was the first and only meeting of directors in the history of Plessen, and it was called on two days notice to approve resolutions, all of which favored the Hameds and disadvantaged the Yusufs. Although Hamed claims that this meeting was held "in full compliance with all of Plessen's governing corporate documents," as Yusuf has previously pointed out, the Plessen Bylaws relied upon to establish the propriety of that meeting are almost certainly invalid, if not fraudulent, since they were purportedly adopted on April 30, 1997, even though it is undisputed that no meetings of directors or shareholders took place since the incorporation of Plessen.

In response to the Department of Licensing and Consumer Affairs ("DLCA") License Renewal Application for 2015 attached as Exhibit 2 to Yusuf's Brief in Support of Motion for Stay Pending Appeal, Hamed attaches a declaration from his son, Waleed, stating that the application "was not created or filed by my father, Mohammad Hamed, or any of his sons listed

in the above caption who are Counterclaim Defendants herein.” Conveniently, this carefully worded statement does not include Hamed’s other family members or agents. Further, the declaration does not bother to state who filed this allegedly “inaccurate” document that clearly states Maher Yusuf is a director of Plessen nor does it dispute that Waleed Hamed signed the check for \$130 to reimburse his credit card for the application filing fee. *See* last page of Exhibit 2.<sup>3</sup>

Once again, Hamed claims that simply because the Partnership does not have a lease covering the Plaza Extra-West premises, “there is no legal basis for arguing that this Court could have held a “closed auction” for the sale of this business.” *See* Opposition at p. 5. Hamed’s brief in opposition to the stay simply sidesteps the Court’s authority to dissolve and appoint a Receiver for Plessen, relief clearly sought by Yusuf in Counts IX and X of his Amended Counterclaim -- and the arguments supporting that relief made in his Motion to Nullify Plessen’s Board Resolutions, to Avoid Acts Taken Pursuant to those Resolutions and to Appoint Receiver (the “Motion to Nullify”).

Given the undisputed fact that there has never been a meeting of shareholders since Plessen was incorporated and this Court’s previous acknowledgement of “the persistent deadlock between the parties,” *see Hamed v. Yusuf*, 2014 V.I. LEXIS 52, \* 22, it is respectfully submitted that this Court could and should have appointed a Receiver who then could have sold the property on which Plaza Extra-West is situated at a closed auction between the partners as a part of the dissolution of Plessen. This option not only avoids the impropriety of providing Hamed with the exclusive opportunity to purchase significant partnership assets, it also avoids the gloom and doom predicted by Hamed if the Supreme Court invalidates the Lease, since the

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<sup>3</sup> The Court is reminded that the 2013 DLCA renewal application attached as Exhibit D to the brief in support of the Motion to Nullify also reflected Maher Yusuf as a Director of Plessen.

store will remain open and operating pending completion of the partnership wind up. In this regard, Hamed's claims that "the Plan would really be unchanged even if the lease were to be declared invalid," *see* Opposition at p. 4, simply makes no sense, for the reasons discussed above. Hamed has already candidly acknowledged what this Court's Plan effectively glossed over, namely, that the Court's approval of the disputed Lease with KAC357, Inc. provided Hamed not only with the "lynchpin" to his own plan for Plaza Extra-West, which this Court effectively adopted in the Order, but outright "control" of Plaza Extra-West. *See* "Hamed's Comments Regarding Proposed Winding Up Order" at p. 7 ("[t]he Court's proposed liquidation order [with respect to Plaza Extra-East and Plaza Extra-West] fully complies with RUPA by liquidating their contents by having each partner buy the equipment and inventory in the physical stores that *they each control* through other corporate interests.") (emphasis added). If the Lease is declared invalid by the Supreme Court, then, as discussed above, the Court's Plan would necessarily have to be changed so that both partners have an equal opportunity to purchase the inventory and equipment of Plaza Extra-West, the right to operate the store, and to own the building and land associated with it.

Hamed states that the "Court expressly deleted these items (leasehold improvements) from the Wind Up Plan for the same reason it did so on the Plaza Extra East location – the partnership had no lease, so it did not own these leasehold improvements (which belong to the fee owners, United and Plessen)." *See* Opposition at p. 6. The deletion of the leasehold improvement items from Plaza Extra-East makes perfect sense because they are owned by United Corporation, which in turn is solely owned by Yusuf. That logic has no applicability to Plessen, which is 50% owned by the Yusuf and Hamed families.



For all of the foregoing reasons, Yusuf has shown that he has a reasonable probability of success on appeal.

### **Irreparable Harm To Yusuf**

Hamed begins his argument by misquoting Yusuf, claiming that “Yusuf argues that he will be irreparably harmed if his ‘property interest’ in the Plaza-West store is ‘allowed to be transferred.’” *See* Opposition at p. 6. Yusuf never said any such thing. Rather, Yusuf argued that if the Plan with respect to Plaza Extra-West was not stayed pending appeal, the issues that he has raised in his appeals would become effectively unreviewable since the inventory and equipment of Plaza Extra-West would be sold to Hamed, the Partnership would be dispossessed from the premises, and KAC357, Inc. would assume possession and operation of the Partnership’s ongoing business under its disputed Lease with Plessen. Hamed’s disingenuous analysis of the irreparable harm to Yusuf completely ignores these issues and Hamed does not even suggest how, absent a stay, the sale and distribution of the inventory and equipment to Hamed and the implementation of the Lease and Plan could be effectively unwound. If the Lease is ultimately voided by the Supreme Court, and if the Supreme Court reverses this Court’s disposition of West and orders this Court on remand to conduct a closed sale auction of the right to operate the store, along with the land and improvements, the store could in the meantime be denuded of inventory and equipment given the sale to Hamed, who in turn could sell or assign these assets to third parties over whom the Court has no jurisdiction. For these reasons, Yusuf has established irreparable harm to himself.

### **Irreparable Harm to Hamed**

Hamed states that “if a partial stay were entered then a **final accounting could not take place, since part of the partnership would still be operating until the appeal is completed.**”

*See* Opposition at p. 7 (emphasis in original). While it is true that entry of the requested stay will result in the continued operation of Plaza Extra-West during the appeal and that a final accounting must await disposition of Yusuf's appeal, that is simply part and parcel of Yusuf's right to seek judicial review of this Court's Orders. As Hamed would have it, this Court should refuse to stay implementation of the Wind Up Plan provisions regarding Plaza Extra-West so that the Plan is fully implemented and unreviewable on appeal. As reflected in the cases cited in Yusuf's Brief In Support Of Motion For Stay at p. 7-8, that would be the quintessential form of prejudice to Yusuf.

Hamed claims that "a partial stay as requested would *significantly* impede Hamed's ability to compete with Yusuf in their respective new stores, as Yusuf would have sole control over the Plaza East location while being the sole Liquidating Partner in the Plaza West store." *See* Opposition at p. 7 (emphasis in original). First of all, if the requested partial stay is entered, Plaza Extra-West would not become Hamed's "new" store, which would compete with Plaza Extra-East. Plaza Extra-West would remain a partnership store pending appeal. To alleviate any concern Hamed or the Court might have with respect to Hamed serving as Liquidating Partner for Plaza Extra-West, it is respectfully submitted that since the liquidation of Plaza Extra-West would be held in abeyance pending appeal, there is no need for a Liquidating Partner for that store during the appeal and the partners would simply operate that store pending appeal pursuant to the terms of the preliminary injunction entered on April 25, 2013. Since Yusuf would have a fifty percent interest in the profits of Plaza Extra-West during the pendency of the appeal and the ultimate disposition of that store, Yusuf would have every incentive to maximize the profits of that store to his and Hamed's benefit. Accordingly, Hamed cannot establish that he would be harmed by the stay sought to Yusuf.

### **Public Interest**

Hamed does not argue that a stay pending appeal will result in closure of Plaza Extra-West. Rather, he claims that the invalidation of the Lease will result in closure. This is an issue that will be addressed by the Supreme Court, whether or not a stay pending appeal is issued. In any event, as explained above, Hamed's unexplained claim that invalidation of the Lease will result in closure of the supermarket at West has no basis in fact or law. There is absolutely nothing that prevents the continued operation of Plaza Extra-West under the provisions of this Court's preliminary injunction during the pendency of Yusuf's appeal, and thereafter, as may be ordered by the Supreme Court and this Court.

### **A Partial Stay Will Not Defeat the Purpose of the Wind Up Order.**

Hamed complains that "if a Partial Stay is entered, the purpose of the Plan would be defeated, as the Liquidation Plan is designed to dissolve the partnership, which in fact could not take place until all appeals are resolved if a partial stay is entered." See Opposition at p. 9. In point of fact, the Partnership is already dissolved. The purpose of the Plan is to wind up the Partnership pursuant to the Uniform Partnership Act, V.I. Code Ann. tit. 26, § 1-274. While it may be true that the Partnership wind up cannot be concluded until Yusuf's appeal is resolved, that would be the case whether or not a stay pending appeal is entered. The stay sought by Yusuf simply will allow the effective appellate review of the few provisions of the Order and Plan that Yusuf disagrees with, primarily the provisions relating to Plaza Extra-West. What Hamed is effectively arguing is that Yusuf should not be able to appeal from this Court's Wind Up Order. While the parties may disagree regarding whether the Supreme Court has appellate jurisdiction with respect to the Orders from which Yusuf has appealed, it is simply beyond cavil that if Yusuf has a right to appeal, that right should not be diminished or rendered moot

by the implementation of provisions of the Plan that might be reversed on appeal. Accordingly, a stay pending appeal does not defeat the purpose of the Wind Up Order; rather, it would preserve the Supreme Court's ability to effectively review the disputed provisions.

At page 10 of his Opposition, Hamed makes a passing argument that if the Court issues the stay sought by Yusuf, it should stay the entire Wind Up Order or at least stay the transfer of Plaza Extra-East. Hamed provides absolutely no explanation why the Court should stay execution of the provisions of the Plan to which both partners agree. This simply makes no sense. The Partnership should be wound up to the fullest extent practicable during the pendency of the appeal. This would include the disposition of Plaza Extra-East and Plaza Extra-Tutu Park, except the provisions relating to those stores concerning continued payment of manager's salaries and reimbursement of legal expenses of the Tutu Park Litigation. Such partial wind up of the Partnership involving these two stores will substantially simplify the issues involved in this case, reduce the Partnership's continued exposure to liability and expenses, and focus the remaining issues on the disposition of partnership assets associated with Plaza Extra-West. There is simply no good reason to stay the provisions of the Wind Up Order from which no party has appealed. Certainly, Hamed has utterly failed to establish the four traditional factors for stays with respect to the provisions of the Wind Up Order that are not affected by an appeal.

#### **Any Bond Amount Should be Nominal**

The Opposition claims that absent a stay, "Hamed and his family would get 100% of . . . [the Plaza Extra-West store] profits." See Opposition at p. 10. If no stay is entered, presumably the disputed Lease between Plessen and KAC357, Inc. becomes effective after

Hamed pays for the inventory and equipment as provided in the Plan.<sup>4</sup> Obviously, the Lease did not contemplate any specific period of time that the Partnership would remain in possession. Under these circumstances, since the Lease leaves the time the Partnership may remain in possession of the premises open ended, the profits that might be generated by KAC357, Inc. after payment of rent should not be considered. In any event, Hamed and his family would not be getting 100% of these profits, KAC357, Inc. would. KAC357, Inc. is not a party to this case and the speculative profits of this start up company should have no bearing on the amount of any bond.

The Opposition relies upon the Declaration of Waleed Hamed, which states: "When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income taxes)." This naked assertion is made without any background or supporting information whatsoever. As reflected in the attached Declaration of John Gaffney, Senior Controller of United Corporation d/b/a Plaza Extra, there were no separate financial statements for Plaza Extra-West before 2013. Based on Mr. Gaffney's review of the accounting data and financial information concerning Plaza Extra-West, the average monthly net operating income for Plaza Extra-West in 2013 was \$120,654 and in 2014, it was \$94,372, without deducting any rent expense (since the Partnership paid no rent to Plessen for occupying the Plaza Extra-West premises). See Declaration of John Gaffney attached as **Exhibit 1** at ¶ 3. Because Waleed Hamed provides this Court and Yusuf with no clue how he arrived at a profit figure of \$250,000 per month for a start up entity, KAC357, Inc., that has no operational history whatsoever, and because that figure is entirely unsupported by

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<sup>4</sup> Section 2.3.4 of the Lease provides: "The Parties recognize that there is currently a partnership between Fathi Yusuf and Mohammed Hamed operating a grocery business in the Demised Premises. The Tenant shall not be granted possession of the Premises so long as this partnership is in possession of the Premises. Likewise, rent shall not be due until the Tenant has possession of the Premises."

any existing financial information concerning Plaza Extra-West, it is entitled to no deference by this Court, particularly since it does not factor in the monthly rent of \$55,000 KAC357, Inc. would be obligated to pay.

For all of the foregoing reasons as well as the reasons set forth in Yusuf's Brief in Support of Motion for Stay of Portions of January 7, 2015 Order Pending Appeal, the Court is respectfully requested to grant Yusuf's Motion for Stay Pending Appeal and to provide such further relief as is just and proper under the circumstances.

Respectfully Submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

DATED: February 10, 2015

By: 

Gregory H. Hodges (VI Bar No. 174)  
Stefan B. Herpel (VI Bar No. 1019)  
Law House  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 774-4422  
Facsimile: (340) 715-4400  
E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)  
[sherpel@dtflaw.com](mailto:sherpel@dtflaw.com)

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](mailto:info@dewood-law.com)

Attorneys for Fathi Yusuf

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of February, 2014, I caused the foregoing **Reply to Hamed's Opposition to Motion for Stay of Portions of January 7, 2015 Order Pending Appeal** 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](mailto:holtvi@aol.com)

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

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

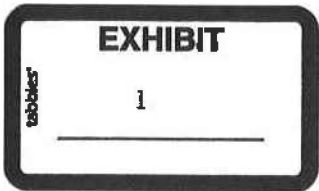
**MOHAMMAD HAMED**, by his )  
authorized agent **WALEED HAMED**, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. )  
 )  
**FATHI YUSUF and UNITED CORPORATION**, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )  
 )  
**WALEED HAMED, WAHEED HAMED,** )  
**MUFEEED HAMED, HISHAM HAMED, and**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

**DECLARATION OF JOHN GAFFNEY**

I, John Gaffney, pursuant to 28 USC § 1746 and Super. Ct. R. 18, under the penalties of perjury, state and affirm that the following is true and correct:

1. I am the Senior Controller of United Corporation d/b/a Plaza Extra. As such, my duties are to collect, supervise and update accounting data and financial information concerning, among other things, the three supermarket stores known as Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.
2. I have been shown a declaration of Waleed Hamed dated February 3, 2015 in which he states the following: "When the Plaza West store was fully functional, without the current management issues, it regularly made a profit of \$250,000 a month (before income





taxes).” I have no idea what information was relied upon to make this statement but it is not supported by the historical accounting data and financial information for Plaza Extra-West.

3. The monthly profits of Plaza Extra-West cannot be accurately reported for 2012 and the preceding years because both St. Croix stores were grouped together as one during that time. 2013 is the first year that Plaza Extra-West was broken out. After reviewing the accounting data and financial information generated with respect to Plaza Extra-West, I can state that the average monthly net operating income for Plaza Extra-West in 2013 was \$120,654 and in 2014, it was \$94,372. Both of these average monthly figures do not take into consideration any rental obligations since, under the arrangement in place from 2000 to date, no rent was due to Plessen Enterprises, Inc. for occupying the Plaza Extra-West premises. Accordingly, I am aware of no accounting data or financial information concerning Plaza Extra-West that would support the statement of Waleed Hamed quoted above.

Dated: February 10, 2015

  
John Gaffney